

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

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ORIGINAL : ENGLISH

PRELIMINARY CONSIDERATIONS
IN CONNECTION WITH THE VALUATION OF PROPERTY
ABANDONED BY ARAB REFUGEES

(Working paper prepared by the Land Specialist)

The immediate task before the Commission is to assess a "global" figure which may be proposed as the basis of compensation to be paid by the Israel Government for immovable property abandoned by Arab refugees and now vested in the Custodian of Absentee Property in pursuance of the Emergency Regulations of 2 December 1948.

There is no absolute basis of assessment. The value of any particular property varies from time to time and with the circumstances in which it comes on the market. Furthermore, the value of any particular property at a particular time may differ according to the purpose for which the property is being valued. A valuation for the purpose of reinstatement might well be quite different from a valuation for the purpose of sale or purchase. For example, during the war when the export of citrus fruit was impossible owing to lack of shipping, a mature orange grove in Palestine could be bought for as little as £50 per dunum although it had cost hundreds of pounds to bring into being. Before the actual work of valuation can start it will therefore be necessary for the Commission to make a decision as to the basis to be adopted. Were time of no importance it would perhaps be desirable to approach the problem empirically, i.e. to make assessments on different bases and to compare and select from the results, but since the matter is urgent it seems that there is no option but to make a decision in advance. This paper is submitted in the hope that it will help the Commission to make that decision.

The ideal would be to propose a figure which would be acceptable to both parties to the dispute. In the writer's personal opinion this is impossible as the mere fact that a figure was acceptable to one party would make it unacceptable to the other. The next best thing is to propose a figure which is defensible by reasoned argument. In the following paragraphs are set out possible bases of assessment with the advantages and disadvantages of each.

A. Valuation by capitalising the nett annual values assessed for taxation purposes

This is the easiest and quickest method of arriving at a result. Once the validity of the basis is accepted, there is little room for differences of opinion as to the method. The assessments of nett annual value were in general extremely low, and in the case of rural land were largely theoretical, bearing little relation to actual market values prevailing during the latter years of the mandatory regime. The resulting figure would be the absolute minimum which the dispossessed Arabs could reasonably be asked to accept. It would certainly be unacceptable to the Arab States although, doubtless, a considerable proportion of the dispossessed owners would accept individually on the principle that "a bird in the hand is worth two in the bush". Against the Arab argument that the nett annual values bore no relation to market values, Israel would probably advance the argument that the increase in value during the last fifteen years of the mandatory regime was brought about by Jewish enterprise and capital. This would be only partly true. The figure would be easily defensible against any objections Israel might make, since, if the principle of compensation to individuals is admitted at all, it can hardly be argued that it should be less than the amount on which they have been paying taxes for years past. On the other hand, Israel would probably feel bound to object to any figure which might be proposed, and if the lowest acceptable figure were quoted in the first instance, there would be no margin for negotiation.

This method would introduce an element of inaccuracy in that it takes no account of the potential value of land which,

although classified as rural, is on the fringe of large centres of population and is ripe for development. This land is often worth very much more than its agricultural value, but it would be brought into account and valued according to its category as cultivable land.

A pragmatical reason for adopting this method is that the "Village Statistics" prepared by the Mandatory Government are now available at Government House. These statistics show the number of dunums in each village divided into seventeen categories of value, and the number of dunums in each category held by Arabs and Jews respectively. They could be used as the basis of assessment for all the rural lands, and the technical work could start at once.

B. Valuation by capitalisation of tax assessments "weighted" by a factor to bring the figure more into line with values prevailing during the latter years of the mandate, and at present.

This is a variant of method A. It obviates the disadvantage of leaving no margin for negotiation but it has disadvantages of its own. The "weighting" factor would be very much a matter of opinion and would be open to argument. It would be practicable to apply it only to rural land since any attempt to apply it to built-on land would necessitate differentiating between those buildings which were affected by the Rent Restrictions Ordinances and those which were owner-occupied. It would probably be impossible to make this differentiation now, even if time permitted. On the other hand application of the factor to rural land only would not be so illogical as it appears at first glance, because the tax assessments of rural land were far more out of line with actual market values than the Urban Property Tax Assessments.

C. Valuation by reference to actual market values

This is technically the best method, but it is a long and difficult process and it is doubtful whether even a global estimate could be made within six months. It would mean making a study, village by village, of actual transactions carried out in the Land Registries. The material for such a study is

available in the micro-photographs of the Land Registers which are kept at the Colonial Office in London. These films may be copied but the Colonial Office is not prepared to part with the originals. There are 2,160 spools of film and the cost of copying each one is £1 - 13 - 0. The Commission would not be concerned with the spools relating to that part of Palestine which is now Jordan territory, but even if only two-thirds of the films required to be copied, the expense would still be considerable. A complete key to the films is now available at Government House and a copy of any particular spool may be had by merely quoting a number to the Colonial Office, London.

Consideration of this method at once raises the difficulty of deciding as at what date the land should be valued. The property market in Palestine has always been peculiarly sensitive to political events and there is no period of time during the last fifteen years during which it could be said that values were "normal". As an example of the extent of variation it may be mentioned that a citrus grove which was worth £P. 120 per dunum in 1938 might well have been worth only £P. 60 per dunum in 1944 and that a house which was worth £3,000 in 1938 might have been worth £9,000 in 1947 provided it was not let.

In a memorandum dated 22nd November 1949, Mr. Paolo Centini, Legal Adviser to the United Nations Economic Survey Mission for the Middle East, quoted the following criterion which was used by the Mixed Claims Commission, United States and Germany :

"in all claims based on property taken and not returned to the private owner the measure of damages which will ordinarily be applied is the reasonable market value of the property as of the time and place of taking in the condition in which it then was, if it had such a market value; if not, then the intrinsic value of the property as of such time and place."

The method adopted by the Commission in determining the reasonable market value was as follows :

"In computing the reasonable market value of plants and other property at the time of their destruction, the nature and value of the business done, their earning capacity based on previous operations, urgency

of demand and readiness to produce to meet such demand which may conceivably force the then market value above reproduction costs, even the goodwill of the business, and many other factors, have been taken into account."

These quotations are interesting because they contain :

- (a) A clear statement that property should be valued for compensation as at the time of taking, and
- (b) An implication that the basis of compensation should be free from any penal element.

"As at the time of taking" might mean as at the time of military occupation, or it might mean as at the time of vesting in the Custodian, or again, it might mean as at the time of disposal by the Custodian to State sponsored bodies. In this last connection the statement of Mr. Joseph Weitz of the J.N.F. that the Fund had purchased about 1,100,000 out of a total of more than four million dunums of cultivable abandoned Arab land is noteworthy. It would be interesting to find out the prices at which the purchases were made, although it will probably be found that these prices are much below those being currently paid in transactions between private individuals. During the mandatory regime the J.N.F. used to purchase land from private persons at current market prices, but when it came to negotiating with the Government for the long term lease of State Domain the Fund always argued that the rent should be limited to the amount which they themselves would charge any Jewish settlement to whom they sub-leased the land, such rent being very considerably less than the four per cent on the current market value which it was the practice of the mandatory Government to ask. Doubtless the fund would adopt a similar principle in its dealing with the Custodian of Absentee Property. Since the Fund is probably the only purchaser of property vested in the Custodian, and since (if Mr. Weitz's statement is correct) the magnitude of transactions between the Custodian and the J.N.F. must greatly exceed any other land transactions in Palestine, Israel would probably argue that the prices paid in those transactions represent the current market values.

If the property of an Arab resident in Israel is required for public purposes, it must be acquired under the Land (Acquisition for Public Purposes) Ordinance, which still remains in force, and which lays down a code of compensation very similar

to that adopted by the Mixed Claims Commission and quoted above. It is difficult to see why the property in Israel of a non-resident Arab should be treated differently. Israel affects to believe that all the Arabs who left their property did so with the purpose of taking up arms against the Jews. This is far from the truth. A great many of the refugee Arabs fled only to save their lives or to keep out of trouble, and others are technically absentees only because they could not be in two places at the same time. If there is to be a differentiation between the treatment of the property of resident and non-resident Arabs it would seem only simple justice to examine the actions of the latter. But, as we have seen from the quotations above, it is not the usual international practice to penalize an enemy individual by confiscating his property without compensation or with inadequate compensation. A parallel can perhaps be drawn with the treatment of Arab property in Palestine at the end of World War I. All titles to immovable property were recognised whether the owners had been fighting with or against the Allies, and whether they were resident or absentee.

The conclusion to be drawn from all this is that if the basis of market value is adopted, it should be the present market value.

D. Valuation on a replacement basis

By this is meant an estimate of what it would cost Israel to create the abandoned Arab assets if she had to start from scratch. This is mentioned only because it has been suggested by so prominent a person as Major-General Sir Edward Spears. (See Appendix). It is a method which is not used in valuation practice except in valuations for insurance purposes. It is impracticable and it would lead to a result which would be quite indefensible.

E. Valuation on the basis of re-instatement

By this is meant an estimate of what it would cost to re-instate each refugee in one of the Arab countries in a position as nearly as possible equivalent to the position which he has lost. For example, if A.B. had fifty dunums of first class cereal land and a house with three rooms in Israel, what would

it cost him to purchase a similar property in Jordan? It does not follow, of course, that with the compensation awarded on this basis he would actually be able to purchase similar properties, since the fact that a large amount of money was available for the purchase of land and houses would immediately cause prices to rise. Nevertheless the idea is an attractive one and is worth considering. It would involve a study of current market prices in neighbouring territories. In the English law of compulsory acquisition the re-instatement principle is admissible in cases where the property being acquired is of such a character that there is no general demand or market for it and re-instatement is genuinely intended. The same principle was incorporated into the Palestine law of compulsory purchase which still remains in force in Israel. The method has an advantage over the method of valuation by reference to actual market values in that it would take no account of the rise in values due to proximity of Arab land to Jewish development which has taken place since the establishment of the State of Israel. Any suggestion that such increase in value should be taken into account would certainly be contested by Israel.

The method would be fairly easy of application to rural property but would be difficult to apply to urban property since the value of a site or a building in a town like Haifa, Jaffa, or Jerusalem depends so much upon its precise location.

W/63
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APPENDIX

Letter to the "Daily Telegraph"
of Saturday, April 23, 1949

"From Major-Gen. Sir Edward Spears:

"Sir,

Mr. Berncastle, in his letter on Arab assets in Palestine, says it is hardly to be expected that the Israeli Government would be prepared to compensate the dispossessed Arab owners on the basis of inflated prices.

Justice would be satisfied if the Israelis would agree that these assets should be valued by an independent authority at their replacement value, that is, at what it would cost the Jews to create them if they had to start from scratch. In the Arab-owned half of the citrus industry, the Arab agricultural industry (which produced an additional £17 million worth of produce annually) and in townships such as Jaffa and the Arab part of Haifa, the Israelis have acquired assets which it would take them years and millions of money to build up.

Yours etc.

(signed) E.L. SPEARS."