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NOTE\*on the Emergency Regulations on Property of Absentees  
("Absentee Property Act")

(Working Paper prepared by the Secretariat)

The Arab Position

1. In the nine point Memorandum of 18 May 1949 (AR/8) the Arab delegations submitted to the Conciliation Commission certain demands for the protection of the rights and property of refugees. As point 3, the following demand was made:

"The abrogation of the Absentee Act and annulment of all measures taken in conformity with this Act".

2. During the meeting on 27 May 1949 between the General Committee and the delegations of the Arab States, the representative of Syria stated his view on the Absentee Property Act. He held that it could not be considered legally valid, since its application was made retroactive to a time when the State of Israel was not yet in existence. He further contended that the definition of absentees covered all persons, whatever their nationality and that the definition of properties made it applicable to the major part of the property of Palestine. Admitting that in war-time the property of enemy aliens might be supervised by the State, it was however a fact that the Arabs were not enemies or foreigners; it was therefore inconceivable in his opinion that a state should enact legislation against its own inhabitants. Finally, he objected to the unlimited powers which he felt had been given by the Act to the custodian.

The Israeli Position

3. In the Memorandum (IS/9) which was handed to Mr. Comay by the Principal Secretary on 11 April 1949, the Conciliation Commission proposed under point 5 the following preliminary measure to be taken by the Government of Israel:

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\* See document W/10, containing text of Absentee Property Act.

"Suspension of the application of the Absentee law until the final peace settlement, and the placing of refugee property in the category of "enemy property" under a custodian";

4. In the letter of 6 May 1949 from Dr. Walter Eytan to the Chairman of the Conciliation Commission it was explained that the Absentee Property Act contains precisely the provisions referred to in the memorandum of the Conciliation Commission of 11 April, namely the placing of refugee property in the category of "enemy property", under a custodian. It was also pointed out that the custodian acts as trustee for the absentee owners, whose property is administered in their interest and as far as possible preserved against deterioration, after the manner of similar custodianships in other countries.

5. In a memorandum (IS/16) which was handed to the delegation of Israel in Lausanne on 18 May 1949, the Conciliation Commission made clear that when it had requested the suspension of the application of the Absentee Property Act, it was referring to those clauses whose operation would tend to aggravate the problem of refugee property and make its eventual solution more complex. It was then stated that the Commission would welcome an indication of the precise extent to which it is considered that the Act provides against further deterioration of refugees property.

6. On the last point no answer has yet been received.

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7. When examining the attitude of the two Parties to the application of the Absentee Property Act it could be asked whether the Act itself does <sup>not</sup> ~~but~~ offer some possibilities of compromise whereby the area of ~~dis~~agreement could be narrowed down.

8. At the outset, it should be noted that the Act does not provide for its own expiration nor does it contain any provisions whereby it might, in whole or in part, be abrogated or suspended. A new law for the abrogation or suspension of the Act would therefore be required.

9. The Act does, however, contain certain provisions which authorize the custodian in certain cases to grant absentees the status of non-absentees and to exempt their property from the status of Absentee Property. These provisions are to be found in sections 28, 29 and 30 of the Act.

10. According to section 28, a person may in two different cases be given a certificate confirming that he is a non-absentee. In the first place the custodian shall issue a certificate to a person who might be defined as an absentee, if he is of the opinion that the person has left his town or village of residence (1) for fear that the enemies of Israel would cause him harm, or (2) without connection with military operations or for fear thereof. (Section 28 (a)). In the second place, the custodian may issue such a certificate to persons who might be defined as absentees when they are on Israel territory, and when they are considered in a position to administer their property efficiently without thereby aiding the enemies of Israel (section 28 (b)).

11. The importance of a certificate issued under section 28 follows from section 29 of the Act, which provided that by such a certificate the custodian may release any property belonging to the holder, whereupon title to it shall revert to him.

12. In accordance with section 30, the custodian may further but without changing the status of the person as an absentee-relinquish his title in the property of an absentee by issuing a certificate to this effect. Where such a certificate has been issued the title in the relinquished property shall revert to the person who had title thereto prior to the appointment of the custodian.

13. Section 31 provides, however, that the custodian shall not exercise his powers under sections 28 (b), 29 or 30 unless a recommendation of an Interministerial Committee passed by a majority of votes has been obtained in each case. (This Committee consists of three members, one appointed by the Minister of Finance, one by the Minister of Agriculture and one by the Minister of Minorities.

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14. Whereas it would hardly serve any practical purpose at the present stage to press for the acceptance by the Government of Israel of the suspension or abrogation of the Absentee Property Act as such which, as stated above, would require the passing of a new law, it might be useful to attempt to reach agreement as to the effects of the Act with respect to such refugees as may return to Israel.

15. Following this line of thought, a suitable point of departure might be found in section 28 (b) of the Act which provides that persons who are within the territory of Israel and who might be defined as absentees, may be given certificates as non-absentees under certain conditions (see paragraph 10). This provision would seem to cover the case of such refugees who have returned to Israel. It might therefore be appropriate to ask the Israeli delegation for formal assurance that those refugees who eventually would be accepted will be given the status of non-absentees and their properties released in accordance with the Absentee Property Act, sections 28 and 29.

16. In connection with the statement of Mr. Sharett that during the past six months a considerable number of refugees have been permitted to return to Israeli territory, the Committee might also inquire from the Israeli delegation whether such refugees have received, or are entitled to receive certificates according to their non-absentee status as indicated in paragraph 10 above.