


Eyal Benvenisti · Chaim Gans · Sari Hanafi (eds.)

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## Palestinian Refugee Property Claims: Compensation and Restitution

*Salim Tamari*

### I. Introduction

Assessment of refugee property losses should be tackled in the wider context of addressing refugee grievances, which include residency options, rehabilitation, restitution and repatriation. In this chapter I will isolate the issues of property compensation and restitution for analytic purposes and with the assumption that this approach will be part of the larger body of refugee claims. My working assumption is that it is essential to distinguish between the constellation of issues related to refugee rehabilitation, residency and compensation for states undertaking refugee absorption on the one hand (including Israel and the future Palestinian State), and issues of property compensation/restitution on the other. This approach is obviously problematic since Israel and some European countries have proposed that a package be comprehensive and that an international fund deal with refugee claims for material compensation. In addition, Israel proposed in the first and second Refugee Working Group (RWG) plenary meetings in the context of multilateral negotiations that refugee property claims be dealt with in relation to an exchange with Jewish refugee property claims in the Arab countries, notably Iraq and Egypt.<sup>1</sup> This position was flatly rejected by the Palestinian side, which adopted the position that these claims should be dealt with on a bilateral basis with the respective Arab states concerned.

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<sup>1</sup> See S. Tamari, *Palestinian Refugee Negotiations: From Madrid to Oslo II*, 1996, 43.

Similarly, the proposal for creating an international fund for compensation – while suitable for certain aspects of refugee rehabilitation, including support for states undergoing revalidation – has been deemed unacceptable for several reasons:

- (1). It takes the issue of refugee property out of the domain of Israel's legal accountability and transfers it into the realm of international voluntary donations.
- (2). It absolves the State of Israel from accountability for property that it has appropriated for Jewish immigrants with the resultant ethnic displacement. That rewards this displacement.
- (3). It establishes a false parallel between the rights of Palestinian refugees and those of Jewish immigrants. To the extent that Arab Jews were expelled from their countries of origin, those claims of lost property should be dealt with bilaterally between the respective Arab states and these Jewish emigrants, including those who did not go to Israel but rather sought refuge in other European countries and the United States.

## II. Scope of the Problem

Palestinian refugee property includes the bulk of private and public real estate, buildings, communal/public property, and *waqf* property acquired by Israel in two broad areas:

- (1). Land within the territory designated for the Jewish State in the 1947 Partition Plan.
- (2). Areas added to the State of Israel by military conquest and consolidated by the armistice agreement of 1949.

Land acquired in the 1967 War, which may be consolidated by any future accord to be signed by Israel and the Palestine Liberation Organization (PLO) is not within the scope of this chapter. A distinction should be made between claims of compensation/restitution for public/state property within the boundaries of the Jewish State according to the Partition Plan and those areas that were annexed in 1949 to the expanded Jewish State. For example, railway lines, public buildings and forest land in the Jaffa area, which was designated as part of the Arab state, would be subject to compensation claims, whereas the same categories of properties in Haifa would not. Compensation/restitution claims for refugee property would apply to those who were either displaced during and after the war of 1948 or in its immediate aftermath

and found themselves outside the boundaries of the state and those Palestinian refugees who became citizens of the state but whose land was taken over by the state involuntarily.

Until recently most studies of refugee compensation claims have focused on the issue of valorisation of lost property. One of the first to address this issue seriously was Sami Hadawi in his *Palestinian Rights and Losses*.<sup>2</sup> The assessment was based on his work with the United Nations Conciliation Commission for Palestine (UNCCP) and contained a critique of the UN's categories, which were based essentially on tax declarations. By Hadawi's estimates those properties amounted to US\$ 11.5 billion in 1990 prices.<sup>3</sup> Since then, Atef Qubursi and Yusif Sayigh attempted separately to update and refine these assessments. Among the international assessors, Frank Lewis came up with supplementary assessment for agricultural lands, which amounted to US\$ 2.3-2.8 billion in 1993 prices.<sup>4</sup> Nevertheless, global figures for property losses, as we shall see, must be subjected to assumptions that are rarely clarified in these estimates. For example do they include *waqf* properties? Do they include public and communal properties in the area designated as the land of the Jewish State in the Partition Plan? If not, would they include such properties in the areas that were *de facto* annexed to the State of Israel by virtue of the armistice of 1949? These and many other questions should be clarified before we begin the attempt to assess the value of lost Arab property in Palestine.

The procedure for filing compensation claims will also have to take into account several factors that are related to the elapse of time, as well as bureaucratic steps, which are bound to result in inequities:

First, poorer refugees are less equipped than better off claimants with documentation and authentication for their property. Landless refugees and former sharecroppers (about 20-25 per cent of all rural refugees) do not have any land claims but do have claims of material grievances – now recognised by a number of important precedents. Since a compensatory fund is likely to be based on an Israeli or international fund with finite resources, refugees with more substantial land claims are more likely to benefit from such a fund than those with little or no such

<sup>2</sup> S. Hadawi, *Palestinian Rights and Losses*, 1985.

<sup>3</sup> See R. Klinov, *Reparations and Rehabilitation of Palestinian Refugees*, paper presented at the Max Planck Institute's conference on Palestinian Refugees, Heidelberg, 11 July 2003.

<sup>4</sup> See the contribution of R. Klinov in this book, 340-341.

claims. In other words, richer claimants who are already living comfortably will get the lion's share of this compensation, rather than poorer refugees who suffered more in the war itself and subsequently in the refugee camps.

Second, unlike the situation in Germany after World War II or the former Yugoslavia in the 1990s, where refugee claims were supported by a coalition of international forces favourable to their predicament, no similar compulsion impels the State of Israel today to deliver on any obligations it will incur towards the Palestinians either during the negotiating process itself or in the implementation of an agreement. Indeed the current Israeli position under the Sharon government is that Palestinian refugee property has already been "exchanged" for the losses of Jewish emigrants from Arab countries (sometimes Iran is added for good measure) after the war of 1948.

Third, bureaucratic setup for most procedures of compensation means that the state and agencies representing the refugees (including the battery of international lawyers acting on their behalf) will siphon off the bulk of those benefits owed to their clients/subjects.

The gradual opening of important data archives that delineate the nature of property and land claims as well as the social composition and distribution of Palestinian refugee population has made the issue of documenting refugee claims much more feasible than at any previous time. We can say without exaggeration that these data bases – and the UNRWA and UNCCP files in particular – contain the most extensive and reasonably reliable information about the social attributes as well as socioeconomic and property claims of the Palestinian refugees, more reliable than similar data on any other refugee population in modern history.

### III. Problems Inherent in the Documentation of Property Claims

But these databases are not without problems, including the problem of missing components, lack of longitudinal depth, and lack of proper access. Most importantly, for the purpose of this analysis, they tend to reinforce an element of unjust distribution of claims for historical losses. I will discuss this component of bias for each database separately.

#### 1. Bias in the UNRWA Archives

Archives of the United Nations Relief Works Agency for Palestine Refugees in the Near East (UNRWA) contain demographic data, prepared for the purpose of the administration of welfare among refugee population, for close to 3.8 million individual refugees in five refugee areas: Palestine (West Bank and Gaza), Jordan, Syria, and Lebanon. Most of this data has been available in a computerised data system known as the Unified Registration System (URS) since 1979 and is updated by field offices on a daily basis. A more extensive data source is contained in a sub-system of the URS covering elaborate attributes of the most destitute of the refugee population households (about 15 per cent of the total households in the URS) originally known as the "special hardship cases."

A separate, but non-computerised, source of data is the family files. These are currently (2003) prepared for digitisation and hence searchability. They contain data on the original process of registration of refugee families, reasons for flight from Palestine in 1948 – as reported in 1950 by the head of household – and changes that affected the family fortunes in the process of relocation to the host countries. They also contain a key section, but not properly or systematically entered, on losses incurred by the refugee family as a result of the war of 1948 and documentation of these losses, again not systematically provided.

Together these databases provide an extensive profile of the demographic profile of refugee families, their composition, their educational achievement, their health conditions and their habitat and location. The amount of data is relatively accurate (compared to census data gathered by the state) and very detailed.

What are the main pitfalls in the UNRWA data basis?

- (1). It is basically a record of poor refugees. The professional strata, the middle classes, and a substantial section of skilled workers are absent as are the bulk of the landed elements, namely the people with the most substantial compensation claims.
- (2). It does not cover refugees who settled outside the "confrontation states" – Syria, Lebanon, Jordan, and the Palestinian territories. That is, refugees in Egypt, the Gulf States, North Africa, and abroad do not appear in the record; nor do "internal refugees" from Israel.
- (3). It has no historical depth. That is, UNRWA data is not longitudinal. Computerised data is continuously being replenished with updating and deletion and expunging of earlier information. People who die,

who move outside the system, whose records are few years old, etc. are removed from the record. This may be essential for the purposes of administering welfare dispensation, but it is a disaster for proper examination of social change, mobility, and the evolution of the refugee problem.

(4). An important component of this data, the family files, is not computerised, and therefore is not searchable. This includes data about original claims and conditions of flight. Recent commitments (in the summer of 2003) by certain European states, most notably Denmark, to extend the computerisation of the UNRWA archives will improve this situation considerably.

(5). Self-reporting of property losses does not lend itself to authentication and therefore to the external legitimising of these claims. By contrast, social conditions and claims for current material assistance are rigorously investigated since they fall under the mandate of UNRWA as a service provider for the health, educational, and welfare needs of refugees.

## 2. Bias in the UNCCP Records

The UNCCP databases in New York are currently digitised and contain the most elaborate record of Palestinian refugee property and land losses in the war of 1948, systematically gathered by an expert land team in the period of 1951-1961. The records are for individual (personal) title deeds and for communal and religious endowments. They are tabulated by title deed owner, size of land, and locational coordinates. They contain map linkages for easy determination of location.

One of the most important features of the UNCCP land records is that exact replicas of the database are owned by the five regional Arab states (as well as Palestine) in addition to Israel. Thus, claims based on this source are verifiable and subject to immediate authentication. Its verifiability is further buttressed by the fact that the land records are all derived from regional land registry offices (the *Tapu*), currently located in Israeli territories.

But the UNCCP database has a number of pitfalls in terms of its applicability to material claims by refugees.<sup>5</sup> First, it does not cover the conditions of hundreds of thousands of refugees who were either landless or sharecroppers with long-term cropping contracts with landlords. It also does not cover the claims of former peasants who lost their property because it was not properly registered in the *Tapu*.

Second, it is a record frozen in one moment of history. It does not reflect changes in the status of properties, real estate, and land plots since 1948. These changes include confiscation, leases, resale by the State of Israel and by some former owners, and changes in the physical status of the property, such as changes in agricultural land into urban property and the abolishing of *waqf* land and its transformation into state, communal, or private property.

Third, large areas of refugee property do not appear in the UNCCP records. Those include a substantial area of southern Palestine (the Negev area), which was deemed communal property as a result of common law practices by Bedouin tribes. Significant sections of urban real estate (e.g. Jaffa) are also missing for obscure administrative reasons. Areas not surveyed and settled into the land registry by 1947 are included, but proper coordinates for their location make those sections of the UNCCP in need for modification. This is true of areas in West Jerusalem, which have been digitised most recently by the mapping section in Orient House.

Fourth, a technical problem with the UNCCP record is the lack of bilingual entries. Since Arabic names are transliterated this may produce problems of recognition.

## 3. Integrating the Demographic and Property Databases

At the risk of oversimplification we can say that while the URS (UNRWA) constitutes a demographic record of poor refugees in the countries of the Arab East, the UNCCP records provide a basis for claims by the propertied classes. There is obviously a substantial degree of overlap in the two social categories, but this overlap is deceptive. UNRWA records, intended primarily as a frame for the provision of welfare

<sup>5</sup> For a discussion of these flaws see E. Zureik/S. Tamari (eds), *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science and Policy Research*, 2000.

services for camp and non-camp needy refugees need substantial modification before they can become a suitable frame for compensatory claims. In contrast, the UNCCP was established for exactly this purpose. Having said that, there is a lot to be gained from the creation of a single digitised database from the two sources of refugee archives; such an integration would help in rectifying the absence of a "poor refugee" component in the UNCCP archives and would supplement the UNRWA-URS with a property record that has so far been poorly documented in the family files. It will also help buttress the UNRWA records with an important element of replicability and verifiability – a condition that has been perceived as lacking (at least by the Israelis and Americans) in UNRWA files.

One assisting factor is that both the URS and the UNCCP records have individual coding features that can act as the linkages between the two data sets. In order to integrate the two archives, certain measures have to be taken:

- (1). A political decision on the part of the PLO that an integrated data set should be created as a basis for refugee compensation claims.
- (2). A joint committee made up of UNRWA and UNCCP technical staff to work out conceptual and technical modalities for the integrated framework.
- (3). The protocols for codes of identification of individual and collective (family, communal) refugee units must be approved by the Arab host countries and Israel, since those parties' cooperation will be needed to facilitate this technical process.

#### IV. The Issue of Equity in Refugee Property Claims

The Palestinians have hesitated in developing a strategy for compensation/restitution since that might lead to questions about the resilience of the leadership in defending refugee political rights. Israel has used this absence as an instrument in claiming that the Palestinians have been using the refugee issues as a means of potential demographic destabilisation of the Jewish State. Some Palestinians (e.g. Rashid Khalidi) have put forth the position that Israeli acceptance of moral culpability for the dispossession of the refugee will be the basis of a historical settlement of

this issue,<sup>6</sup> – but most Palestinian negotiators on refugees have taken the position that a combination of options must obtain (restitution, repatriation, naturalisation, and compensation) so that closure for the refugees can be achieved. In all of these cases the refugees themselves should be an essential party to the determination of their future based on concrete choices.

Similarly, Michael Fishbach suggests that Palestinian property claims should be considered within the context of Jewish global claims for property lost in Arab states in the 1950s. The rationale for this position lies in the assumption that the Israeli Palestinian refugee settlement will be part of a wider process of negotiating the Arab-Israeli conflict. But if this is the case then it makes equal sense to bring the issue of German-Israeli reparations into this global picture: first, because these reparations can set important precedents for the ways and means of implementing refugee compensation, and second, because Palestinian refugees were themselves the indirect victims of the German displacement of Jews.

#### 1. Separating Refugee Repatriation from Refugee Compensation

I argue that it is essential to *distinguish and separate* the issue of resolving the future repatriation of refugees from the question of the disposition of their property. Considerations dealing with the question of residency emanating from repatriation (return, naturalisation, and settlement) are likely to affect some refugees, while issues of compensation will affect all refugees. In the former case, the modalities of the practical implementation of the right of return were discussed at Taba in December 2000: return to Palestine, to Israel, to territories ceded the future Palestinian State, naturalisation and resettlement. The issue of material compensation on the other hand, needs to be addressed in terms of documentation of property claims and compensating losses in life-chances, e.g. employment, normality, physical and psychological suffering.

One significant feature of the compensatory paradigm, if taken on the basis of documented losses of property, is that it tends to replicate a highly skewed social structure. A claims strategy in which refugees will

<sup>6</sup> R. Khalidi, "Toward a Solution", in: Center for Policy Analysis on Palestine (ed.), *Palestinian Refugees: Their Problem and Future*, 1994, 24 et seq.

simply reiterate their demands for compensation on the basis of material property losses is highly favourable to the owners of large estates and their descendents and very unfavourable to those who were either landless or had small properties, the latter constituting the vast majority of refugees. Furthermore, if we assume that the collective fund for restitution will be limited and considerably smaller than the actual value of dispossessed land and real estate, this inequity will be further accentuated.

## 2. The Issue of Demographic Attrition

Two essential historical factors contribute to the process of inequity in compensation claims:

- (1). Refugees with smaller property (e.g., those households that individually used to possess less than 50 dunums) will have property claims that are extremely fragmented and parcellised by demographic attrition, four generations later. One can visualise interfamilial squabbles over such rights, whose return will be further reduced by the passage of time and the intervention of a battery of lawyers who will get the lion's share of such indemnities.
- (2). Establishing material claims for landless refugees and those with small amounts of property will be much more difficult to ascertain and authenticate than for those with substantial property. The rich have always been better in preserving their records than the poor in the condition of war. Moreover, the UNCCP records – the most systematic in archiving these records – have nothing to say about landless refugees and those sharecroppers whose land was unjustly appropriated by big landlords.

## V. A Strategic Approach Toward Material Compensation

Israeli acknowledgement of its role in the historical dispossession of Palestinian refugees in the war of 1948 should not be seen as act of contrition in lieu of concrete settlement, but as the first step in a process of negotiations over material settlement that will bring closure to the issue of the refugees. So far, with precious few exceptions (e.g. Shlomo Ben Ami in the Ottawa multilateral meeting in 1991 and Yossi Beilin's proposal for a joint narrative in Taba 2001) Israeli official pronouncements

have been that Israel and its armed forces are not culpable for the displacement of the refugees in the 1948 War and that the appropriation of Palestinian absentee property is held in lieu of the "exchanged" Jewish property confiscated in Iraq, Egypt, Tunis, Lebanon, and so on.

I propose here a three-pronged approach to material compensation, which will follow a process of acknowledgment of historical injustice. The essential feature of this process is that it will give the refugees concrete options to choose from, including repatriation in Palestine, repatriation to areas of Israel that will be annexed to Palestine (on a swap basis), repatriation to Israel, naturalisation in the host countries, and third state migration. The compensation/restitution modalities apply independently to all of these options.

(1). During the first stage, the PLO and Israel, in coordination with the Arab host governments, will agree on the procedures necessary to authenticate the documents needed to approve property claims. It is necessary at this stage to separate the procedures of repatriation/resettlement from those pertaining to material compensation. It is not the objective of this paper to address the question of repatriation/naturalisation, which has been dealt with at length elsewhere.

(2). *Collective versus Individual Claims*: It is essential that Palestinian refugees are able to have two venues for claims of material compensation. A collective claim will go for the state (e.g., state to state), earmarked for the rehabilitation of repatriated refugees and the building of a national infrastructure (housing, roads, and economic and social base) for the absorption of refugees. Individual claims, on the other hand, will be cleared through an autonomous organisation (possibly UN-RWA), which will assess, authenticate, and process individual claims for property losses. Refugees who are residents of countries outside the regional host countries will be able to file claims worldwide.

(3). *Restitution*: This is an essential component of a just solution to the refugee problem. One major argument used against restitution of property is that such an act would dispossess current (i.e. Israeli) occupants. But precedents in other areas, including Germany and Bosnia, indicate that a model of restitution would enable the owners to repossess their former properties while allowing for long-term leases for the current occupiers.

Precedents need to be examined in order to see which recent historical examples are appropriate. One of the most relevant cases in this regard is the Dayton Peace Agreement concerning the repatriation of refugees from Bosnia Herzegovina (1995), which involved millions of Bosnian,

Serb, and Croat refugees. Although the schemes for repatriation and compensation were only partly successful, the Dayton Agreement contained the three elements of success necessary for the Palestinian-Israeli case: international intervention by the European Union and the United States, border delineation, and a mechanism for repatriation of refugees and restitution/compensation for their lost properties, supervised by the UN High Commissioner for Refugees (UNHCR) and the UN International Task Force. One can benefit from both the benefits and mistakes made by this agreement. In Mick Dumper's study in this volume, he noted:

"As a result [of the agreement] by 2000 only 10 per cent of the Serbs from Croatia, 5 per cent of Muslims and Croats from Western Bosnia and Herzegovina and only 1 per cent of those expelled by Serbs from eastern Bosnia and Herzegovina (Republica Srpska) returned to their homes."<sup>7</sup>

This case is particularly relevant to the Palestinian case because it involved the issues of borders, displacement, and restitution in a new state that ceased to be the national state of the original refugees. Most other international cases involving repatriation (e.g. Guatemala, Afghanistan and Somalia) involve refugees' repatriation to the country that still represents them or third party relocation.

(4). *Cutting Point in Property Claims*: In this case it will enhance refugee claims to propose a strategy (successfully adapted in Yugoslavia, among other recent cases) in which landless refugees and those with minimal property claims (say owners of areas below 40 dunums in rural areas and single properties in urban areas) group their claims into a single package-deal in which they will receive a standard package of monetary compensation (or a number of standard packages) per family. Although on the surface, this proposal may not meet the standards of justice, its consequences meet conditions of fairness. For once claimants will shorten prolonged waiting periods for the bureaucratic procedures of authentication of claims, which could take years and quite likely decades, judging from precedents. They will also ensure that the bulk of this compensation goes directly to the claimants and not to attorneys and bureaucrats representing them.

<sup>7</sup> M. Dumper, *Comparative Perspectives on Repatriation and Resettlement of Palestinian Refugees: The cases of Guatemala, Bosnia and Afghanistan*, unpublished paper, 2004.

But there is a more important reason for adopting this procedure already referred to above. Namely, the cumulative increase in the size of the households of those claimants, four generations after the event, will most likely ensure internal family disputes over individual rights that can be spared through the suggested procedure. It is quite likely that this procedure will allow a substantial proportion of Palestinian refugee property claimants (perhaps as much as 80 per cent of the total refugees) to expedite their claims within months of the implementation of an accord on such claims, leaving room for effective concentration of legal and administrative resources for the remaining 20 per cent.

Why is it possible to achieve an equitable resolution for refugee claims despite inequitable power relations between the protagonists? Now we come to the thorniest of the questions of equity raised above: why would the State of Israel feel compelled to respond to these issues of justice and equity raised above? So far it has had three standard answers:

- (a). That Israel is not accountable for the fate of refugees during the war.
- (b). That Palestinian property confiscated from exiled refugees has been "exchanged" by the sequestered property of Jewish emigrants from Arab countries.
- (c). That the status of refugees is a humanitarian issue of global concern, largely the product of Arab countries themselves intent on perpetuating the conditions of misery for their own political objectives, and in this context Israel will contribute, voluntarily, to solving this situation through an international fund of compensation.

The first of these answers has already been superseded by the intellectual work of the "new" Israeli historians, whose contribution has already become acceptable to important sections of the Israeli establishment such as Shlomo Gazit, Beilin, Shlomo Ben Ami and indeed to public opinion worldwide. It is ironic that the same claims, when made by the victims themselves for decades were seen as propaganda. It took the work of few courageous Israeli scholars, especially renegade historian Benny Morris, to make this point acceptable.

The second response, concerning the exchange of property, has acquired recent weight since it has been officially adopted by both the Netanyahu and Sharon governments. Nevertheless, it has been sufficiently challenged during the multilateral peace negotiations to warrant its shelving. The main argument here is that Palestinian restitution claims cannot be reduced to the status of "generic Arab claims" and



pertain to Israeli actions during the war and its aftermath and that Jewish property claims belong to the arena of bilateral negotiations between Israel (or individual Jewish emigrants and refugees) and the concerned Arab states.

My main contention is that, despite the lack of equity in power relations, Israel will most likely respond to claims of accountability with regard to refugee property for two important reasons:

First, Israel wants to achieve closure on the question of refugees more than any other issue. This is partly due to the need to bring about an "end of claims, end of conflict" resolution in negotiations, which was at the heart of the collapse of the Camp David/Taba negotiations in 2000 and which is impossible without addressing refugee property claims. It is also to forestall individual refugee claims for property rights by making a collective deal on this issue with the PLO/PNA acting on behalf of the global refugee population.

Second, Israel seeks the ultimate legitimacy and its acceptance as a state within the Arab world. It is impossible to do this without resolving the refugee claims, especially as far as Jordan, Syria, and Lebanon are concerned.

Israel will most likely resist any deal that will involve the repatriation of refugees inside Israeli territory and will insist that refugees be either repatriated to the future Palestinian State or naturalised in the host country. Even if a symbolic deal is struck over repatriation of refugees to Israel, the Israelis will try to undermine it in the process of implementation.

But even here there is room for flexibility. If the process of naturalisation of refugees in the Arab states is to succeed, Israel must be party to this absorption. Having said this, it will make more practical sense for the Palestinians to insist that refugee repatriation in the context of implementing General Assembly Resolution 194 (III) be accomplished primarily in territories in Israel to be annexed/swapped to the Palestinian State.