

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

GENERAL COMMITTEE

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SUMMARY RECORD OF THE SIXTEENTH MEETING

held in Lausanne on Wednesday,
22 June 1949, at 11:45 a.m.

Present : Mr. Yenisey (Turkey) - Chairman
Mr. de la Tour du Pin (France)
Mr. Wilkins (U.S.A.)
Mr. Milner - Committee Secretary

Absentee Property Act: memorandum by the Secretariat (W/10)

The CHAIRMAN had two questions to put to the Legal Adviser on the subject of the Absentee Act. He wished to know, first, whether or not the Act was a violation of international law, and secondly, whether there was any legal basis for the protests made against it by the Arab delegations.

Mr. SERUP (Legal Adviser) said, in reply to the first question, that he would hesitate to term the Act a violation of international law. There were no specific rules of international law to prevent a country from enacting legislation of the sort, and several countries had done so in similar circumstances. The particular aspect of the law which made it controversial was the fact that it applied to a section of the population which was outside the country.

In replying to the second question, the Legal Adviser recalled the chief points made against the law by the representative of Syria in the General Committee (see Com.Gen./SR.9). Mr. Choukairi had claimed that the law was invalid because no Israeli law could be made retroactive to a date when the State of Israel had not been in existence. The Legal Adviser questioned the claim, however, since the law itself had been in application only from the moment of its promulgation by the State of Israel; the retroactivity lay only in its definition of an "absentee".

Further, the Legal Adviser felt that Mr. Choukairi had gone too far in contending that the Act covered all persons of whatever nationality. The persons covered were listed in three categories, and there were various cases in which foreigners would not be subject to the law. The Syrian representative had claimed that the property falling within the definitions of the Act constituted the major part of all the property of Palestine. The Legal Adviser, while admitting that the definition of property was a broad one, did not consider it necessarily more broad than similar definitions in the laws of other countries, e.g. the British law concerning enemy property. Mr. Choukairi had thought it inconceivable that any State should enact a law directed, not chiefly against foreigners but against a part of its own population. The Legal Adviser agreed that this aspect of the law was abnormal; it could only be explained by the special demographic structure of Palestine. It would, nevertheless, be difficult to find in that aspect a basis for terming it illegal. Finally the Syrian representative had stated that under the Act the custodian had unlimited powers and authority. The Legal Adviser admitted those powers were wide, but was not prepared to call them unlimited. The Point of departure was that the custodian was entitled to treat the property in the same manner in which the owner would have treated it had he not been absent. (But, on the other hand, the Act did contain explicit limitations of the powers of the custodian.)

The CHAIRMAN had two observations to make. First, it was clear that any country in wartime had the right to enact legislation for control of the property of enemy aliens. The present law, however, seemed to be directed against nationals of Palestine. The question was whether the refugee absentees could be considered as foreign nationals. Secondly, he remarked that the retroactivity of the Act depended upon the definition of an absentee. Was an absentee an Arab who had left the country, or a national of Palestine who was not a national of Israel ?

Mr. de la TOUR DU PIN felt that it was beyond the competence of the Committee to discuss the question whether the Absentee Act was in accordance with international law; such a question would have to be decided by the International Court of Justice. However, certain aspects of the law might have political consequences. If under the law certain Arab property could be liquidated by Israel, then the refugees, if repatriated, would be

without homes or means of livelihood; therefore, the Commission's attitude should be that from a political point of view the Act was contrary to the resolution of 11 December 1948, which called for repatriation of the refugees and preservation of their property.

Mr. de la Tour du Pin drew attention to paragraph 15 of the Secretariat's note (Com.Gen./W.2), in which it was suggested that certain articles of the Absentee Act should form the basis for proposals by the Commission. He wished to stress the fact that the Commission should consider its position carefully in the matter; it might be dangerous to make proposals on such a basis when it had not been determined that the Act was in accordance with international law.

The CHAIRMAN agreed that any discussion of the Act by the Commission or the Committee would imply de facto recognition of the validity of the law.

Mr. WILKINS agreed on the necessity of avoiding any implicit recognition of the validity of the Absentee Property Act. In regard to paragraph 5, he understood that the request for the suspension of certain clauses of the Act was among those still under consideration by the Israeli Government. Pending more complete information, he questioned the validity of the conclusion drawn in paragraph 14, to the effect that it would be useless to press for the suspension of the Act since that would require the passing of a new law. The questions contained in paragraph 15 and 16 might, on the other hand, usefully be asked of the Israeli Delegation as a means of alleviating the lot of refugees who had returned to Israel.

The COMMITTEE SECRETARY explained that paragraph 14 had been included in the absence of any definite reply from Tel Aviv to the questions asked in the Commission's memorandum of 18 May (document IS/16), with the idea that the Committee might find it more useful at the present time to consider particular measures rather than the suspension or abrogation of the whole law. By raising the question of such measures it might be easier to elicit the assurances regarding the Act which the Commission had sought in its memorandum of 18 May. If some ^{such} assurances were forthcoming, it would mean a step towards satisfying the Commission's original intention in raising the general questions of the Act's applicatio

Mr. WILKINS agreed that the questions in paragraphs 15 and 16 should be put to the Israeli Delegation. He did not however wish it to appear as though the Committee had passed without objection a statement that it should refrain from pressing for a measure which would involve a new law. There was no reason why laws should not be changed, or why the Commission's original intention should be discarded.

The LEGAL ADVISER pointed out that the emphasis in paragraph 14 lay on the words "at the present stage".

The CHAIRMAN pointed out that it would be beyond the competence of the Committee to ask for the promulgation of a new law. The problem could however be explained in discussions with the Israeli Delegation, and the questions in paragraph 15 and 16 should be put to them.

Mr. de la TOUR DU PIN approved of paragraphs 15 and 16. He emphasized however the inadvisability of appeal to a law of which the validity under international law was doubtful and contested by the other party. At the last meeting with the Israeli Delegation, in raising the question of certain facilities for payments to absentees, he had carefully refrained from referring to a clause in the Absentee Property Law which permitted such facilities. The law might possibly be alluded to in private interviews, but he warned the Committee against public appeal to it, which the Arabs might resent.

The LEGAL ADVISER mentioned Mr. Choukairi's contention that the Absentee Property Act had been nullified by the adoption of the General Assembly Resolution of 11 December 1948. The relationship between international law and national law was a perennial problem, but he did not think Mr. Choukairi's views tenable.

The CHAIRMAN agreed that it would be difficult to accept such an interpretation.