

**The United Nations Conciliation Commission for Palestine  
and a Durable Solution for Palestine Refugees**



working paper prepared for  
UN Conference on Palestine Refugees

*Paris*

26-27 April 2000

## **Introduction**

In 1948 the United Nations General Assembly, based on recommendations submitted by the UN Mediator for Palestine, established the Conciliation Commission for Palestine (UNCCP) to assist the governments and authorities concerned to achieve a final settlement of the Palestine question. Given the partial if not primary responsibility of the United Nations for the creation of the Palestine refugee situation, stemming from the 1947 UN decision to partition Palestine, the international community created a special regime to provide assistance and protection, including the promotion and implementation of a durable solution, for Palestine refugees.

The UNCCP, rather than the International Refugee Organization (IRO) and its successor, the Office of the UN High Commissioner for Refugees (UNHCR), was authorized to provide protection and seek a durable solution for the refugees. A separate agency, the UN Relief and Works Agency (UNRWA) was subsequently established to provide assistance. Emphasizing the special situation of Palestine refugees, the international community later authorized the UNHCR to assume responsibility for the refugees, if, for any reason, protection or assistance ceased, without the situation of the refugees being resolved according to the relevant resolutions of the General Assembly.<sup>1</sup>

The international community also set down a specific framework and special guidelines for a durable solution for Palestine refugees in the mandate of the UNCCP. According to General Assembly Resolution 194 (III), paragraph 11, a durable solution includes repatriation, resettlement, economic and social rehabilitation, and compensation. The special guidelines provided to the Commission emphasizes a preferred option comprising a combined package of repatriation and compensation or resettlement and compensation based on the choice of each refugee. The framework and special guidelines were consistent with that set down in the Statute of the UNHCR, then in the drafting

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<sup>1</sup> Article 1D, 1951 Convention Relating to the Status of Refugees, 189 UNTS 150. For a more complete discussion of the special regime see Susan M. Abram and Guy Goodwin-Gill, *Brief Amicus Curiae*, United States Department of Justice Executive Office for Immigration Review, Board of Immigration Review, Board of Immigration Appeals, Falls Church Virginia. A condensed version is available as BADIL Information & Discussion Brief, Issue No. 1, "Reinterpreting Palestinian Refugee Rights Under International Law, and a Framework for Durable Solutions." Published by BADIL Resource Center (February 2000).

stages, and remarkably forward-looking in noting the preferred option of voluntary repatriation with additional provisions for development and compensation.<sup>2</sup>

Barely three years after it was created, however, the Commission notified the General Assembly that it was unable to make substantial progress towards achieving a final settlement of the conflict. The failure of the Commission to facilitate a durable solution was related in large part to Israel's opposition to the special guidelines in paragraph 11 of Resolution 194 (III). The failure was also related, however, to the internal contradictions of the UNCCP's mandate and function. The mandate of the Commission, unlike the Office of the UNHCR, was not limited to refugees, but included the broader task of finding solutions to all outstanding issues between Israel and the Arab states. The function of the Commission, i.e. conciliation and mediation of the Palestine conflict, which excluded provisions for an enforcement mechanism like the International Court of Justice, also militated against the full provision of protection and representation of the specific interests of the refugees. As much as the Commission emphasized the importance of the refugee issue, it was ultimately forced to weigh the refugee issue against other outstanding issues in order to attempt to facilitate a comprehensive peace settlement.

The first part of the working paper examines the broad mandate and function of the Commission as prescribed in paragraphs 4 through 6 of Resolution 194 (III). The second part of the paper looks at the mandate and function of the Commission in relation to the refugees as set down in paragraph 11, and the impact on the establishment of the Commission's Refugee Office in 1950. Finally, the last section examines the impact of the clash between the mandate and functions of the Commission and the special guidelines for the refugees during the first four years of the Commission's operation. In sum, the clash rendered the UNCCP's efforts for protection to be largely palliative. This was evident in the conclusions of the Technical Committee for refugees, the Economic Survey Mission, and in relation to implementation of the framework and special

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<sup>2</sup> UNGA 428 (V), 14 December 1950, 1950 Statute of the United Nations High Commissioner for Refugees. For more details on voluntary repatriation as a preferred option for durable solutions and the growing importance of development and securing access to properties see UNHCR, *The State of the Worlds Refugees*, published annually, and the Executive Committee Conclusions of the UNHCR.

guidelines as set down in paragraph 11. The conclusion of the working paper provides several recommendations for a durable solution for Palestine refugees. The paper is based on a review of the reports of the UNCCP and the *Yearbook of the United Nations* between 1947 and 1952.

### **The Broad Mandate of the UNCCP**

The Conciliation Commission was entrusted with the broad task, defined in paragraphs 4 through 6 of General Assembly Resolution 194 (III), 11 December 1948, of assisting the parties, Israel and the Arab states, through direct and indirect negotiations, in achieving a final settlement of all outstanding issues.<sup>3</sup> This broad mandate was carried over from the terms of reference for the UN Mediator, and set down in UN General Assembly Resolution 186 (S-2) of 14 May 1948.<sup>4</sup> Among the tasks assigned to the Mediator was the promotion of a peaceful adjustment of the future situation in Palestine.<sup>5</sup>

In describing the role accorded to him by the General Assembly the Mediator noted that his main task was to use his “good offices” to offer friendly suggestions and proposals and facilitate adjustment of controversy.<sup>6</sup> The Mediator deferred to article 4 in Part II of The Hague Convention stating that “the part of the Mediator consists in reconciling the opposing claims and appeasing the feelings of resentment that may have arisen.”<sup>7</sup> In seeking to promote a peaceful adjustment of the situation in Palestine, the

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<sup>3</sup> UNGA Resolution 194 (III), 11 December 1948.

<sup>4</sup> UNGA Resolution 186 (S-2), 14 May 1948, Part II, Article 1(a).

<sup>5</sup> The original draft resolution called for the Mediator to promote “agreement on the future government of Palestine”. *Yearbook of the United Nations, 1947-48*. New York: UN Department of Public Information [Internet Edition]. Additional tasks included arranging for the operation of common services necessary for the safety and well-being of the population in Palestine, protection of the Holy Places, directives to co-operate with the Truce Commission for Palestine, and to invite assistance and co-operation of additional agencies for the promotion of the welfare of the inhabitants of Palestine.

<sup>6</sup> UN Doc. A/648, *Progress Report of the United Nations Mediator on Palestine*, 16 September 1948. The exact function of the Mediator was a subject of discussion during the drafting stages of the resolution in Sub-Committee 9. This debate was later mirrored in the drafting stages of Resolution 194 (III).

<sup>7</sup> *Ibid.*

Mediator further noted that his role was “to encourage compromise rather than strict adherence to principle”.<sup>8</sup>

The mandate of the Mediator was carried forward as Article 2(a) of Resolution 194 (III). The Commission was further instructed, similar to the Mediator’s role, to “assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them.”<sup>9</sup> Reflecting this understanding of its mandate, the Commission noted in its first report, that it should,

concentrate on an effort to bring about a rapprochement between the parties concerned. Its most pressing task should be to use its good offices for the purpose of enabling the Governments concerned to meet and enter into negotiations – if possible direct ones – and to collaborate with them in order that these conversations may result in a “final settlement of all questions outstanding between them.”<sup>10</sup>

The debate during the drafting of Resolution 194 (III) centered on the impact of including the Mediator's Conclusions within the mandate of the proposed conciliation commission. While the original draft resolution submitted by the UK at the 203<sup>rd</sup> meeting of the First Committee in November 1948 included a paragraph which endorsed the Mediator's Conclusions along with the broader mandate regarding all outstanding issues, a revised draft was subsequently tabled, which refrained from endorsing the Mediator's Conclusions. According to the summary of the debate in the First Committee, many representatives felt that the Assembly should not make any recommendations. Similar concerns were raised in the plenary meetings on the 11 December.<sup>11</sup> While it was stressed that the primary purpose in removing the endorsement of the Mediator's conclusions was to gain greater support in the Assembly for the resolution, China noted that all sponsors of the amendment had accepted the French sub-amendment, which had urged the

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<sup>8</sup> Ibid.

<sup>9</sup> Paragraph 6, *supra* note 2.

<sup>10</sup> UN Doc. A/819, *United Nations Conciliation Commission for Palestine, First Progress Report*, 15 March 1949.

<sup>11</sup> *Yearbook of the United Nations 1948-49*, New York: United Nations Department of Public Information, 1949. The amendment also asked for the deletion of the preamble, which referred to the Assembly resolutions of 29 November 1947 and 14 May 1948, the Mediator’s progress report, and the Security Council’s truce and armistice resolutions, and proposed to substitute the words “The General Assembly, having considered further the situation in Palestine.”

“elimination of controversial points from the resolution so as not to prejudge the conciliation efforts”.<sup>12</sup>

The success of the Commission in relation to its broad mandate depended, in large part, on its ability, first to bring the parties together around a broad common agenda, and secondly to have the latitude to build package deals that would assist the parties to bridge divergent interests. The Commission brought forward several proposals during its first years of operation to attempt to bridge the opposing positions of the parties.<sup>13</sup> This included the 1949 May Protocol, which combined elements of Resolution 181 and 194<sup>14</sup>; the March 1950 proposal for mixed working committees chaired by the Commission<sup>15</sup>; and, the 1951 Comprehensive Pattern of Proposals<sup>16</sup>.

The function of the proposed commission was also addressed in the First Committee during the drafting of Resolution 194 (III). Most representatives felt that the proposed commission should only “assist and encourage” the parties to enter direct negotiations in order to arrive at a permanent settlement.<sup>17</sup> The representatives agreed on

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<sup>12</sup> The amendment was sponsored by Australia, Brazil, Canada, China, Colombia, France and New Zealand. Ibid. The UK representative later voiced his support for the joint amendment to remove “all phraseology likely to antagonize the parties directly involved”. Similar concerns had been expressed in the discussion concerning the function of the Mediator. During the 343<sup>rd</sup> meeting of the Security Council in August 1948, the UK proposed that the Security Council emphasize to the Mediator the gravity of the refugee problem. While France supported this view, the French delegate stressed that any such communication with the Mediator should “not give the impression that the Mediator deal with the question of refugees as a matter of priority. The question was part and parcel of the whole settlement which the Mediator was supposed to seek.” *Yearbook of the United Nations 1947-48, supra* note 5. Syria, meanwhile, submitted a draft resolution calling for the International Court of Justice to submit an advisory ruling on the “power of the General Assembly under the Charter to partition Palestine for the creation of a Jewish state against the wishes of the majority of the Palestine population,” and on the “international status of Palestine upon the termination of the mandate.”

<sup>13</sup> In sum, the Arab states demanded Israel's recognition and implementation of paragraph 11 of Resolution 194 (III), while Israel preferred to discuss the issue of borders and opposed repatriation of the refugees. Numerous reports of the Commission cite the importance of linking the issue of boundaries with that of the refugees.

<sup>14</sup> The Protocol appears as Annex A of UN Doc. A/927, *United Nations Conciliation Commission for Palestine, Third Progress Report*, 21 June 1949.

<sup>15</sup> The Memorandum on the mixed committees appears as Annex III of UN Doc. A/1255, *United Nations Conciliation Commission for Palestine, Sixth Progress Report*, 29 May 1950.

<sup>16</sup> For the text of the Comprehensive Pattern of Proposals see UN Doc. A/1985, *Progress Report of the United Nations Conciliation Commission, Progress Report*, 20 November 1951.

<sup>17</sup> *Yearbook of the United Nations 1948-49, supra* note 11.

a list of five functions, which included bringing the parties together, initiation of negotiations, and promotion of an agreement by making suggestions and proposals. The representatives further noted that the task of the commission should be “one of conciliation only, without arbitration”.<sup>18</sup> A draft amendment by Guatemala which called on the proposed commission “to use its good offices” was rejected, because the UK representative regarded it as giving the Commission too much of a role in negotiation.<sup>19</sup>

By its own admission, the UNCCP played several roles in relation to its mandate. These included that of intermediary, conciliator and mediator. As intermediary, the Commission canvassed the opinions and positions of the Arab states and Israel via field visits and in fora like the 1949 Lausanne meetings, although it reserved the right to withhold suggestions or proposals that it deemed contradictory to its mandate.<sup>20</sup> Failing these efforts, concerned about an increasingly dangerous situation on the ground, and seeking to respond to the counter demands of the Arab states for mediation, and Israel, which viewed the Commission more as a “harmonizing agent” with direct intervention contingent on the consent of the parties for direct negotiation, the Commission sought to play the role of conciliator through the mixed committees chaired by members of the Commission.<sup>21</sup> The mixed committees added a second track to the conciliation process, comprising a general track and a technical track. Only when all these efforts had failed did the Commission, citing paragraph 2(a) of its mandate, enter into the role of

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<sup>18</sup> Ibid. Only one exception was made, that being Jerusalem where it was proposed that the commission prepare a draft statute for an international regime in the city. A draft amendment by Australia limited the function of the Commission to call into consultation organs and agencies of the UN, which may assist in repatriation.

<sup>19</sup> Ibid. The role of “good offices”, eventually found its way into the mandate of the Commission, however, by including the mandate of the UN Mediator under Resolution 186 (S-2), *supra* note 4.

<sup>20</sup> An example of the latter is the decision of the Commission not to pass on conditions proposed by the parties for participation in the working committees (*supra* note 12). The Commission chose rather to outline the principles of operation for the committees. UN Doc. A/1288, *United Nations Conciliation Commission, Seventh Progress Report*, 17 July 1950.

<sup>21</sup> Details on the procedures for the operations of the committees, however, were left open for negotiation between the parties and the Commission. In August 1949, the Commission had also attempted to play a conciliation role by submitting specific questions to the parties on various aspects of the conflict, as a follow-up to the 1949 May Protocol (*supra* note 11), from which the Commission could then engage in further detailed discussions. UN Doc. A/922, *United Nations Conciliation Commission for Palestine, Fourth Progress Report*, 22 September 1949.

mediator.<sup>22</sup> A specific proposal on all outstanding issues, the Comprehensive Pattern of Proposals, was presented to the parties at the 1951 Paris Conference, in order to inject some substance to the negotiations.<sup>23</sup>

### **Special Guidelines on Refugees**

The General Assembly also provided the Commission with a handful of special directives, including those on the refugees.<sup>24</sup> The framework and special guidelines were carried over from the Basic Premises and Conclusions in the Mediators Progress Report of September 1948.<sup>25</sup> In his report of 28 June 1948, the Mediator emphasized that “recognition [should] be accorded to the right of residents of Palestine to return to their homes without restriction and to regain possession of their property”.<sup>26</sup> In his first progress report to the UN General Assembly, the Mediator wrote:

No settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the homes from which he has been dislodged [...]. It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.<sup>27</sup>

In the conclusion of his 1948 report the Mediator noted that:

The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations,

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<sup>22</sup> UN Doc. A/1985, *supra* note 16.

<sup>23</sup> The Comprehensive Pattern of Proposals called for a cancellation of war damages for both Israel and the Arab states; Israeli acceptance of a specified number of refugees who would be integrated into the economy; Israeli acceptance of the obligation to pay, based on its ability; the unfreezing of all bank accounts in the region and an agreement in principle regarding armistice agreements. *Ibid.*

<sup>24</sup> Other special directives included those on Jerusalem and the Holy Places.

<sup>25</sup> UN Doc. A/648, *supra* note 6.

<sup>26</sup> UN Doc. S/863, *Text of Suggestions of the United Nations Mediator on Palestine to the two Parties on 28 June 1948*, 3 July 1948. Later that summer the Mediator attempted to apply this principle through facilitating the return of some 1,600 refugees from Ajanjul and Buweiriya northwest of Jerusalem just inside the Ramle sub-district. A second attempt was made in August to facilitate the return of Palestinian Arabs to Jaffa and Haifa, without prejudice to the “ultimate right of all refugees to return to their homes.” UN Doc. S/961, *Cablegram dated 12 August 1948 from the United Nations Mediator to the Secretary General concerning the observance of the truce in Jerusalem.*

<sup>27</sup> UN Doc. A/648, *supra* note 6. The right of return was raised by the Mediator repeatedly in his report.



and their repatriation, resettlement and economic and social rehabilitation and payment of adequate compensation for the property of those choosing not to return should be supervised and assisted by the UN Conciliation Commission.<sup>28</sup>

The basic framework of the Mediator's recommendations on the refugees thus became the basis for paragraph 11 of Resolution 194 (III), which authorized the Commission,

to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees, and through him, with the appropriate organs and agencies of the United Nations.<sup>29</sup>

The General Assembly also included special guidelines for a durable solution. According to the first part of paragraph 11:

...refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date [while] compensation should be paid for the property of those choosing not to return and for loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.<sup>30</sup>

The guidelines thus emphasized several preferred options for a durable solution. These options included combinations of repatriation and compensation or resettlement and compensation based on the choice of each refugee.

The importance of these special guidelines was emphasized by a series of working papers prepared by the Secretariat of the Commission to facilitate implementation.<sup>31</sup> The

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<sup>28</sup> Ibid.

<sup>29</sup> *Supra*, note 3.

<sup>30</sup> Ibid.

<sup>31</sup> See, for example, UN Doc. W/24, *Initial Steps on the Question of Compensation*, 7 September 1949; UN Doc. A/AC.25/W.53, *Note on the problem of compensation*, 13 September 1950; UN Doc. W/30, *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*, 31 October 1949; UN Doc. A/AC.25/W.81 Rev. 2, *Historical Precedents for Restitution of Property or Payment of Compensation to Refugees*, March 1950; UN Doc. W/45, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*, 15 May 1950; UN Doc. W/58, *Emergency Regulations on Property of Absentees "Development Authority Law" (Transfer of Property) - 5710-1950*, 9 February 1951; UN Doc. W/61/Add.1, *Addendum to Definition of a "Refugee" Under paragraph 11 of the General Assembly Resolution of 11 December 1948*, 29 May 1951; UN Doc. W/61, *Sampling Survey of Abandoned Property Claimed by Arab Refugees*, 12 April 1951; UN Doc. A/AC.25/W/R.78, *Practical Suggestions for the Commission's Future Activities in Connection with*

papers addressed the specific meaning of return and compensation in the first part of paragraph 11. The Secretariat addressed the specific interpretation of each relevant clause on repatriation. According to the Secretariat, the special guidelines on repatriation set down by the General Assembly, “intended to confer upon the refugees as individuals the right of exercising a free choice as to their future.”<sup>32</sup> The choice included repatriation and compensation or resettlement and compensation. Furthermore, in choosing the term “to their homes”, the Secretariat stated that the General Assembly clearly meant the return of each refugee to “his house or lodging and not his homeland”.<sup>33</sup> Amendments, which referred to “the areas from which they have come”, were rejected by the General Assembly.<sup>34</sup>

An earlier working paper prepared by the Secretariat addressed the meaning of the second part of paragraph 11 of Resolution 194 concerning compensation.<sup>35</sup> The Secretariat noted that the Resolution affirmed two types of compensation: payment to refugees not choosing to return to their homes; and, “payment for the loss of or damage to property which under principles of international law or in equity should be made good

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*Compensation*, 24 April 1952. The guidelines are also notable in that while repatriation was recognized as a component for solutions to refugee situations most international efforts at the time focused on resettlement, in part due to labor market needs in Europe and later as a propaganda weapon in the context of the Cold War. Under the International Refugee Organization (IRO) (1947-1950), the predecessor to the Office of the United Nations High Commissioner for Refugees (UNHCR), only 5% of the total numbers of refugees registered with the organization were repatriated. George Stoessinger, *The Refugee and the World Community*. Minneapolis: The University of Minneapolis Press, 1963, p. 114, cited in Chimni, B.S., “From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems,” Working Paper No. 2 (May 1999) [UNHCR website, [www.unhcr.ch](http://www.unhcr.ch)]

<sup>32</sup> UN Doc. W/45, *supra* note 32. The importance of choice was emphasized throughout both the documents of the UNCCP and the Mediator.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.* The Secretariat further noted that the terms “and live at peace with their neighbors” and “should be permitted to do so” essentially imposed obligations on both the refugees and the government of Israel. While the refugees would be required to provide assurances of their intentions to live in peace, perhaps non-participation in the Palestine war as the criterion, Israel was obligated to create the conditions, which would facilitate repatriation, including the provision of protection. As regards the term “at the earliest practicable date”, the Secretariat stated that, “In deference to the Israeli arguments the Assembly agreed that the refugees should be allowed to return ‘when stable conditions had been established’. It would appear indisputable that such conditions were established by the signing of the four Armistice Agreements.” This view was stated earlier by the Conciliation Commission’s Technical Committee on Refugees. UN Doc. A/1367/Rev. 1, *General Progress Report and Supplementary Report of the United Nations Conciliation Commission for Palestine*, Appendix 4, Report of the Technical Committee on Refugees, 23 October 1950.

<sup>35</sup> UN Doc. W/30, *supra* note 32.

by the Governments or authorities responsible”.<sup>36</sup> As regards the meaning of the latter term, the Secretariat stated that while the Resolution did not affirm compensation for ordinary war damages, its legislative history implied that the Resolution affirmed compensation for “looting, pillaging, and plundering of private property and destruction of property and villages without military necessity”.<sup>37</sup> Draft resolutions by the United States, Guatemala, and Colombia were rejected, as they did not include reference for loss of or damage to properties.<sup>38</sup> The Secretariat noted, in addition, however, that while ordinary war damage was excluded from the language of the resolution and intentions of the drafters, the resolution did potentially provide for a broader set of claims based on the reference to international law.<sup>39</sup>

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<sup>36</sup> Compensation covered movable and immovable according to the Legal Advisor to the Economic Survey Mission (ESM). *Legal Aspects of the Problem of Compensation to Palestine Refugees*, Paolo Contini (22 November 1949), appended to UN Doc. W/32, *Letter and Memorandum dated 22 November 1949 Concerning Compensation*, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, Chairman, United Nations Economic-Survey Mission for the Middle East, 19 January 1950.

<sup>37</sup> The Secretariat noted that these were all violations of the 1907 Hague Convention. Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the laws and customs of war on land, 3 Marten Nouveau Recueil (Ser. 3) 461, 187 Consol. T.S. 227, Chapter I, Article 23(g), 28, Chapter V, Section III, Article 46, 47. This language originated in the Mediator’s report, UN Doc. A/648, *supra* note 6. The looting and confiscation of Palestinian refugee property is covered by numerous sources. Tom Segev, an Israeli researcher, notes that Israel State Archives include files still inaccessible to researchers with index titles such as Plunder of Abandoned Arab Property, Looting, Possession without Permit, and Robbery. Tom Segev, *1949: The First Israelis*. New York: Henry Holt and Company, Inc., 1986, p. 72.

<sup>38</sup> UN Doc. W/30, *supra* note 32.

<sup>39</sup> *Ibid.* "By the substitution of the expression 'loss of or damage to property which under principles of international law or in equity should be made good', whereby the wording became similar to that generally used in Mixed Claim Conventions, it may be assumed that the General Assembly on the other hand did not wish to limit the claims to cases as just mentioned. It would therefore seem necessary to give the provision in question a somewhat wider application and to consider each case on its merits." The suggestion of the Secretariat in 1950 to examine the way in which the Israeli government obtained reparations and compensation from the German government for Jewish victims of Nazi persecution in a second working paper suggests that the inclusion of the term “loss of or damage to property which under principles of international law or in equity should be made good,” did potentially provide for a broader set of claims, as applied in relation to Jewish losses in Germany. UN Doc. A/AC.25/W.53, *supra* note 32. This may have included reference to compensation for human capital losses and damages for psychological pain and suffering. See, for example, the work of Atif Kubursi in Sami Hadawi, *Palestinian Rights and Losses in 1948*. London: Saqi Books, 1988. The Legal Advisor to the Economic Survey Mission further examined the issue of Israel’s liability for payment of compensation, the question of refugee status and whether compensation claims could be made under international or domestic law, the methods of compensation, and the measure of damages. In sum the Advisor noted that Israel had agreed to pay compensation for refugee land as part of a general peace settlement and that the issue of international or domestic claims fora was subject to the status of refugees in a final settlement. The advisor also raised the issue of whether the UN should undertake legal or diplomatic protection of stateless Palestine refugees. The methods of

The Commission's function in relation to the refugees followed much the same pattern as its function in relation to its broader mandate, with the exception of mediation. Earlier efforts of the Commission focused on canvassing the views and concerns of the Arab states, Israel, relevant experts, international non-governmental organizations involved in relief efforts, and the refugees themselves. The first follow-up meeting of the Commission in spring 1949 in Lausanne focused on the refugee issue, because of its "importance and extreme urgency" and "to determine the position that this issue would take in the final peace negotiations".<sup>40</sup> The Commission also attempted to advance a resolution of the refugee through the mixed committees, after it became apparent that the positions of the parties severely limited its role as intermediary. The Commission engaged the parties in discussions about the return of refugee owners of orange groves along with their laborers<sup>41</sup>, family reunification<sup>42</sup>, and access to blocked bank accounts.<sup>43</sup> As with its broader role in conciliation of all outstanding issues, the Commission reserved the right to withhold suggestions and proposals it considered contradictory to its mandate.<sup>44</sup>

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compensation included both, restitution for refugee property that had been "wrongfully seized, sequestered, requisitioned, confiscated, or detained by the Israeli government", and indemnification for loss or damage to refugee property attributable to an action by the Israeli government, which is wrongful under international law. Finally the Advisor noted that there were no fixed rules of international law concerning the "computation of the just and fair value of lost or damaged property"; different methods have been adopted by different claims commissions and that the standards of value would vary according to the economy of the country, the type of property, etc. UN Doc. W/32, *supra* note 32.

<sup>40</sup> UN Doc. A/819, *supra* note 10. The Commission also noted, however, that the parties were free to raise other outstanding issues.

<sup>41</sup> These included: (a) That inhabitants of areas falling within the no-man's land in the north of the Gaza region be allowed to return as soon as possible to their lands to cultivate them; (b) That refugees at present in the Gaza area under Egyptian control and possessing land in the hinterland of this zone be allowed to undertake as soon as possible the cultivation of their lands; (c) That refugees at present in the Gaza zone originating from the Beersheba area be allowed, provisionally and pending a final settlement, to establish themselves in that area. As regards the orange groves, the committee of experts which examined one-third of the groves in the summer of 1949 found that on average more than 50 percent of the groves had been destroyed and less than 25 percent could be salvaged for production but only if immediate steps were taken to put hydraulic and other machinery into operation. UN Doc. A/1255, *supra* note 15.

<sup>42</sup> *Ibid.*

<sup>43</sup> UN Doc. A/927, *supra* note 14.

<sup>44</sup> An example is the Commission's determination that Israel's offer to repatriate 100,000 refugees in 1949 did not meet minimal conditions necessary for conciliation. UN Doc. A/838, *United Nations Conciliation Commission, Second Progress Report*, 19 April 1949.

Additionally, the Commission was assigned a specific role concerning the special guidelines set down for a durable solution for the refugees. Paragraph 11 called upon the Commission to *facilitate* a solution to the refugee issue. As regards the meaning of the term “facilitate”, the Secretariat noted that the drafting history, and simple definition, implied “secondary or auxiliary, rather than primary or initiatory, action”.<sup>45</sup> The term “should be permitted” in reference to the return of the refugees was thus addressed to the parties, rather than the Commission. While the refugees would be required to provide assurances of their intentions to live in peace, perhaps non-participation in the Palestine war as the criterion, Israel was obligated to create the conditions, which would facilitate repatriation, including the provision of protection.

This interpretation of the function accorded in paragraph 11, explains, in part, the reason for the incomplete provision of protection by the Commission. While the Secretariat noted that it was within the mandate of the Commission to facilitate the granting of such permission,

Nothing in the instructions given to the Commission states that in this undertaking it is obligated to comply to the letter with the terms of the preceding subparagraph of paragraph 11, e.g., that it is compelled to facilitate the granting of permission to return for all refugees wishing to do so.<sup>46</sup>

However, the Secretariat also noted at the same time that the Commission would not "disregard its duty of safeguarding the principle laid down by the resolution or of reporting its violation."<sup>47</sup> This interpretation later played itself out in the drafting of the terms of reference for the Commission's Refugee Office.

During November and December 1950, the Ad-Hoc Political Committee considered measures to address the repatriation and payment of compensation for Palestine refugees. The Committee debate centered predominantly on a joint four-power draft resolution by France, Turkey, the United Kingdom and the United States. The Resolution first urged the governments concerned to engage without delay in direct discussions in order to arrive at a peaceful settlement of all questions outstanding

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<sup>45</sup> UN Doc. W/45, *supra* note 32.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

between them. It then proposed that the Commission establish a Refugee Office to make arrangements for the assessment and payment of compensation, and secondly to work out arrangements for the implementation of other objectives in paragraph 11 of Resolution 194 (III).<sup>48</sup>

An alternate resolution submitted by Egypt also called for the creation of a Refugee Office, but emphasized both repatriation and payment of compensation as set down in paragraph 11.<sup>49</sup> In making the case for their draft, the sponsors of the joint four-power resolution argued that the Egyptian draft was based on an incorrect reading of Resolution 194 (III), which should be "read as a whole" without "exclusive reference [...] to its provisions concerning refugees."<sup>50</sup> The four powers further noted that the UN had already provided for the repatriation of refugees under the framework of the UN Relief and Works Agency (UNRWA), which dealt with reintegration.<sup>51</sup> Finally, the Commission noted that its draft would "contribute to better relations between Israel and the Arab states", because it recognized "that the principles contained in the Assembly's resolution must be applied on a practicable basis."<sup>52</sup> The joint four-power draft resolution eventually became the foundation for Resolution 394 (V), 14 December 1950, spelling out the terms for the refugee office.<sup>53</sup>

According to the Commission, the Resolution marked, "a new phase in its work, a phase in which it must progress from general discussion to the seeking and, in certain cases, the putting into operation of practical measures, towards a liquidation of the

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<sup>48</sup> Draft Resolution A/AC.38/L.57 cited in *Yearbook of the United Nations 1949-50*. New York: United Nations Department for Information, 1950.

<sup>49</sup> Draft Resolution A/AC.38/L.30/Rev.1, *Ibid.* The Philippines submitted an amendment to the preamble and paragraph 1 of the joint four-power resolution, which included more specific references to the refugee question. A similar resolution was submitted by Ethiopia and Pakistan.

<sup>50</sup> *Ibid.* The powers further noted that the Egyptian, Israeli and joint Ethiopian-Pakistan represented extreme points of view.

<sup>51</sup> UNGA Resolution 302 (V), 8 December 1949. There is no evidence to support claim by the four powers that UNRWA was authorized to facilitate repatriation. The Agency was clearly established as a successor to the UN Disaster Relief Project and the UN Relief for Palestine Refugees to provide relief and engage in development work. The reference to reintegration probably stems from the Economic Survey Mission.

<sup>52</sup> *Ibid.* In this regard, the delegate from the UK noted that he doubted whether it would be in the best interest of the refugees to return to Palestine since there was a grave danger that the legacy of distrust between the two parties would make the task of mutual adjustment of populations impossible.

<sup>53</sup> UNGA 349(V), 14 December 1950.

refugee problem."<sup>54</sup> By October of 1952, the Commission had come to the conclusion that "the most promising way it could lend itself to the resolution of the issue was in further efforts to solve the questions of compensation for the Palestine refugees and the release of bank accounts block in Israel."<sup>55</sup> The reduction of the budget of the Commission, simply to cover the expenses of the Refugee Office, meant that the Commission would be able to provide little protection other than that related to documentation of refugee properties.

### **Impact on a Durable Solution**

Paragraph 11 of Resolution 194 (III), while remarkably progressive and forward-looking, introduced a framework and special guidelines on which there was least agreement between the parties. Given the broader aspect of its mandate to conciliate all outstanding issues among the parties, and the constraints on its function with the absence of any kind of enforcement mechanism, the Commission was hard pressed to facilitate implementation of the durable solution for Palestine refugees as set down in paragraph 11. While the principle of refugee choice was emphasized repeatedly by the Commission, in practice it did not come into play. The various subsidiary bodies established to provide the Commission with information and technical advice concerning implementation of the durable solution, frequently filed reports, which failed to deal with the complete framework and special guidelines in paragraph 11.

In 1949, for example, the Commission established a Technical Committee to furnish the office with basic information about the refugees, including the number of refugees, their place of origin, previous occupations, means of subsistence, etc.<sup>56</sup> The Committee was also authorized to investigate methods for determining refugee choices, the protection of the rights, properties and interests of the refugees, practical projects for immediate work relief under the auspices of host governments, technical information related to practical possibilities for repatriation, resettlement, and rehabilitation, as well

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<sup>54</sup> UN Doc. A/1793, *United Nations Conciliation Commission, Ninth Progress Report*, 22 March 1951.

<sup>55</sup> UN Doc. A/2216, *United Nations Conciliation Commission, Twelfth Progress Report*, 8 October 1952.

<sup>56</sup> Report of the Technical Committee on Refugees appearing as Appendix 4 of UN Doc. A/1367/Rev.1, *supra* note 35.

as compensation. When the Committee filed its report with the Commission, the conclusions focused on immediate and long-range programmes for resettlement with an action plan based on the assumption of the resettlement of large numbers of refugees outside of Israel. Moreover, the Committee dismissed the idea of determining refugee choices as "premature" stressing the repatriation, unlike resettlement, involved a political decision.<sup>57</sup>

The interim and final recommendations of the Economic Survey Mission (ESM), established by the Commission shortly after the Technical Committee completed its work in 1949 yielded similar recommendations, focusing almost solely on resettlement. Under the terms of its mandate, the Mission was, among other things, investigate ways and means to facilitate repatriation, resettlement, rehabilitation, and compensation in order to reintegrate the refugees.<sup>58</sup> At the same time, the ESM was authorized to propose "an organizational structure [to] coordinate and supervise and facilitate measures for relief, resettlement, economic development, and related requirements such as community facilities."<sup>59</sup> As with the Refugee Office, no provisions were made for an organizational structure to facilitate repatriation. Given the framework established in UN Resolution 194 and the broad demand for voluntary repatriation, the ESM noted in its interim report of November 1949 that "the only immediate constructive step in sight [was] to give the refugees an opportunity to work where they now are."<sup>60</sup>

Concerning repatriation, early efforts were made not only to collect information, including the number of refugees and determine their preferred options for a durable solution, but also to raise the importance of repatriation as an element in a peaceful

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<sup>57</sup> The Committee did note, however, that when refugees were asked to express any thoughts to the Committee, they "invariably displayed an emotional and deep-seated desire to return to their former homes." Ibid.

<sup>58</sup> Article 2(b) of Terms of Reference of the Economic Survey Mission appearing as Annex I of UN Doc. A/922, *supra* note 22. Other tasks included (a) to enable the governments concerned to further such measures and development programs as are required to overcome economic dislocation created by the hostilities, and (c) to promote economic conditions conducive to the maintenance of peace and stability in the area.

<sup>59</sup> Article 3(h), *ibid.*

<sup>60</sup> *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, 1949.



settlement of the conflict with the Israeli government.<sup>61</sup> The Commission also attempted to facilitate the return of refugees on a case basis.<sup>62</sup> A small number of refugees were permitted to return under limited family reunification.<sup>63</sup> In general, however, no specific plans were prepared by the Commission and after a few years, the Commission failed to advance any serious efforts on repatriation, deeming the issue to be a political one with the process difficult due to changes on the ground.<sup>64</sup>

As mentioned, considerable more efforts were made to facilitate, if not promote, resettlement. Based on the findings of the Economic Survey Mission, and the increasing inability of voluntary organizations to provide relief for the refugees, the Commission recommended the creation of UNRWA to provide for both short term (relief) and longer term (development) needs of the refugees. UNRWA programs during the first several years of its existence focused heavily on resettlement. Understandings, conditioned on Israel's acceptance of repatriation, were arrived at with Jordan and Syria concerning resettlement of refugees choosing not to return.<sup>65</sup> The Commission further engaged in discussions with host countries to examine employment opportunities for refugees, generated domestically and with international assistance.

The work on compensation is really the legacy of the UNCCP. To date the Refugee Office of the Commission continues to hold the most comprehensive record of Palestinian refugee properties. While additional work and documentation is required to correct imbalances and omissions in the records, the UNCCP records are invaluable for restitution of refugee properties and compensation according to the terms set down in paragraph 11 of UN Resolution 194 (III). Commission efforts related to compensation included the investigation of laws and regulations adopted inside Israel affecting refugee

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<sup>61</sup> UN Doc. A/838, *supra* note 45.

<sup>62</sup> Palestinian Arab inhabitants of Abasan and Akhzah were eventually allowed to cultivate land in Israel-held territory with the creation of a special zone. UN Doc. A/1255, *supra* note 15.

<sup>63</sup> In December and January of 1949, a total of some 800 dependents from Lebanon and Jordan rejoined their families in Israel. The number of refugees from Lebanon thus far allowed to return is 921. Of these 523 had actually joined their families. The number in Jordan authorized to join families is 500 of whom some 300 had crossed into Israel. On 14 February, 115 persons from Gaza area crossed into Israel. *Ibid.*

<sup>64</sup> UN Doc. A/1985, *supra* note 16.

<sup>65</sup> UN Doc. A/922, *supra* note 22.

properties. In fact, in one of its more assertive attempts to provide protection for refugee properties, the Commission called, unsuccessfully, for the abrogation of the Absentees' Property Law, the suspension of all measures of requisition and occupation of Arab houses, and the unfreezing of waqf property.<sup>66</sup> Step by step progress was made on the issue of blocked accounts in Israel being handled by a mixed committee concerning the estimated 4-5 million Palestinian pounds in blocked refugee accounts in Israel. The creation of a Refugee Office in 1950, furnished with a legal expert, economic expert and a land specialist, facilitated the collection of data and evaluation of refugee losses. The Office completed both a global assessment<sup>67</sup> in 1951 and an individual assessment<sup>68</sup> in 1964. The Refugee Office completed its work having collected 453,000 records amounting to 1,500,000 holdings. A total of some 5.2 million dunums of rural land was identified as individually-owned by refugees, not including Bir Saba' (Beersheva) and Ramle. No overall values for the property were released by the Refugee Office, although today the value of immovable property is estimated to exceed \$150 billion (1996 US\$).<sup>69</sup>

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<sup>66</sup> Ibid.

<sup>67</sup> The report included a description of methods and a summary of the final results. A total of 16,324 sq. km out of a total of 26,320 sq. km were determined to be refugee lands. The value of refugee property was assessed at 100,383,784 Palestinian pounds or 280 million dollars at the dollar-pound exchange rate in 1951. This was divided into 70 million pounds in rural property with the remainder as urban property. The value of movable lost property was estimated at 21,570,000 Palestinian pound. 1 sq. km equals 1000 dunums. The term "lands" included not only the land by "anything attached to the land", such as buildings and trees according to relevant Ordinances of the British Mandate government. The figure was arrived at by subtracting all villages outside the territory controlled by Israel, included the demilitarized zones as well as Jerusalem's no-man's land and the subtraction of urban areas and villages in which land continued to be held by the original Palestinian Arab inhabitants. According to the Refugee Office a total of 4,186 sq. km were passed to Jewish control (excluding the Naqab/Negev), of which 1,431 sq. km were uncultivable, 15 sq. km village built-on areas, and 2,739 sq. km of cultivable land. In the Naqab, 12,318 sq. km fell under Israeli control of which 10,303 sq. km were deemed uncultivable and 1,835 sq. km cultivable. Evaluation of Abandoned Arab Property in Israel, Annex A, UN Doc. A/1985, *supra* note 16.

<sup>68</sup> Detailed individual documentation was based on the Land Registers of the British Mandate, the Rural Tax Distribution Lists and the Urban Field Evaluation Sheets. Record forms were prepared for each parcel of land owned by Palestinian Arab individuals, including property owned in partnerships, companies and cooperatives. Separate forms were prepared to record land owned by religious bodies. The Office also prepared forms to record land classified as state domain, Jewish-owned land, and other parcels of land not owned by Arabs. The Office examined both settled land (registered under the Land [Settlement of Tithe] Ordinance) and non-settled land. Lands in the Naqab (Negev) were examined separately.

<sup>69</sup> For a summary table comparing different valuations see Terry Rempel, "The Ottawa Process: Workshop on Compensation and Palestinian Refugees," *The Journal of Palestine Studies*. Vol. XXIX, Number 1 (Autumn 1999), pp. 36-49. For more detailed economic analysis, see for example, Atif Kubursi,

## Conclusion

Following the adoption of Resolution 394 (V), and the establishment of the Refugee Office in 1951, the work of the Palestine Conciliation Commission focused almost solely on documentation and assessment of refugee properties. At the urging of the United States, a short-lived attempt was made to revive the broader mandate of the Commission in the early 1960s with the appointment of Joseph Johnson but this effort failed to produce any new breakthroughs. From 1964 onward, the Commission's role transitioned to a functionary one. Annual reports were submitted to the General Assembly. The UNCCP continued to file annual reports noting that the Commission,

hope[d] that the situation and related circumstances in the region will improve towards the achievement of a comprehensive, just and lasting peace in the Middle East, thus enabling it to carry forward its work in accordance with its mandate as defined by the General Assembly in its resolution 194 (III).<sup>70</sup>

With the signing of the Oslo Agreement in 1993, however, all reference to Resolution 194 (III) was removed from the reports of the Commission.

It is not clear if the Commission established by the General Assembly in 1948 was consistent with the vision provided by the UN Mediator days before his assassination. It would appear, however, from a reading of the text of the Mediator's recommendations, that the Mediator had intended the Commission to act as a protection body solely for Palestine refugees and other persons of concern. The idea of the Commission is first raised in the context of the Mediator's recommendations for a durable solution for the refugees, and only later expounded upon in terms of the mandate and function. This type of Commission would have been consistent with the overriding emphasis placed on the refugees and their right of return to their homes in the Mediator's reports. While the drafters of the mandate and function of the Conciliation Commission believed that a solution to the question of Palestine lay in a comprehensive package deal, the inclusion of refugees within the mandate of the Commission, without the necessary

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*Palestinian Losses in 1948: The Quest for Precision.* Washington, DC: Center for Policy Analysis on Palestine, 1996.

protection to facilitate implementation of the specific framework and special guidelines set down by the General Assembly, rendered the Commission's efforts on behalf of the refugees to be largely palliative.

Unfortunately, the Oslo Process has consigned Palestine refugees to much the same position. There is no international agency present at the negotiations representing the specific rights, choices, and interests of the refugees. On the multilateral track and other levels of "track-two diplomacy" the issue is still largely accorded a palliative approach. While refugees continue to raise the demand for the right of return, based on international legal principles and practice, few efforts have been made to provide the necessary protection to facilitate the durable solution set down in Resolution 194 (III) more than fifty years ago, even though the framework and special guidelines set down in paragraph 11 have proven to be remarkably forward-looking and consistent with the international refugee law as it has developed over the past five decades.

The basic problem for Palestine refugees, is not paragraph 11, but the lack of protection and the lack of enforcement of basic principles firmly grounded in basic human rights. Consistent with the first component of the special guidelines of paragraph 11, new efforts are urgently required to address the issue of protection and the promotion of a durable solution, which includes voluntary repatriation. And, consistent with the second component, additional efforts are required to improve documentation of refugee properties and losses and develop mechanisms for restitution. While protection cannot guarantee a durable solution, a durable solution cannot be achieved without protection.

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<sup>70</sup> UN Doc. A/47/413, *Report of the United Nations Conciliation Commission for Palestine*, 1 September 1992.