

United Nations  
GENERAL  
ASSEMBLY

TWENTY-THIRD SESSION

Official Records

SPECIAL POLITICAL COMMITTEE, 634th  
MEETING

Thursday, 12 December 1968,  
at 10.50 a.m.



NEW YORK

CONTENTS

	Page
<i>Agenda item 33:</i>	
<i>Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (continued) . . . . .</i>	1

Chairman: Mr. Abdulrahim Abby FARAH  
(Somalia).

AGENDA ITEM 33

Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (continued) (A/7213, A/SPC/126, A/SPC/127, A/SPC/L.165, A/SPC/L.166 and Add.1, A/SPC/L.167 and Add.1, A/SPC/L.168, A/SPC/L.169)

1. The CHAIRMAN suggested that, of the documents before it (A/SPC/L.167 and Add.1 and A/SPC/L.168), the Committee should first consider draft resolution A/SPC/L.167 and Add.1, upon which a roll-call vote had been requested.

*A vote was taken by roll-call.*

*Jamaica, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Luxembourg, Malaysia, Maldives Islands, Mauritania, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Somalia, Spain, Sudan, Sweden, Syria, Thailand, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia, Afghanistan, Algeria, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Gabon, Gambia, Ghana, Greece, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy.

*Against:* None.

*The draft resolution was adopted by 88 votes to none.*

2. The CHAIRMAN said that, after the explanations of vote on the resolutions A/SPC/L.165, A/SPC/L.166

and Add.1 and A/SPC/L.167 and Add.1, the Committee would consider the last draft resolution before it (A/SPC/L.168).

3. Mr. SAYEGH (Kuwait) said that his delegation had voted in favour of draft resolution A/SPC/L.166 and Add.1 on the understanding first, that the right of the newly displaced persons and refugees to return to their homes and former places of residence was not contingent upon any other factors and secondly, that their return was based on a right and not on sufferance. It therefore assumed that the provision of the fourth preambular paragraph was an additional practical reason for their speedy return and did not constitute the sole, or even the principal, juridical basis for their return.

4. With regard to draft resolution A/SPC/L.165, his delegation had noted the significance of the inclusion of more than one reference to paragraph 11 of General Assembly resolution 194 (III). It understood that those were not routine echoes of past and inoperable resolutions, as had been suggested, but rather significant substantive reaffirmations of the rights of the Palestinians and of the obligations of the United Nations and Israel towards them.

5. His delegation had voted in favour of draft resolution A/SPC/L.167 and Add.1 on the understanding that the relief of newly displaced persons should in no sense be misconstrued as a reason for delaying their right to return to their homes.

6. Mr. DE SOUZA (Dahomey) considered that the draft resolutions represented an accurate reflection of the various opinions expressed during the general debate. The question of Palestine refugees was a humanitarian problem for which the United Nations was in duty bound to find an urgent solution. His delegation hoped that, despite its present financial difficulties, more generous contributions on the part of donor States would enable UNRWA to continue its constructive work. His delegation had therefore voted in favour of draft resolutions A/SPC/L.165 and A/SPC/L.167 and Add.1.

7. It wished to emphasize, however, that UNRWA could be only a palliative. The humanitarian aspect of the refugee problem could not be dissociated from its political context. It was a consequence of the tension and insecurity which had prevailed in the Middle East for so many years and could be resolved only by a negotiated and lasting peace which would guarantee secure borders to all States in the region and recognize their right to existence.

8. Therefore, even though it shared the humanitarian concern which motivated its sponsors, his delegation had not been able to support resolution A/SPC/L.166

and Add.1 because it contained no reference to the need for peace and for a final settlement of the question.

9. Mr. FRACKIEWICZ (Poland) said that, although his delegation shared the doubts expressed by the representative of the Soviet Union about draft resolution A/SPC/L.167 and Add.1, it had voted in favour of the resolution because of its humanitarian content and the interest of the Arab countries in the problems involved. The socialist group countries considered however that the financial responsibilities should rest mainly on parties which adopted a complacent attitude towards the Israel action.

10. The socialist group countries thought that draft resolution A/SPC/L.167 and Add.1 should in no way delay the effective implementation of the priority draft resolution A/SPC/L.166 and Add.1, which provided for the speedy return of all refugees to their homeland. They also understood that it applied to refugees from all the Arab territories—Jordan, United Arab Republic, Syria—occupied in June 1967. The overwhelming vote in favour of draft resolutions A/SPC/L.165, A/SPC/L.166 and Add.1 and A/SPC/L.167 and Add.1 was a clear indication of the Committee's unanimous determination to solve the refugee problem.

11. Mr. TOMEH (Syria) emphasized that it was no mere coincidence that the Committee had given priority to draft resolution A/SPC/L.166 and Add.1. His delegation had voted for it because its first preambular paragraph recalled Security Council resolution 237 (1967) and the second reaffirmed General Assembly resolution 2252 (ES-V) and because operative paragraph 1 said that the General Assembly called upon the Government of Israel to take effective and immediate steps for the return without delay of those inhabitants who had fled the areas since the outbreak of hostilities. His delegation wished to emphasize the unconditional and comprehensive nature of the draft resolution. The only vote against it had in fact been that of Israel.

12. The Syrian delegation had also voted in favour of draft resolution A/SPC/L.165, primarily because paragraphs 4 and 8 repeated and reaffirmed paragraph 11 of General Assembly resolution 194 (III), which recognized the inalienable rights of the Arab refugees.

13. It had also voted in favour of draft resolution A/SPC/L.167 and Add.1 and wished to express its appreciation of the humanitarian spirit which had moved its sponsors. The reference in paragraph 2 of the draft to the provision of humanitarian assistance on an emergency basis and as a temporary measure emphasized that that assistance was only complementary and that priority should be given to the return of the refugees, as stipulated unconditionally in draft resolution A/SPC/L.166 and Add.1.

14. Mr. MOLEFHE (Botswana), Mr. BRECKENRIDGE (Ceylon), Mr. TOURÉ (Guinea), Mr. RAOUF (Iraq), Mr. MAIGA (Mali), Mr. HASSANE (Niger), Mr. ALI (Pakistan), Mr. SALIM (United Republic of Tanzania) and Mr. KHODR (Yemen) said that, had they been present at the time of the voting, they would have voted in favour of draft resolution A/SPC/L.167 and Add.1.

15. The CHAIRMAN said that, as none of the sponsors of the next draft resolution before the Committee (A/SPC/L.168) was able to introduce it immediately, they had requested a suspension of the meeting for half an hour. In the absence of any objection, he would take it that the Committee agreed to that request.

*It was so decided.*

*The meeting was suspended at 11.50 a.m. and resumed at 12.25 p.m.*

16. Mr. CHAI (Secretary of the Committee) informed members of the Committee that a limited number of copies of the Working Paper prepared by the Secretariat in 1961 for the United Nations Conciliation Commission for Palestine, which had been mentioned by the representative of Syria at the previous meeting,<sup>1/</sup> was available to any members of the Committee interested.

17. Mr. TOMEH (Syria) thanked the Secretary for that information but proposed that, in view of the importance of the document and the limited number of copies available, it should be reissued after the current session.

18. The CHAIRMAN said that, in the absence of any objection he would take it that it was the wish of the Committee that the document in question should be reissued after the session.

*It was so decided.*

19. Mr. ALI (Pakistan), introducing draft resolution A/SPC/L.168 on behalf of the sponsors, said that they had been motivated solely by considerations of international law, justice and equity and hoped that the same consideration would prevail in the Committee.

20. For the past twenty years, the Committee had discussed the repatriation and rehabilitation of the Palestinian Arab refugees, the mandate of UNRWA had been extended and the Commissioner-General had reported that the Palestinian Arabs had not given up their attachment to their ancestral homes. The rights of those refugees were clear and inalienable and had been recognized by the relevant United Nations resolutions. Paragraph 4 of draft resolution A/SPC/L.165, which had been adopted at the preceding meeting had clearly recognized the rights of those refugees to their homes and property by requesting the United Nations Conciliation Commission for Palestine to exert continued efforts towards the implementation of paragraph 11 of General Assembly resolution 194 (III).

21. Pending that repatriation, the refugees should receive income from the property they had left behind in Israel in order to enable them to lead their lives in dignity on their own income. In proposing that the United Nations should appoint a custodian to protect and administer Arab property, assets and property rights in Israel, his delegation had been guided by the pertinent provisions of General Assembly resolution 394 (V) as well as by established principles governing claims of restitution of property or payment of compensation. Nehemiah Robinson, the author of Indemnities and Reparations, published in 1944 by the Institute of Jewish Affairs of the World Jewish Con-

<sup>1/</sup> A/AC.25, W.81, Rev.2 (mimeographed).

gress, made a strong case for the intervention of the United Nations on behalf of those victims of war who would remain in or would be willing to return to their former homeland, and suggested the establishment of internationally organized courts or similar bodies empowered to make and execute decisions irrespective of the residence of the respondents and the location of the goods. The United Nations could not afford to go back on the pledge it had made to the Palestine refugees.

22. The draft resolution recalled General Assembly resolution 394 (V) which, with General Assembly resolution 194 (III), had been designed to protect the property and rights of the Palestine Arab refugees. Those resolutions were solemn international undertakings and therefore could not be disregarded or relegated to oblivion. The sponsors considered the creation of an office of United Nations custodian to administer Arab property in Israel necessary in order fully to implement paragraph 11 of General Assembly resolution 194 (III) which dealt with the right of refugees to return to their homes and the payment of compensation to them. The latter had two different aspects: payment of compensation to refugees who chose not to return home and payment of compensation to refugees for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible. It was with a view to implementing both aspects of that paragraph that paragraph 2 (a) of General Assembly resolution 394 (V) had directed the United Nations Conciliation Commission for Palestine to establish an office which would make such arrangements as it considered necessary for the assessment and payment of compensation to Palestine Arab refugees.

23. Repatriation and compensation were the essentials of an international pledge given to the people of Palestine by the United Nations as a consequence of its decision to establish a Jewish State in that country. Until that pledge was honoured, the matter remained the responsibility of the United Nations, which would forfeit its moral capital if it condoned the confiscation by Israel of the Arab property, assets and property rights in Palestine.

24. Mr. COMAY (Israel) expressed his surprise that the Committee should be asked to deal once more with a proposal which had appeared in one form or another practically every year since the fifteenth session of the General Assembly and which had always been either withdrawn or rejected. It was useless to cover up its weaknesses with purely sentimental appeals. The question was whether there was any juridical basis at all for taking the action proposed and the answer was in the negative. There were no grounds on which the United Nations could appoint such a custodian or directly intervene with regard to private property claims within the territory of a sovereign Member State. The relevant general principles of international law were that properties within the borders of a sovereign State were exclusively subject to the domestic laws of that State and that the United Nations had no competence under its Charter or otherwise to intervene in the regulation of such property rights within the State. That applied to the

income from the property as much as to the property itself and was not altered in any way by the fact that the individual claimants happened to be refugees, whether or not they were receiving assistance from the United Nations.

25. Various reasons might be suggested for alleging that those general principles should not be applied to abandoned properties in Israel or that Israel sovereignty was subject to some special limitation, but none had any foundation. The representatives of the Arab countries had not suggested at any time that a United Nations custodian should be appointed to take over confiscated Jewish property in Iraq, Egypt or Jordan. Although individual States had often taken over private property for various reasons, with or without compensation, an international property custodian had never been imposed upon a sovereign State. Israel's sovereignty and statehood could not be limited by some special provision since Article 2 (1) of the Charter categorically stated that the Organization was based on the principle of the sovereign equality of all Member States. The Arab States would no doubt argue that such a limitation upon Israel's sovereignty derived from the partition decision (General Assembly resolution 181 (II)). It was ironical that they should invoke the terms of the resolution which they had rejected and because of which they had gone to war. Attached to that resolution, which called for the setting up of independent Jewish and Arab States, was the form of a declaration which those two States would make reciprocally in each other's favour, one of the provisions of which was to lay down a special procedure in case of the expropriation for public purposes of property belonging to Arab citizens of the Jewish State and Jewish citizens of the Arab State. The Arab State had never come into existence; a war had intervened and the reciprocal declaration had never been made. It would be easy to refute such an argument therefore, since it was based upon a non-existent declaration.

26. Were the General Assembly to lay down the Palestine Arab refugees' entitlement in law, as stated in the first paragraph of the draft resolution, it would amount to a legal judgement setting aside domestic legislation of a Member State. The taking over of derelict and abandoned land and properties in Israel for the purpose of bringing them into productive use had been effected by due process of law, subject to an offer of compensation. For twelve years the Israel authorities had co-operated with the technical office of the Conciliation Commission in compiling an inventory of those properties as a basis for future compensation claims. The implications of any draft resolutions like the one under discussion would be that the property legislation of any Member State was subject to the approval or veto of other States Members of the Organization.

27. Replying to the representative of Pakistan, he pointed out that the second preambular paragraph of draft resolution A/SPC/L.168 was a distortion, not an affirmation of General Assembly resolution 394 (V) which had only directed the United Nations Conciliation Commission to continue consultations with the parties concerned regarding measures about property; as a good offices body, it had no power to

prescribe on its own measures of the kind suggested in the text of the draft resolution. The fact that a previous resolution had had to be rewritten to suit the purpose of the present draft showed that the case for the draft resolution was, in any case, an extremely weak one.

28. The sponsors seemed, furthermore, to admit that the Conciliation Commission had no special authority in the matter, as no mention was made of that body in the operative part of the draft resolution. In operative paragraph 1, it was the Secretary-General who was requested to take all appropriate steps to have a custodian appointed, and under paragraph 3 the custodian was to report not to the Commission, but to the General Assembly. But if the Commission was not empowered to appoint a custodian, neither was the Secretary-General, nor even the General Assembly.

29. As they had no valid grounds for their proposal, the sponsors had tried to appeal to sentiment. In that connexion, he pointed out that the half-million Jewish refugees from Arab countries who had been settled in Israel had lost most of the property which they had left behind. That property had been confiscated, but the Governments of the countries concerned had never made a compensation offer corresponding to that made by Israel in respect of abandoned Arab properties. In those circumstances, the reference in the first preambular paragraph to the principles of justice and equity was quite unnecessary; there could be no difference in law, in justice or in equity between the claims of Arab and of Jewish property owners.

30. With regard to income, he pointed out that the Israel Government had indeed spent vast sums on rehabilitating and developing derelict lands and property, but as it had not made any financial profit on them, it was rather anomalous to cast the United Nations in the role of rent collector.

31. In conclusion, he drew attention to the fact that although all the sponsors of draft resolution A/SPC/L.168 maintained official relations with the Arab States, not one of them had seen fit to maintain official relations with the State of Israel. While he recognized the right of any delegation to sponsor any proposal it wished, the facts seemed to show that the proposal made in the draft resolution was of a political, not a humanitarian nature. It was indeed, an act of irresponsibility at a time when the international community should be trying to improve the prospects for an Arab-Israel peace. Moreover, the whole refugee question came within the scope of the Jarring mission, and once that problem had been resolved, any property and compensation claims would automatically be settled. His delegation was, therefore, strongly opposed to the proposal, and urged that it should be rejected as in previous years. He reserved the right to reply to any further arguments that might be put forward at a later stage of the debate.

32. The CHAIRMAN, in pursuance of a decision taken by the Committee at its 616th meeting concerning a letter dated 11 November 1968 (A/SPC/126), stated that, if there were no objections, he would invite Mr. Nakhleh to address the Committee on draft resolution A/SPC/L.168.

*It was so decided.*

33. Mr. NAKHLEH (speaking as one of the persons constituting the Palestine Arab delegation, in accordance with the decision taken by the Committee at its 616th meeting, which did not imply recognition of that delegation by the Committee) said that by General Assembly resolution 394 (V), the United Nations had recognized its legal and moral obligations to protect the rights, properties and assets of the Arabs of Palestine. The draft resolution at present before the Committee echoed a passage from the above-mentioned resolution, which had been distorted by Mr. Comay, but which in fact directed the United Nations Conciliation Commission for Palestine to establish an office which, under the direction of the Commission, would continue consultations with the bodies concerned regarding measures for the protection of the rights, property, and interests of the refugees. As the United Nations had adopted resolution 394 (V) in accordance with the principles of international law it should also adopt the five-Power draft resolution.

34. He rejected as illegal, immoral and unjust and, moreover, as a violation of the Charter of the United Nations and the principles of international law Mr. Comay's contention that the United Nations had no right to intervene because the lands in question had been incorporated into the economy, and because the authorities of Tel Aviv had sovereignty over them. Unfortunately, the Committee had in the past been prevented from taking the necessary decision because certain Western Powers had sided against the Arab States in all aspects of the Palestine problem, even to the extent of depriving the Palestine Arabs of their legal and human rights to enjoy the income from their properties and assets. Article 17 (2) of the Universal Declaration of Human Rights, which stated that no one should be arbitrarily deprived of his property, was still not applied to the Palestine Arabs, even in the year 1968, which marked the twentieth anniversary of the Universal Declaration and which had been designated International Year for Human Rights. The present situation was also contrary to the provisions of the International Covenants on Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and accepted principles of international law, *inter alia*, those laid down in articles 46 and 47 of the Hague Regulations and in the judgement of the International Military Tribunal at Nürnberg, relating to private property and the protection of private rights. Those principles, had, moreover, been upheld and implemented in all those Western countries which had consistently voted against a draft resolution which would give the people of Palestine the right to enjoy the assets from their properties.

35. The assertion of Mr. Comay, when challenged on the basis of such principles, that the so-called State of Israel had sovereignty over the property of the Arab Palestine people was invalid; the so-called State of Israel had no sovereignty because it had never been a State either in law or in fact. It was merely a racist colonial régime of occupation which had been recognized by some States in contravention of international law. In any case, States which did exercise sovereignty were subject to the obligations of international law, and had undertaken, by the terms of the Charter of the United Nations to respect

human rights and fundamental freedoms and to fulfil in good faith the obligations assumed by them in accordance with the Charter. The established principle of international law regarding State responsibility could be said to be that a State could not invoke its municipal legislation as a reason for avoiding its international obligations, and that a State was criminally and physically liable for acts which contravened international law. The so-called State of Israel had also violated the principles summarized by the International Law Commission with regard to expropriation by a State of properties in its domain. The Commission had stated that the action of a State was considered arbitrary and unlawful if (a) it was contrary to international law; (b) the State was forbidden to take action under a treaty or international conventions; (c) the method of procedure constituted a denial of justice; (d) the State's action discriminated between nationals and aliens; (e) the expropriation was considered as an unjust enrichment. He submitted that all those grounds applied to the case in point. When the Jews had invaded Palestine, a minority of Jews had expelled the majority of the population, proclaimed themselves illegally as a State and designed so-called laws which deprived the lawful inhabitants of their properties and of the use and enjoyment of the income therefrom.

36. The present situation was also a contravention of the principles submitted by the International Law Commission to the effect that if the owner of a certain property owned the land before a law of expropriation was passed, then the law in question could not enable the State to expropriate that owner's property. But although the properties of the Palestine Arabs had existed for over 2,000 years, Israel had designed laws with the intention of confiscating the rights of the Palestine Arabs, and now asserted before the Committee and the General Assembly that the questions must be dealt with under its domestic laws. All the authorities on international law upheld the principles of the supremacy of international law over the sovereignty of any State. For the benefit of the United States delegation and some of the Latin

American delegations, he pointed out that article 5 of the Charter of the Organization of American States stated that "international law is the standard of conduct of States in their reciprocal relations" and that "international order consists essentially of ... the faithful fulfilment of obligations derived from treaties and other sources of international law". If such recognized principles of international law were to be flouted, then all other interventions by the United Nations would become null and void.

37. In conclusion, he pointed out that Article 1 of the Charter of the United Nations stated that the United Nations must peacefully solve all disputes "in conformity with the principles of justice and international law". That phrase had been added to the original draft at the San Francisco Conference because all delegations had insisted that a settlement could not be made by expediency or on political grounds but must be in accordance with those principles.

38. The Palestine Arabs were pleading for respect for their human rights, in conformity with Articles 55 and 56 of the Charter, and respect for their property, and were asking the Committee to apply international law and justice to that end. If the United Nations could not decide the issue, the United States and the other Western Powers which opposed the rights of the Palestine Arabs should refer the matter in question and all other issues of the Palestine question to the International Court of Justice.

39. Finally, he appealed to the Western Powers which had always voted against the Palestine Arabs and had enabled the invaders to continue to usurp their property and their rights to abstain at least on the draft resolution (A/SPC/L.168) if they could not bring themselves to vote for it.

40. The CHAIRMAN noted that as there were six more speakers on the list, the Committee would resume its consideration of the item the following morning.

*The meeting rose at 1.30 p.m.*