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The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency: A Study in International and United States Law

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THE LEGAL PROBLEMS CONCERNING THE JURIDICAL STATUS AND POLITICAL ACTIVITIES OF THE ZIONIST ORGANIZATION / JEWISH AGENCY: A STUDY IN INTERNATIONAL AND UNITED STATES LAW

W. T. MALLISON, JR.*

For it is not Names, that Constitute Governments, but the use and
exercise of those Powers that were intended to accompany them

—John Locke¹

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The writer has served, from time to time, as consultant to the American Council for Judaism, a national organization of Americans of Jewish religious faith. The letterhead of its National Office states, in part: "A National Organization dedicated to the preservation of the universal values of Judaism and opposing Zionist efforts to impose a national identification on our religious faith. For in the U.S. religion and nationality must remain separate and distinct."

The analyses and conclusions in the present study are those of the writer alone.

1. JOHN LOCKE, *The Second Treatise of Government: an Essay Concerning the True Original, Extent, and End of Civil Government* sec. 215 (1698) in JOHN LOCKE: TWO TREATISES OF GOVERNMENT 427 (Laslett ed. 1960).

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INTRODUCTION

Senator J. W. Fulbright, the Chairman of the Committee on Foreign Relations, stated on the floor of the Senate on August 27, 1962:

As the Committee on Foreign Relations investigation into the nondiplomatic activities of representatives of foreign governments progresses, we are becoming aware of the variety of legal problems that arise with any effort by the Federal Government to apply surveillance and sanctions in this field.

. . . .

It is already clear that this act [the Foreign Agents Registration Act of 1938]—drawn up 24 years ago—does not adequately meet some of the new foreign agent techniques discovered during these first months of our inquiry.

. . . .

What the Committee on Foreign Relations would like to do is suggest a direction for this great legal research capacity—in effect request law schools throughout the Nations, their professors and

students alike, to devote a part of their energy to the study of one law, the Foreign Agents Registration Act, and the problems that surround it.²

Since Senator Fulbright is a law school graduate,³ a former law teacher,⁴ and a former university president,⁵ it is not surprising that he turned to the law schools for help in a difficult legal inquiry. The law schools, however, have offered but little assistance.

In 1963 the Senate Committee on Foreign Relations held an extensive Hearing over a period of several months concerning the activities of nondiplomatic representatives of foreign principals in the United States.⁶ A 1964 Report of the Committee stated:

[T]he nine chosen cases were selected not because they were typical but rather because they illustrated a range of activities which the committee believed were inimical to the interests of the United States and should be dealt with in new legislation.⁷

One of the "chosen cases" involved an examination of the activities of the Zionist Organization/Jewish Agency in the United States. The present study, at least in part, is a belated attempt to comply with the request made by Senator Fulbright for legal research to supplement the work of the Committee.

The value identifications and perspectives of the present study include a conception of public law (whether international or municipal) which is based upon the dignity of the individual.⁸ In consequence, discriminations such as those based upon religious belief, national origin, or racial identification, should not be given effect in public law. A central responsibility of public law is deemed to be the providing of a rational and predominantly consensual institutional structure in which the individual may achieve his basic values. In contrast, Zionist public

2. 108 CONG. REC. 17731 (1962).

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6. This Hearing is cited in full in note 161, *infra*.

7. Senate Committee on Foreign Relations, Foreign Agents Registration Act Amendments, S. REP. NO. 875, 88th Cong., 2d Sess. (1964).

8. See McDougal, *Perspectives for an International Law of Human Dignity*, 53 PROC. AM. SOC. INT'L LAW 107 (1959).

law concepts and their practical implementation as documented in the present study stress groups rather than individuals. The eminent American scholar, Morris Raphael Cohen, has stated the central point:

Though most of the leaders of Zionism in America are sincerely and profoundly convinced of the compatibility of Zionism and Americanism, they are none the less profoundly mistaken. Nationalistic Zionism demands not complete individual liberty for the Jew, but group autonomy.⁹

Because of this conflict of basic values it is highly desirable that the same public law issues which are examined here also be considered from different value perspectives. A scholarly juridical analysis of these legal issues by one of the many well-qualified Zionist lawyers should provide considerable enlightenment for both supporters and opponents of the Zionist political movement and its public law structure. Political viewpoints,¹⁰ although of undoubted interest, do not usually provide legal analysis.

I. THE BASIC JURIDICAL ISSUES

Although the juridical issues of the present study are closely related to the "Jewish people" nationality claims, these claims are not examined in detail here. They are considered, however, where it is necessary to provide context for the study. They are also mentioned briefly where the issues which are examined afford illustration of detailed implementation of the "Jewish people" claims. The public law sources of the Zionist-Israel claims to constitute the "Jewish people" nationality entity and to confer membership in it upon Jews have been appraised in an earlier study.¹¹

9. COHEN, *THE FAITH OF A LIBERAL* 329 (1942). See ch. 39 entitled, *Zionism: Tribalism or Liberalism*.

10. See, e.g., Halpern, *The Anti-Zionist Phobia: Legal Style*, 11 *MIDSTREAM* No. 2, at 74 (June 1965) which sets forth a political view of the Zionist "Jewish people" concept. Contrast the scholarly Zionist legal analysis of the same concept in Feinberg, *The Recognition of the Jewish People in International Law*, *JEWISH YEARBOOK OF INTERNATIONAL LAW* 1948, at 1 (1949). In fairness to Professor Halpern it should be recognized that it is difficult, and perhaps impossible, to make the "Jewish people" concept acceptable to an American audience.

11. Mallison, *The Zionist-Israel Juridical Claims to Constitute "The Jewish People" Nationality Entity and to Confer Membership in It: Appraisal in Public International Law*, 32 *GEO. WASH. L. REV.* 983 (1964) (hereinafter cited as *The "Jewish People" Study*).

This inquiry considers three principal groups of issues. The first group concerns the present juridical status of the Zionist Organization. The historic claims to constitute the Zionist Organization as a public body will be considered also since they are indispensable to an understanding of the present legal status.

The second group of issues concerns the relationship in law of the Zionist Organization to certain national states. Its nexus to the British Government prior to and during the League of Nations Mandate for Palestine and its relation to the State of Israel from 1948 to the present must both be examined.

The juridical status and political activities of the Zionist Organization under United States law constitute the final group of issues. This inquiry will necessarily involve consideration of the Foreign Agents Registration Act of 1938 as Amended and the 1963 Senate Hearing concerning the Activities of Nondiplomatic Representatives of Foreign Principals in the United States. The entire study will, of course, employ primary public law sources.

II. THE CONTEXT OF THE "JEWISH PEOPLE" CLAIMS

The "Jewish people" nationality claims are the core of Zionist public law.

A. *The "Jewish People" Concept*

A fundamental postulate of Zionism must be summarized at the beginning in order to provide clarity for the subsequent appraisal. Zionism is based upon an acceptance of anti-Semitism now and has been so based since its inception in 1897. Illustration may be provided from the words of Dr. Theodor Herzl, the first president of the Zionist Organization:

We naturally move to those places where we are not persecuted, and there our presence produces persecution. This is the case in every country, and will remain so, even in those highly civilized—for instance, France—till the Jewish question finds a solution on a political basis. The unfortunate Jews are now carrying Anti-Semitism into England; they have already introduced it into America.¹²

12. HERZL, *THE JEWISH STATE: AN ATTEMPT AT A MODERN SOLUTION OF THE JEWISH QUESTION* 19, 20 (D'Avigdor & Cohen transl. 1943).

Zionism and its "Jewish State" act upon the postulate that anti-Semitism is fundamental and ineradicable. Upon this postulate the Zionist juridical objectives that "the Jewish people" be constituted as an additional nationality entity, membership in which is to be conferred upon all Jews, are based.¹³ The "Jewish people" concept is used to recruit Jewish immigration to Israel and to achieve other Zionist political objectives. The Zionist "solution" to anti-Semitism is to "ingather" all Jews into the State of Israel.¹⁴

A contemporary illustration of the importance of anti-Semitism as a guide to Zionist action is provided by Arthur Hertzberg, a leading proponent of Zionism in the United States:

The assumption that anti-Semitism "makes sense" and that it can be put to constructive uses—this is at once the subtlest, most daring, and most optimistic conception to be found in political Zionism. . . . What is new in Herzl is that, assuming, as the heir of assimilation, that anti-Semitism is rational, he boldly turned this idea outward into the international arena.¹⁵

Zionists have frequently received the effective support of anti-Semites who are well aware of Zionist basic assumptions concerning this subject. Among the documented examples is the one provided by the British Zionist and scholar, Leonard Stein, concerning the anti-Semitic perspectives of British Prime Minister Lloyd George¹⁶ who is well known as an influential supporter of Zionism including the political promise clause of the Balfour Declaration.

The "Jewish people" concept is consistently advanced as a juridical claim in international law decision-making contexts. A particularly well known example involved the exploitation of the claim in the *Eichmann Trial Judgment*.¹⁷ In that case the reliance upon the claim to establish jurisdictional authority in international law probably resulted in a failure of jurisdiction. The recognized nondiscriminatory jurisdictional

13. *The "Jewish People" Study* 1050-60 *passim*.

14. Illustrations of the textual statements are provided *infra*.

15. HERTZBERG (ed. *THE ZIONIST IDEA: A HISTORICAL ANALYSIS AND READER*, INTRODUCTION 49 (1966) (hereinafter cited as HERTZBERG, *ZIONIST IDEA*).

16. STEIN, *THE BALFOUR DECLARATION* 143 (1961) (hereinafter cited as STEIN). Stein refers to "a streak of ordinary vulgar anti-Semitism" in Lloyd George's speeches and provides specific examples. STEIN 143, nn.20-21.

17. *The Attorney-General of the Government of Israel v. Adolf, the son of Karl Adolf Eichmann*, Crim. Case No. 40/61, Dist. Ct. of Jerusalem, Israel, Dec. 11-12, 1961, *aff'd* Crim. App. No. 336/61, Sup. Ct. of Israel, May 29, 1962.

concept of crimes against humanity was only given lip service by the Israel trial court.¹⁸ If jurisdiction to conduct the case failed, this was acceptable to Zionists because the opportunity to advance the "Jewish people" claims in what was widely regarded as a judicial context provided justification. The *Eichmann Trial Judgment* included, *inter alia*, these formulations of the claim:

If there is an effective link (and not necessarily an identity) between the State of Israel and the Jewish people, then a crime intended to exterminate the Jewish people has a very striking connection with the State of Israel.

The connection between the State of Israel and the Jewish people needs no explanation. The State of Israel was established and recognised as the State of the Jews. . . . It would appear that there is hardly need for any further proof of the very obvious connection between the Jewish people and the State of Israel: this is the sovereign State of the Jewish people.¹⁹

The United States Department of State has commented upon the "Jewish people" concept as follows:

The Department of State recognizes the State of Israel as a sovereign State and citizenship of the State of Israel. It recognizes no other sovereignty or citizenship in connection therewith. It does not recognize a legal-political relationship based upon the religious identification of American citizens. It does not in any way discriminate among American citizens upon the basis of their religion.

Accordingly, it should be clear that the Department of State does not regard the "Jewish people" concept as a concept of international law.²⁰

Although this indicates official rejection of the "Jewish people" claim as "a concept of international law," there are interesting questions which remain concerning the efforts to implement the concept.

B. The Continuing Implementation of the Concept

At the outset it should be recognized that the enunciation of the

18. *Id.* at p. 22, heading #26.

19. *Id.* at p. 32, headings #33-34.

20. Letter from Assistant Secretary of State Talbot to Dr. Elmer Berger, Executive Vice President of the American Council for Judaism, April 20, 1964 in 8 *WHITEMAN, DIGEST OF INTERNATIONAL LAW* 35 (1967).

"Jewish people" concept or claim in public law-making contexts involves an assertion of jurisdiction over Jews in the United States. The enunciation, consequently, involves implementation as well. The central jurisdictional point is made clear by the American Law Institute, *Foreign Relations Law of the United States*:

A state subjects a person to its laws when it provides, by statute or otherwise, that its law is applicable to that person as well as when it actually applies its law to him through its courts or other law enforcement agencies. The propriety and consequences of a state's acting in either of these ways are characterized as a matter of "jurisdiction"²¹

It is an error to regard the establishment of the State of Israel as the end of Zionism and its "Jewish people" concept. The establishment of the State is regarded by the Government of Israel and the Zionist Organization as only one step in obtaining assent to the "Jewish people" claims in law.²² Another key step, consisting of a wide range of subordinate public law measures, involves imposing "Jewish people" nationality law obligations upon Jews who are nationals of states other than Israel.²³ This is done in diverse ways including the *Eichmann Trial Judgment* jurisdictional holding upon the basis of the claimed legal connection between "the Jewish people" and the State. Other measures include supposed municipal statutes which have a practical impact upon nationals of other states than Israel who are Jews.²⁴ In addition, the working relationships between the Zionist Organization and the Government of Israel are based directly upon the "Jewish people" concept and, in particular, its implementation through the recruiting of Jewish immigrants.²⁵ This recruitment constitutes, in Zionist-Israel practice and law, both a national "right" of "the Jewish people" (and no other)²⁶ and the long range objective of "gathering in the exiles" (meaning all of "the Jewish people") into the State of Israel.²⁷

21. RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES 19 (1965) (hereinafter cited as RESTATEMENT).

22. The continuing claims after the establishment of the State of Israel are examined in *The "Jewish People" Study* 1036-49.

23. *Id.* and *passim*.

24. The Israel Status Law (1952) examined *infra* in Section V B.

25. The Zionist-Israel Coordination Board examined *infra* in Section V C.

26. The Israel Law of Return sec. 1 provides: "Every Jew has the right to come to this country as an *oleh*" (Jewish immigrant), 4 LAWS OF THE STATE OF ISRAEL (Authorized Translation) 114 (1950) (hereinafter cited as ISRAEL LAWS).

27. The Status Law sec. 4 examined in this study *infra* Section V B.

It is apparent that these objectives are closely interrelated and cannot be analyzed, or understood, except on the basis of the "Jewish people" claims. If the subordinate claims imposing nationality obligations upon "the Jewish people" are effective in sufficient measure, then the long range total "ingathering" will also be successful since Jews will have been so completely separated in public law from their fellow nationals of other religious identifications that ultimately they will have no place to go except the State of Israel.

The "Jewish people" nationality claims include the claim of collective political obligations from all Jews to the State of Israel. Former Prime Minister Ben-Gurion has stated it in specific terms:

First of all there is the collective duty of the Zionist Organization and of the Zionist Movement to assist the State of Israel in all conditions and under any circumstances towards accomplishment of 4 central matters—the Ingathering of the Exiles, the building up of the country, security and the absorption and fusion of the Dispersions within the State.

This signifies assisting the State whether the government to which the Jews in question owe allegiance desire [sic] it or not
...²⁸

The quoted statement does not expressly raise the issue of double loyalty since the only political duties which are recognized "in all conditions and under any circumstances" are those to the State of Israel. The double loyalty issue is, however, recognized by some of the Zionist political elite and dealt with in apparent double talk. For example, Mr. Berl Locker, speaking as chairman of the Zionist Executive at a Session of the Zionist General Council, stated as one of "the basic doctrines of Zionism in the present day":

The State of Israel lays no claim to the political loyalty of Jews resident in other countries. Jews are good citizens in all countries of their domicile and especially in the countries in which they enjoy equal rights. *But Jews as a community do possess a collective loyalty to the State of Israel, as Israel is the national home of the entire Jewish people.*²⁹

28. Article entitled Tasks and Character of a Modern Zionist, based on a speech delivered at the World Conference of Haichud Haolami on Aug. 8, 1951, Jerusalem Post, Aug. 17, 1951, at 5, cols. 3-8 at cols. 4-5.

29. Organization Dept. of the Zionist Executive, Session of the Zionist General Council 44 (July 21-29, 1954).

On its face this statement is simply double talk since it can be interpreted textually as meaning either single or double loyalty. A Zionist statement, however, must usually be interpreted in greater depth than "on its face." The italics in the original indicate, of course, the relatively greater significance of the italicized statement concerning the loyalty of Jews to the State of Israel. Further analysis requires a basic understanding of Zionist public law. Such law is concerned almost exclusively with collective rights and duties consistent with the collective "Jewish people" concept. From this perspective the statements which are not in italics have no Zionist significance since they are only concerned with individual Jews ("good citizens"). The italicized statement concerns the Zionist concept of the "entire Jewish people" as well as the lower level concept of "Jews as a community." Since Zionism is concerned with collective rights and duties this is the only part of the quotation which has meaning to Zionists.³⁰

The contemporary implementation of the "Jewish people" concept continues to emphasize the immigration of Jews living in "exile" or in the "diaspora" (the Zionist terms for Jews who are nationals of any state other than the State of Israel) to Israel. In view of the substantial failure of Zionist recruitment of Jewish immigrants in the United States, Zionism has developed other major political objectives within this country which are conducted in spite of the provisions of the Treaty of Friendship, Commerce and Navigation Between the United States and Israel³¹ which deny authority to conduct such activities. Each of these objectives is documented in the 1963 Senate Foreign Relations Committee Hearing concerning the "Activities of Nondiplomatic Representatives of Foreign Principals in the United States."³² Perhaps the most important and comprehensive one is to conduct Zionist political activities in the United States as if they were genuine American activities. A related objective includes the domination of the mass media of communications with Zionist-Israel political viewpoints presented to make them appear to be American ones.³³

30. For understanding any communication the relevant and indispensable questions are: Who, says What, to Whom, for what Objectives, How, under what Conditions, and with what Effects.

McDougal & Gardner, *The Veto and the Charter: An Interpretation for Survival*, 60 YALE L.J. 258, 263 (1951) (note omitted).

31. Citation appears in *infra* note 157.

32. Examined in this study *infra* Section VI B.

33. AMER. INST. FOR POLITICAL COMMUNICATION, A SPECIAL REPORT: DOMESTIC COMMUNICATIONS ASPECTS OF THE MIDDLE EAST CRISIS 1 (July, 1967).

III. THE SUBJECTS OF INTERNATIONAL LAW

Since the Zionist Organization has claimed status as a public body, a brief consideration of the subjects of international law is essential. It is, of course, elementary learning that the subjects of international law are no longer limited to national states.³⁴ A memorandum of the Secretary-General of the United Nations has described the current situation as follows: "Practice has abandoned the doctrine that States are the exclusive subjects of international rights and duties."³⁵ Among the subjects of international law other than states, international public bodies or organizations are of particular importance. In addition to the well known examples, a number of which are associated with the United Nations, there are many less known public bodies including the Sovereign Order of Malta³⁶ and the International Commission for the Cape Spartel Light.³⁷

Public bodies are usually constituted as subjects of international law through the explicit multilateral agreement of states (conventional law).³⁸ There is no authority for a state to constitute a public body unilaterally. Such bodies may, on occasion, be constituted by necessary implication drawn from an appraisal of their substantive powers. The United Nations, in spite of its preeminent position as the principal general function public body, is not explicitly constituted as a public body by its Charter. The International Court of Justice in the *United Nations Reparation Case*,³⁹ however, determined that the United Nations enjoys international juridical status or "personality" as a necessary implication from the substantive powers which are granted to it by the Charter. It would have been unsound to allow the substantive grants of power to

34. McDougal, Lasswell & Reisman, *The World Constitutive Process of Authoritative Decision*, 19 J. OF LEGAL ED. 253, 263-67 (1967) describes five participants or subjects including national states.

35. Memorandum of the Secretary General of the United Nations, Survey of International Law in Relation to the Work of Codification of the International Law Commission, A/cn.4/1/Rev. 1, p. 19 (Feb. 10, 1949).

36. See Farran, *The Sovereign Order of Malta in International Law*, 3 INT'L AND COMP. L.Q. 217 (1954); Farran, *The Sovereign Order of Malta: A Supplementary Note*, 4 INT'L AND COMP. L.Q. 308 (1955).

37. The Commission is described in 2 INTERNATIONAL GOVERNMENTAL ORGANIZATIONS 1051 (Peaslee ed., 2nd ed. 1961). The convention creating the Commission appears in *id.* at 1052-53.

38. See RESTATEMENT sec. 5(a) which defines an international organization, in part, as created by an international agreement.

39. Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. 174.

be frustrated through the failure to find the ancillary status or personality. The Court found the United Nations to be a "subject of international law and [a body] capable of possessing international rights and duties" The present significance of the case is that it illustrates the empirical analysis which must be made in an inquiry concerning status as a public body-subject of international law.

In answering the question as to whether or not the Zionist Organization has been constituted as a public body the same empirical tests must be employed. Professor Lauterpacht has provided these succinct criteria:

[I]n each particular case the question whether a person or a body is a subject of international law must be answered in a pragmatic manner by reference to actual experience and to the reason of the law as distinguished from a preconceived notion as to who can be subjects of international law.⁴⁰

The principal juridical consequence of status as a public body, of course, is subjection to the law.⁴¹ There can be no grant of powers and status as a public body without the accompanying legal obligations of a subject of the law. These obligations include, at the minimum, both the specific legal limitations imposed upon the public body and the general legal limitations which apply to all subjects of international law.

IV. THE CLAIMS TO CONSTITUTE THE ZIONIST ORGANIZATION AS A PUBLIC BODY FROM THE FIRST ZIONIST CONGRESS TO THE TERMINATION OF THE LEAGUE OF NATIONS MANDATE FOR PALESTINE (1897-1948)

A. The Early Claims to Constitute the Zionist Organization as a Public Body (1897-1917)

The relevant activities of the First Zionist Congress, which met in Basle in 1897, have been summarized as follows:

The First Zionist Congress was called by Dr. Theodor Herzl to provide political and juridical implementation for his basic assumption of ineradicable anti-Semitism and the consequent neces-

40. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 12 (1950).

41. E.g., the *Ma'arommat's Palestine Concessions Cases* considered in this study *infra* in Section IV D.

sity of a "Jewish" state. In the opening address Herzl stated the object of the meeting: "We are here to lay the foundation stone of the house which is to shelter the Jewish nation." The Congress then proceeded to constitute the Zionist Organization, and concluded with the adoption of a statement of Zionist purpose known as the Basle Program. The key provision stated: "The aim of Zionism is to create for the Jewish people a home in Palestine secured by public law." Four means were formulated to obtain this objective: (1) the promotion of Zionist (termed "Jewish") immigration to Palestine; (2) the "organization and binding together of the whole Jewry" through appropriate means; (3) "strengthening and fostering of Jewish national sentiment and consciousness"; (4) taking steps toward "obtaining government consent" for the objectives of Zionism.⁴²

The present analysis emphasizes the second point (the organizational means) of the Basle Program. It is clear that in Zionist conception the Zionist Organization was claimed to be a public body representing all Jews from its inception.⁴³ Such a claim standing alone is, of course, not the equivalent of authoritative international decision. In order to constitute the claimant as a public body-subject of international law the assent of the community of states is required. Herzl, as the first president of the Zionist Organization, nevertheless conducted negotiations with the German Kaiser and the Turkish Sultan as if the Organization were a valid public body.⁴⁴ The results of these negotiations were negative. As far as the Kaiser's initial enthusiastic support for Zionism is concerned, it has been stated by a scholarly pro-Zionist study that "it was partly motivated by anti-Semitism."⁴⁵ In 1903 the Zionist Organization negotiated for and obtained a British proposal for Zionist coloniza-

42. *The "Jewish People" Study* 998-99.

43. At Basle, Herzl described the Zionist Organization as "an agency for the Jewish people" intended to negotiate with governments. *First Zionist Congress Address of Aug. 29, 1897* in HERTZBERG, *ZIONIST IDEA* 226. See particularly *id.* at 228, 230.

Even the comic opera aspects of the First Congress did not detract from the serious intent in the attempted creation of the Zionist Organization as a public body. See Herzl's reference to his requirement that delegates be dressed in formal attire, "tails and white tie." 2 *THE COMPLETE DIARIES OF THEODOR HERZL* 581 (Patai ed., Zohn transl. 1960).

44. 1 *ESCO FOUNDATION FOR PALESTINE, PALESTINE: A STUDY OF JEWISH, ARAB, AND BRITISH POLICIES* 42-45 (1947) (hereinafter cited as *ESCO STUDY*); TAYLOR, *PRELUDE TO ISRAEL: AN ANALYSIS OF ZIONIST DIPLOMACY, 1897-1947*, at 6-7 (1959) (hereinafter cited as *ZIONIST DIPLOMACY*).

45. *ESCO STUDY* 43.

tion in Uganda. This was presented to the Sixth Zionist Congress and, although Herzl favored it, the proposal was not implemented.⁴⁶ Perhaps the mere conduct of these diplomatic negotiations resulted in a small measure of recognition of the Zionist Organization as a public body. If so, it did not amount to the international community assent required to constitute such a body in law.

Three years of intensive diplomatic negotiations preceded the issuance of the Balfour Declaration by the British Government on November 2, 1917.⁴⁷ Dr. Chaim Weizmann was the principal Zionist negotiator, and he acted throughout on behalf of the Zionist Organization. He also acted on behalf of the Zionist alleged constituency of "the Jewish people" until the British Government rejected his authority to speak for all Jews when English anti-Zionist Jews entered into the negotiations.⁴⁸ Although a unilateral public law announcement in form, the Declaration was in substance a compromise agreement between the Zionist Organization, anti-Zionist British Jews, and the British Government.⁴⁹ The Declaration contains an ambiguous political promise clause in which the British Government undertook to view with favor the establishment in Palestine of a "national home for the Jewish people." This was explicitly subordinated to the two safeguard clauses which were designed to protect Jews in any other country than Palestine and the Arabs of Palestine from any prejudice or harm. The safeguards clauses were inserted over the strong objections of the Zionist negotiators.⁵⁰

The Balfour Declaration necessarily involved the recognition by the British Government of the public body status of the Zionist Organization. The Declaration manifests the British view that the Organization had the juridical status to receive the political promise clause as well as to be subjected to the legal limitations embodied in the safeguards. Although this still did not amount to the according of public body

46. *Id.* at 48-49; ZIONIST DIPLOMACY 7.

47. STEIN, *THE BALFOUR DECLARATION* 514 (1961). The Stein book is the authoritative history of the negotiations leading to the Declaration.

48. The exclusion of anti-Zionist Jews from the Zionist "Jewish people" nationality claims is reflected in the second safeguard clause of the Declaration. The Zionists were not successful in removing it from the later drafts of the Declaration once it was inserted. *The "Jewish People" Study* 1013-16.

49. *Id.* at 1016-21.

50. *The "Jewish People" Study* 1008. Dr. Weizmann stated that the final compromise Declaration "shows a painful recession from what the Government itself was prepared to offer." TRIAL AND ERROR: *THE AUTOBIOGRAPHY OF CHAIM WEIZMANN* 260 (East and West Library illus. ed. 1950).

status by the community of states, it was a significant step toward this objective. The political "alliance"⁵¹ between the Zionist Organization and the British Government allowed the former to participate in the Paris Peace Conference of 1919 where a further step to the objective could be taken.

B. The Zionist Organization at the Paris Peace Conference (1919)

Representatives of the Zionist Organization were invited to appear before the Supreme Council of the Peace Conference and on February 27, 1919 Dr. Weizmann and Nahum Sokolow addressed the Council and commented on several aspects of an official Zionist memorandum which had been sent to the Supreme Council on February 3, 1919.⁵² Among the Zionist proposals was the creation of a "Jewish Council" which should have the status of "a legal entity" and which was designed, *inter alia*, to implement the Zionist "national home" project in Palestine.⁵³

These events may be regarded as a tentative multilateral recognition of the Zionist Organization as a public body. Professor Feinberg, a leading Zionist legal scholar, suggests that the Zionist Organization "as the representative of the Jewish people" was probably granted a status "actually equivalent to that of the neutral States" at the Peace Conference.⁵⁴ Whether this view is accurate or not, the important point is that the status accorded to the Organization at the Peace Conference would lead shortly to unequivocal public body status.

C. The Zionist Organization as a Public Body Constituted by the Mandate for Palestine

The Zionist Organization enjoyed a privileged position through its political alliance with the British Government and, as a result, participated in the drafting of the Mandate for Palestine.⁵⁵ Although the Zionists did not achieve all of their political objectives,⁵⁶ a number were in-

51. The quoted term appears in ESCO STUDY 74.

52. ZIONIST DIPLOMACY 26.

53. The Zionist Memorandum appears in 2 DIPLOMACY IN THE NEAR AND MIDDLE EAST 45 (Hurewitz ed. 1956); 5 MILLER, MY DIARY AT THE CONFERENCE OF PARIS 15 (1924).

54. Feinberg, *supra* note 10, at 14.

55. 1 ESCO STUDY 151-77.

56. In particular the Zionists wanted the Mandate to recognize their rights in Palestine but had to accept "the historical connection." Weizmann states, "Zionists wanted to have it read: 'Recognizing the historic rights of the Jews to Palestine'" but British Foreign Secretary Curzon rejected this unequivocally. Weizmann, *supra* note 50, at 348.

corporated in the terms of the mandate. The present appraisal is limited to those portions of the Mandate which concern the functions and status of the Zionist Organization.

The preamble to the Mandate incorporated the substance of the Balfour Declaration and spelled out its safeguard clauses in full.⁵⁷ Thus it endeavored to protect the rights of the "existing non-Jewish communities in Palestine" and the rights "enjoyed by Jews in any other country" [than Palestine].

Article 4 is the most important provision concerning the Zionist Organization. It provides, in full:

An appropriate Jewish agency shall be recognized as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the cooperation of all Jews who are willing to assist in the establishment of the Jewish national home.⁵⁸

Thus the League of Nations, acting in behalf of the world community of the time, constituted the Zionist Organization as a public body. This was done without the participation of the United States which was not a member of the League.

The "Jewish agency" referred to is, of course, the "Jewish Council" requested in the Zionist memorandum to the Paris Conference.⁵⁹ From the time of the effectuation of the Palestine Mandate, the terms "Zionist Organization" and "Jewish Agency" have been simply different names

57. The entire Mandate is set forth as the preamble to the Anglo-American Convention on Palestine, 44 Stat. 2184 (1925). It also appears in STOYANOVSKY, *THE MANDATE FOR PALESTINE* 355 (1928).

58. *Id.* The future tense [e.g. "shall be recognized"] was used in the wording because the Mandate was drafted before it was approved by the Council of the League. Upon the effectuation of the Mandate on Sept. 29, 1922, the words, in the legal sense, were read as the present tense.

59. See the text accompanying *supra* note 53.

for the same public body.⁶⁰ The scope of the authority granted to the Zionist public body is indicated by the language which empowers it "to assist and take part in the development of the country." As a result of the action of the League of Nations, the British Government was now able to cooperate politically with an internationally recognized public body⁶¹ which as a subject of international law possessed certain powers and was bound in law to observe the limitations on its powers.

Other provisions of article 4 concern the legal limitations which are imposed. The first paragraph describes the public body as having purposes which concern the "Jewish national home" and the "Jews in Palestine." The last portion of the same paragraph makes the Zionist Organization "subject always to the control of the Administration," thereby subordinating the public body to the British Government. Further explicit legal limitations appear in the second paragraph. The first sentence recognizes the Zionist public body status only while its "organisation and constitution are satisfactory to the Mandatory Government." Finally, the international activities of the Zionist Organization in behalf of the "national home" enterprise may be performed only in consultation with the British Government. In summary, article 4 constitutes the Zionist Organization as a public body while simultaneously imposing explicit legal limitations upon it.

Other articles provide for further public functions of the Organization/Agency. Article 6 directs the Palestine Administration to promote "Jewish immigration" and, "in co-operation with the Jewish agency," to facilitate the settlement of Jews on the land. Article 11 was

60. The names quoted in the text, consistent with official Zionist sources, use a capital letter at the beginning of each word even though art. 4 of the Mandate uses a lower case letter at the beginning of the second word in each name.

61. In 1930 the British Government recognized the "Jewish Agency for Palestine" as the appropriate Jewish agency under the terms of art. 4. *ANGLO-AMERICAN COMMITTEE OF INQUIRY, REPORT TO THE UNITED STATES GOVERNMENT AND HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM* 20 (1946) (hereinafter cited as *ANGLO-AMERICAN REPORT*). The change was not a real one in substance since the "Jewish Agency for Palestine" was only an "enlarged" Jewish Agency in which "non-Zionists" were supposed to participate. Their participation was never effective and Zionist control continued. Mr. Lasky has written:

While the Enlarged Agency professed to continue for a time, it was without non-Zionist participation, and the identity of the Zionist Organization and the Agency was at least *de facto*.

LASKY, *BETWEEN TRUTH AND REPOSE* 70 (1956) (hereinafter cited as *LASKY*). The Lasky study is subtitled: *The World Zionist Organization, its Agency for the State of Israel, the Means by Which It Raises Its Funds, and the Structure Through Which It Operates in the Diaspora: A Study in Organization.*

to provide the occasion for future litigation concerning the "international obligations" of the Mandatory and recognition of the public body status of the Organization by the Permanent Court of International Justice.⁶² It concerns the development of "public works, services, and utilities," and provides that the administration of Palestine "subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities" A further provision of the same article states:

The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration.

D. Determination of Public Body Status by the Permanent Court of International Justice in the Mavrommatis Palestine Concession Cases

The issue of the juridical status of the Zionist Organization/Jewish Agency was considered by the Permanent Court of International Justice in the three cases which are collectively termed the *Mavrommatis Palestine Concessions Cases*.⁶³ While Palestine was a part of the Turkish Empire, the Turkish Government had granted certain public utility concessions in Jaffa and Jerusalem to Mr. Mavrommatis, a Greek subject. Thereafter the Mandatory Government, acting pursuant to articles 4 and 11 of the Mandate, arranged with the Zionist Organization to grant public works concessions to Mr. Rutenberg and these apparently overlapped the Mavrommatis concessions. Before asking the assistance of his government, Mr. Mavrommatis attempted to have his concessions recognized and honored through direct negotiations with the British Government. In doing this he relied upon the article 11 provision requiring that arrangements for "public works, services, and utilities" shall be made "subject to any international obligations accepted by the Mandatory." As the successor government to the Turkish Government in Palestine, the Mandatory was bound by the international obligations of Turkey concerning Palestine.⁶⁴ In the course of his dealings with the

62. *The Mavrommatis Palestine Concessions Cases* cited in *infra* notes 66, 71, and 74.

63. *Id.*

64. The Tinoco Claims Arbitration (Great Britain v. Costa Rica) (Oct. 18, 1923), 18 AM. J. INT'L L. 147 (1924) is a leading case concerning the obligation of a successor government to honor the international undertakings of its predecessor.

British Government, the latter invited Mr. Mavrommatis "to come to an understanding with the Zionist Organization and with Mr. Rutenberg." Although no understanding was reached with either the British Government or the Zionist Organization, the British invitation to Mr. Mavrommatis to confer with the organization concerning a dispute in public international law provides further evidence of its public body status. Thereafter, the Greek Government took up Mr. Mavrommatis' claims and presented them against the British Government in the Permanent Court of International Justice. The Greek Government prevailed concerning the Mavrommatis concessions in Jerusalem but not concerning those at Jaffa.⁶⁵

If any reasonable doubts could exist concerning the public body status of the Zionist Organization under the Mandate, they were resolved by the decision in the first *Mavrommatis Case*.⁶⁶ The Court quoted from article 4 of the Mandate in substantial part and then stated:

This clause shows that the Jewish agency is in reality a public body, closely connected with the Palestine Administration and that its task is to co-operate, with that Administration and under its control, in the development of the country.⁶⁷

There is nothing in the dissenting opinions which is inconsistent with this holding of the Court.⁶⁸ The dissenting opinion of the British judge, Lord Finlay, employed wording very similar to that in the Court's judgment on this subject and stated that according to article 4 "a Jewish agency is to be recognized as a public body" ⁶⁹ In addition, the judgment of the Court in this respect has been quoted with approval by the authoritative Zionist study of the legal aspects of the Palestine Mandate.⁷⁰

In the second *Mavrommatis Case*⁷¹ the court proceeded on the basis that the public body status had been adequately decided in the first case and referred in greater detail to the conversations which "took place with M. Rutenberg and with the president and other representatives of the Zionist Organization" and stated that the British Colonial Office was

65. The facts summarized in the text are based upon the three *Mavrommatis Cases*.

66. The Mavrommatis Palestine Concessions, [1924] P.C.I.J. ser. A, No. 2.

67. *Id.* at 21.

68. The five dissents appear in *id.* at 38-93.

69. *Supra* note 66, at 38, 52.

70. STOYANOVSKY, *supra* note 57, at 148.

71. The Mavrommatis Jerusalem Concessions, [1925] P.C.I.J., ser. A, No. 5.

kept informed as to the status of these conversations.⁷² The Court also considered "the influence of the Zionist Organization in the affairs of Palestine," and pointed out that provision is made for this influence in the terms of the Mandate.⁷³ In summary, the judgment in the second case does not reach any conclusions or make any findings inconsistent with the determination of the public body status of the Zionist Organization in the first case.

In the third *Mavrommatis Case*⁷⁴ the Zionist Organization/Jewish Agency was again simply regarded as "a public body."⁷⁵ The dissenting judges again manifested no disagreement with the judgment of the Court concerning the public body status of the Organization. The dissenting opinion of Judge Altamira stated:

But I think it necessary to point out, as regards the part played by the Jewish Agency in the economic policy of Palestine, that this very fact has the effect of excluding any action on the part of the public administration which would destroy the interests and character of the Organization. The recognition of that Organization as a true public body, with the rights conferred on it by Article 4 of the Mandate, implies that it must be accorded privileged or exceptional treatment which would disappear if the control exercised by the Administration were so extensive as to result in the substitution of the Administration itself for the Jewish Agency.⁷⁶

Judge Caloyanni, in his dissenting opinion, recognized the close relation between the Organization and the Administration provided in the Mandate:

From a study of these texts it clearly appears that the Zionist Organization is so closely connected with the Palestine Administration that for purposes of developing the country as regards economic questions and as regards works of public utility, it appears to be unable to do without this Organization, unless it consented.⁷⁷

72. *Id.* at 18.

73. *Id.* at 43.

74. Case of the Readaptation of the Mavrommatis Jerusalem Concessions (Jurisdiction), [1927] P.C.I.J. ser. A, No. 11.

75. *Id.* at 17.

76. *Id.* at 33, 37.

77. *Id.* at 47, 50.

E. Implementation of the Public Body Status

1. *Implementation Inside Palestine: the "Shadow Government."* The provisions of the Mandate, and particularly those concerning the close relationship of the Zionist Organization/Jewish Agency to the Palestine Administration, could lead to the conclusion that the Zionist Organization was an integral part of the governmental administration of Palestine. The dissenting opinions in the third *Mavrommatis Case* just considered could also be reasonably interpreted as leading to this conclusion. The British Government, nevertheless, took a different position shortly before the Palestine Mandate became effective. In the Churchill White Paper of July 1, 1922 the British Government stated:

It is also necessary to point out that the Zionist Commission in Palestine, now termed the Palestine Zionist Executive, has not desired to possess, and does not possess, any share in the general administration of the country. Nor does the special position assigned to the Zionist Organisation in Article IV of the Draft Mandate for Palestine imply any such functions. That special position relates to the measures to be taken in Palestine affecting the Jewish population, and contemplates that the Organisation may assist in the general development of the country, but does not entitle it to share in any degree in its Government.⁷⁸

Almost a month earlier, on June 3, 1922, the British Colonial Office had written to the Zionist Organization including in the letter a pre-publication copy of the Churchill White Paper. The Colonial Office letter concluded with the statement that it would "be glad to receive from you a formal assurance that your Organisation accepts the policy as set out in the enclosed statement and is prepared to conduct its own activities in conformity therewith."⁷⁹ The enclosed White Paper included the paragraph barring the Zionist Organization from possessing "any share in the general administration of the country."

The Zionist Organization, in a letter to the Colonial Office of June 18, 1922 signed by Dr. Weizmann,⁸⁰ stated that the Executive of the Zionist Organization had considered the British statement of policy and had passed the following resolution concerning it:

78. JEWISH AGENCY FOR PALESTINE, BOOK OF DOCUMENTS SUBMITTED TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS RELATING TO THE ESTABLISHMENT OF THE NATIONAL HOME FOR THE JEWISH PEOPLE 28, 29 (1947).

79. *Id.* at 27, 28.

80. *Id.* at 32.

The Executive of the Zionist Organisation, having taken note of the statement relative to British policy in Palestine, transmitted to them by the Colonial Office under date June 3rd, 1922, assure His Majesty's Government that the activities of the Zionist Organisation will be conducted in conformity with the policy therein set forth.⁸¹

The same letter also stated:

It [the Zionist Organization] has repeatedly made it clear both in word and deed that nothing is further from its purpose than to prejudice in the smallest degree the civil or religious rights or the material interests of the non-Jewish population [of Palestine].⁸²

For a short time the Zionist Organization/Jewish Agency observed these limitations on its authority. Thereafter, as its political and military power increased, it violated the express limitations in the Mandate and its undertakings to the British Government whenever the political objectives of Zionist nationalism and its claimed constituency of "the Jewish people" made this desirable. The 1946 report of a non-partisan and respected fact-finding committee, the Anglo-American Committee of Inquiry, provided a careful summary of the activities of the Jewish Agency in Palestine.

At first the Agency gave the Palestine Government effective cooperation. With its large revenue, its able administrators, advisors and staff, and its manifold activities, the Agency became finally and still remains the most potent nongovernmental authority in Palestine and indeed in the Middle East. The Peel Commission described it as "a Government existing side by side with the Mandatory Government". The description is even more accurate today.⁸³

The same committee also stated:

The Jews have developed, under the aegis of the Jewish Agency and the Vaad Leumi, a strong and tightly-woven community. There thus exists a virtual Jewish nonterritorial State with its own executive and legislative organs, parallel in many respects to the Mandatory Administration, and serving as the concrete symbol of

81. *Id.* at 32-33.

82. *Id.* at 33.

83. ANGLO-AMERICAN REPORT 20.

the Jewish National Home. This Jewish shadow Government has ceased to cooperate with the Administration in the maintenance of law and order, and in the suppression of terrorism.⁸⁴

In summary, the Zionist Organization exercised the public body powers accorded to it by the Mandate but the limitations imposed upon it by the same authority were violated.

2. *Implementation Outside Palestine: the International Public Body.* The Zionist Organization acted in consultation with and under the control of the British Government in implementing the Zionist "national home" enterprise outside Palestine only so long as it was dependent upon that government. Thereafter, the Zionist Organization used its public body status and powers without regard to the legal limitations imposed upon it by the Balfour Declaration and the Mandate for Palestine. In particular, it advanced the "Jewish people" claims in opposition to the British Government before the Permanent Mandates Commission of the League of Nations.⁸⁵ In 1947 and 1948 it transferred its political pressure activities to the United Nations.⁸⁶ It advanced them there under the "Jewish Agency" name until it was formally replaced by the name of the State of Israel. Mr. Shertok (later Sharet), who was probably the principal Jewish Agency representative at the United Nations, became the first foreign minister of the State of Israel.⁸⁷

The Zionist Organization also conducted its public body activities within national states including the United Kingdom and diplomatic negotiations took place between the Organization and the British Government.⁸⁸ A basic negotiating and pressure objective of the Organization was to impose upon the British Government the principle that its basic legal obligation under the Mandate was not to the native inhabitants of Palestine (composed of Moslems, Christians, and Jews), but to the Zionist claimed constituency of "the Jewish people."⁸⁹

The principal focus of Zionist Organization public body activities shifted from the United Kingdom to the United States in the early part of the Second World War.⁹⁰ The Zionist Biltmore Declaration of May

84. *Id.* at 39.

85. *See, e.g., supra* note 78, at 140-75.

86. *See supra* note 78, *passim*.

87. LASKY 45.

88. ZIONIST DIPLOMACY 50-52.

89. *Id.* at 51. *See supra* note 78, at 137-38.

90. ZIONIST DIPLOMACY 55; STEVENS, AMERICAN ZIONISM AND U.S. FOREIGN POLICY 1942-1947, at 2-3 (1962).

11, 1942 provides illustration of Zionist Organization pressure group activities within the United States. That Declaration demanded the establishment of a "Jewish Commonwealth" in Palestine without any reference to or regard for the safeguard clauses of the Balfour Declaration which were embodied in the Mandate for Palestine then in force.⁹¹ Thereafter the Organization's activities were increasingly directed at the President, the Congress, and the Department of State.⁹² Former President Truman described a part of this process with commendable candor after he left office.⁹³ The Organization/Agency's registration statements filed under the Foreign Agents Registration Act of 1938 beginning in 1943 do not adequately reflect its public body functions.⁹⁴

V. THE CLAIMS TO CONTINUE THE PUBLIC BODY STATUS OF THE ZIONIST ORGANIZATION FROM THE ESTABLISHMENT OF THE STATE OF ISRAEL IN 1948 TO THE PRESENT

A. The Continuation of Zionist Organization Public Body Functions (1948-1951)

The end of the British Mandate and the establishment of the State of Israel on May 14, 1948 terminated the legal authority for the public body status of the Zionist Organization/Jewish Agency. No action taken by the United Nations provided a continuing juridical basis for the Organization. Since one of its principal political objectives had been the creation of the State of Israel, one might conclude that the Organization was now dissolved. The facts, however, indicate that it continued to function.

The Executive Reports submitted to the 23rd Zionist Congress at Jerusalem (1951) indicate in considerable detail the continuing functions of the Zionist Organization after the termination of the Palestine Mandate. According to these official records, a number of departments of the Organization ceased to function since the respective "activities were taken over by the Government."⁹⁵ The function of diplomatic negotia-

91. The Biltmore Declaration appears in *supra* note 78 at 226-27.

92. STEVENS, *supra* note 90, *passim*.

93. 2 TRUMAN, MEMOIRS: YEARS OF TRIAL AND HOPE 140, 153, 158 (1956).

94. This conclusion is supported by the analysis in LASKY *passim*.

95. ZIONIST ORGANIZATION AND JEWISH AGENCY, REPORTS OF THE EXECUTIVES SUBMITTED TO THE 23RD ZIONIST CONGRESS V (Aug. 1951) (hereinafter cited as EXECUTIVE REPORTS).

A secondary source has provided a brief summary:

The new ministries of government were direct transformations of the bu-

tions, which had been of primary importance before 1948, could probably now be performed by the Government. The recruitment of Jewish immigrants into Israel (Palestine), however, remained a preeminent function of the Zionist Organization.⁹⁶ In addition, the Zionist national funds continued their fund-raising efforts and according to these Executive Reports the Jewish Agency financed the war effort against the Arab states "during the early months of fighting as well as in the period preceding it."⁹⁷

Problems remained, nevertheless, in terms of the allocation of public or governmental functions between the Government of Israel and the Organization. The concern of the Government lest the Zionist Organization perform a role for the State of Israel analogous to that which it had performed for the Mandatory Government was expressed by the Prime Minister. *The Jewish Agency's Digest* reported in 1949:

Mr. Ben-Gurion said that during the British Mandatory regime, the Zionist Organization's function had been to shape the policy of the Palestine Government—insofar as the Mandatory had been faithful to the Mandate and to its international obligations, and to the promotion of immigration and settlement. The Jewish Agency had been to a certain extent "a state within a state, a government within a government."

This would not be tolerated under the State of Israel, Mr. Ben-Gurion said.

The Prime Minister warned against two misconceptions:

- (1) That with the rise of the State, the Zionist Movement and the Zionist funds became obsolete.
- (2) That notwithstanding the rise of the State the Zionist

reus of previously existing institutions. The Political Department of the Jewish Agency became the Foreign Ministry; the Social Welfare Department of the National Assembly became the Ministry of Social Welfare; the Haganah became the Israeli army. When the sovereignty of Israel was proclaimed, many officials simply moved their files from the Jewish Agency, the Histadrut, the Anglo-Palestine Bank, and other institutions, to their new desks. In some instances there was overlapping. For example, the Jewish Agency still shared with the government the responsibilities of immigration and housing, even as the Histadrut shared the responsibilities of public health and municipal transportation.

SACHAR, *THE COURSE OF MODERN JEWISH HISTORY* 543 (Delta ed. 1963).

96. The activities of the Immigration Department appear in *EXECUTIVE REPORTS*, 23rd Zionist Congress 240-90 (Aug. 1951).

97. *Id.* at 822.

Movement would continue to function as though the State did not exist.⁹⁸

It is clear that the functions performed by the Organization and the working relationships between it and the Government constituted a status for the Organization and a juridical relation between it and the Government. If the Government of the new State had regarded the implementation of the "Jewish people" concept as completed by the establishment of the State, it could have performed necessary governmental functions itself without the Organization. "The Jewish people," however, was to be organized to support the State and to provide Jewish immigration for it,⁹⁹ and these continuing functions made the Organization indispensable.

By 1951 a "Co-ordinating Board," containing Organization and Government representation, was in existence.¹⁰⁰ This Board was concerned with, *inter alia*, "defining relationships between the two bodies."¹⁰¹ In the performance of this task and in arranging further cooperation between Organization and Government, it was possible that the Co-ordinating Board could develop a series of working relationships which would be satisfactory. If so, they could be later formalized in Zionist-Israel public law to define the relation between Organization and Government based on the preexisting working relationships.

B. *The Zionist Organization/Jewish Agency Status Law (1952)*

1. *Legislative History.* For convenience in analysis the legislative history of the Status Law¹⁰² will be examined in terms of its background in both the Zionist Organization and the Government of Israel. It should not be supposed, however, that this means that there are two distinct legislative histories. Since the Organization and the Government are both controlled by the same Zionist political elite, there is reason to believe that there was close cooperation between Organization and Government. This is made explicit by the "Report by the Legal Adviser" which is included in the Executive Reports submitted to the 24th

98. 2 INFORMATION DEP'T OF JEWISH AGENCY AND WORLD ZIONIST ORGANIZATION, THE JEWISH AGENCY'S DIGEST OF PRESS AND EVENTS 318 (Nov. 18, 1949) (hereinafter cited as JEWISH AGENCY DIGEST).

99. The textual statements are supported by the EXECUTIVE REPORTS, 23rd Zionist Congress *passim* (Aug. 1951).

100. 3 INFORMATION DEP'T OF JEWISH AGENCY AND WORLD ZIONIST ORGANIZATION, ZIONIST NEWSLETTER No. 19, ZIONIST PROBLEMS SURVEYED 8, 10 (June 5, 1951).

101. *Id.*

102. 7 ISRAEL LAWS 3 (1952).

Zionist Congress in 1956. It is there stated that the "significant matters on which extensive services were rendered" by the Legal Adviser of the Zionist Organization/ Jewish Agency included the preparation of drafts and negotiations with the Government concerning both the Status Law and the Covenant.¹⁰³ As to the Status Law, the Report by the Legal Adviser states: "Much of this work was done in close cooperation with the Legal Adviser to the Government of Israel."¹⁰⁴ As to the Covenant, "A great deal of the work by the Legal Adviser was done in the closest cooperation with the Legal Adviser to the State of Israel."¹⁰⁵ The probable conclusion concerning the ensuing legislative history of the statute is that it is a common Zionist history whether performed within the Organization or the Government.

The 23rd Congress of the World Zionist Organization met in Jerusalem, Israel during August, 1951. This was a particularly important Congress since it was the first one held after the establishment of the State of Israel. One of the most significant items on the agenda of the Congress was that concerning the juridical status of the Zionist Organization. Among the "political Resolutions" adopted by this Congress is the following one which is quoted in part:

It [the State of Israel] is the supreme expression of the will of the Jewish nation for redemption, and it embodies the creative partnership of all sections of the nation. . . .

With the establishment of the State, its authorised institutions assumed the task and responsibility of conducting its policy and determining its relations with the nations of the world.

This policy, which is based on the desire of the State for peace with the nations of the world and with the neighboring Arab countries in order to strengthen its sovereignty and security and to ensure full possibility for its dynamic development, enjoys and will continue to enjoy the full support of the Zionist Movement and of the whole Jewish people.¹⁰⁶

103. EXECUTIVE REPORTS, 24th Zionist Congress 23, 24 (1956).

104. *Id.* at 24.

105. *Id.* Apparently the Legal Adviser of the Organization/Agency is the same Mr. Maurice M. Boukstein who appeared before the 1963 Senate Hearing considered in this study *infra*. This is indicated by the statements in the EXECUTIVE REPORTS, 24th Zionist Congress 23, 24 (1956) that the Legal Adviser also served as attorney for the United Jewish Appeal of Greater New York "in connection with various bank loans" and as attorney for the United Israel Appeal, Inc. and the Palestine Foundation Fund.

106. Resolutions Adopted by the 23rd Zionist Congress, "Political Resolutions" at 3, 4 (Aug. 14-29, 1951).

The first sentence quoted, in referring to the State as "the supreme expression of the will of the Jewish nation," indicates that the State, like the Organization, acts for the entire "Jewish nation." In addition, the characterization of the state as "supreme" indicates that the Organization/Agency recognizes that it no longer has the supreme role in political Zionism which it enjoyed prior to the establishment of the State. The second sentence in the Resolution makes this point more specifically by indicating Zionist acceptance of the State performing functions which were formerly conducted by the Organization. The last quoted sentence indicates that this "policy" allocation of functions is fully accepted by the Zionist Organization.

An even more important resolution of this Congress was entitled "Status for the Zionist Organization." It is set forth in full:

(a) The Congress declares that the practical work of the World Zionist Organisation and its various bodies for the fulfilment of its historic tasks in Eretz Israel calls for the fullest degree of co-operation and co-ordination on its part with the State of Israel and its Government, in accordance with the laws of the land.

(b) The Congress considers it essential that the State of Israel shall grant, through appropriate legislative act, status to the World Zionist Organisation as the representative of the Jewish people in all matters relating to organized participation of the Jews of the Diaspora in the development and upbuilding of the country and the rapid absorption of the immigrants.

(c) In relation to all activities conducted in the interests of the State of Israel within the Diaspora it is essential that the Government of the State of Israel shall act in consultation and co-ordination with the World Zionist Organization.

(d) In all matters regarding legislation by the State of Israel touching upon the activities of the World Zionist Organization and the Jewish Agency, their property and their liabilities, it is essential that there shall be prior consultation between the Government and the Executive of the World Zionist Organization and the Jewish Agency.

(e) (1) On the basis of the status to be granted to the World Zionist Organization, the Executive of the World Zionist Organization and the Jewish Agency shall be empowered to work within the spheres defined from time to time by special agreement with the Israel Government.

(2) The following spheres of activity shall be fixed among others, for the forthcoming period:

- (a) The organization of immigration, the transfer of immigrants and their property to Eretz Israel;
- (b) Participation in the absorption of immigrants;
- (c) Youth Aliyah;
- (d) Development of agricultural settlement;
- (e) Acquisition and amelioration of land by the Jewish National Fund;
- (f) Participation in development projects.

(3) The Co-ordinating Body of the Israel Government and the Executive of the World Zionist Organization and the Jewish Agency shall co-ordinate the above-mentioned spheres of activity.¹⁰⁷

The term "the practical work" referred to in paragraph (a) covers the continuing public functions of the Organization after the establishment of the State. The balance of the paragraph declares the necessity for cooperation between Organization and State in the implementation of these public activities.

Paragraph (b) reflects the situation of the absence of formal juridical authority for the Organization since the termination of the Mandate. The requisite juridical status is to be obtained from the State of Israel but such status is not to make the Organization only a representative of the State. The Organization is to be recognized by the State "as the representative of the Jewish people," that is, the representative of Jews who are nationals of other states than Israel. There is no method consistent with international law whereby the State of Israel can make the Zionist Organization the representative of Jews who are not nationals of Israel.¹⁰⁸

Paragraph (c) also indicates that the activities involved include the advancement of Israel national interests among Jews in other national states. The balance of the paragraph concerns the tactical need of co-ordination in advancing Zionist nationalism among Jews who are not Israelis. This paragraph, as well as the preceding one, covers activities

107. ORGANIZATION DEPT OF THE ZIONIST EXECUTIVE, FUNDAMENTAL ISSUES OF ZIONISM AT THE 23RD ZIONIST CONGRESS 135-36 (1952). The term "Youth Aliyah" refers to youth immigration to Israel.

108. Concerning the closely related issue of functional subversion of nationality status see *The "Jewish People" Study* 1051.

of the Organization beyond the State of Israel. It is probably for this reason that the title of the resolution was changed from "Status and Functions of WZO in Israel" as it appeared in an earlier form.¹⁰⁹

Paragraph (d) requests special treatment through consultation for the Organization under Israel law. The Organization, of course, enjoyed preferred treatment under the Mandatory Government in Palestine by virtue of its public body status.

The first subsection of paragraph (e) requests "special agreement" between the Organization and the Government. The agreement device is important in giving the appearance of separate status and perhaps of equality of bargaining power to the Organization. The second subsection sets forth the public functions to be performed by the Zionist Organization with the consistent emphasis upon immigration. The "Co-ordinating Body" referred to in the final subsection is an important device because it, like the agreement, gives the Organization an appearance of equality with the Government. There was every reason to believe that the request for the "Co-ordinating Body" would be accepted since that body was actually operating in 1951.¹¹⁰ In the same way, there was reason to believe that the other requests in the Resolution would be honored because of the close existing cooperation between Organization and Government in the implementation of Zionist objectives.

The Government of Israel was also interested in providing a formal juridical status for the Zionist Organization in view of the termination of the Mandate. In 1952 Prime Minister Ben-Gurion stated in the Knesset concerning the proposed status legislation:

This Bill differs generally from other laws not only in form but also in content. Usually a law is intended to change or improve something. This enactment is intended to maintain, to confirm, and to give legal force and State recognition, to a basic fact—the experience of the Jewish people, its historic continuity, unity, and aspiration. It will give the impress of the State and the law to the fact that the State of Israel is the creation of the Jewish people, indelible proof and faithful base of its existence, and primary instrument for its liberation.¹¹¹

109. The quoted title appeared in an earlier mimeographed version of the resolution cited *supra* note 107.

110. See the text accompanying *supra* notes 100-101.

111. 4 JEWISH AGENCY DIGEST 1060, 1061 (May 16, 1952).

This official statement is particularly important in demonstrating that the Status Bill was intended to confirm or ratify the existing state of affairs. It also provides further indication of the centrality of the "Jewish people" concept. In the same statement, the Prime Minister also said:

But the advantage of the State is also a source of restriction. For the sovereign authority of the State is confined within its own borders, applying only to its own citizens, while over 80 per cent of the Jewish people are still to be found—and who knows for how long?—outside the borders of the State. The State of Israel cannot intervene in the internal life of the Jewish communities abroad, cannot direct them or make demands upon them. However unique is the State of Israel in the manner of its emergence and in its task, it is obliged to operate like every other state, and its capacity outside its borders is restricted. It is the Zionist Organization, built upon the voluntary association and activity, which is able to achieve what is beyond the power and competence of the State, and that is the advantage of the Zionist Organization over the State.

Hence the Zionist Organization has not been rendered useless by the establishment of the State but, on the contrary, its responsibility and mission have become incalculably greater. The State and the Zionist Movement complement each other, need each other and with joint effort can and must activate the Jewish people to realize the ideal of its redemption.¹¹²

The first of these two paragraphs seems to recognize the legal limitations which are imposed upon the State of Israel as a sovereign state since it is conceded that the State "cannot intervene in the internal life of the Jewish communities abroad." But it is then stated that the Zionist Organization can act in this area which is conceded to be beyond the legal competence of the State. If the Zionist Organization is either closely linked in law to the State or is a part of the State, however, it is subject to the same legal limitations as the State. The "joint" character of the State and the Organization in implementing the "Jewish people" nationality claims is stressed in the second paragraph.

These official Government of Israel statements indicate two basic areas of agreement between the Organization and the Government: (1) the Zionist Organization is to continue to perform its preexisting functions including those which affect Jews in states other than Israel; (2)

112. *Id.* at 1069, 1070.

the organization needs more formal juridical authority and status from the State in order to regularize its continued performance of these functions.

2. *Interpretation of the Statute.* In the interpretation of a Zionist legal document it is essential to have a knowledge of Zionist ideology and to recognize that this ideology is a guide to action in public law. The "Jewish people" concept is basic to Zionist public law relations with Jews outside the State and to the recruitment of Jewish immigration to build up the manpower of the State.

The Status Law was enacted on November 24, 1952 and went into effect the following December 2.¹¹³ A statement of its "constitutional" importance appeared in the *Israel Government Year-Book*:

The World Zionist Organization-Jewish Agency for Eretz Israel Law 5713-1952 was of great constitutional importance. The Prime Minister, in submitting the Law to the Knesset, defined it as "one of the foremost basic laws." This Law completes the Law of the Return in determining the Zionist character of the State of Israel. The Law of the Return established the right of every Jew to settle in Israel, and the new Law established the bond between the State of Israel and the entire Jewish people and its authorized institutions in matters of immigration into and settlement in Israel.¹¹⁴

The State of Israel has no constitution, as such, but its "basic laws" possess predominant constitutional characteristics including having considerably more importance than routine legislation.¹¹⁵ Such constitutional laws include the statutes which implement Zionist ideology and those which establish the governmental structure. Both the Law of Return¹¹⁶ and the Status Law qualify as constitutional laws in this sense.

In the ensuing analysis the sections of the Status Law are grouped by subject even though this involves some departure from the numbered sequence.

a. Introductory Provisions

1. The State of Israel regards itself as the creation of the entire Jewish people, and its gates are open, in accordance with its laws, to every Jew wishing to immigrate to it.

113. Note in 7 ISRAEL LAWS 3 (1952).

114. STATE OF ISRAEL, GOVERNMENT YEAR-BOOK 57 (1953-54).

115. See generally BAKER, THE LEGAL SYSTEM OF ISRAEL 14 *passim* (1961). See also FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 3-5 (Badi ed. 1961).

116. 4 ISRAEL LAWS 114 (1950).

2. The World Zionist Organisation, from its foundation five decades ago, headed the movement and efforts of the Jewish people to realise the age-old vision of the return to its homeland and, with the assistance of other Jewish circles and bodies, carried the main responsibility for establishing the State of Israel.
3. The World Zionist Organisation, which is also the Jewish Agency, takes care as before of immigration and directs absorption and settlement projects in the State.

These three sections provide introduction and background to the entire statute. The first sets forth the consistent Zionist-Israel juridical claim of factual and legal connections between the State of Israel and the entire "Jewish people." This is, of course, the same "Jewish people" claim which the United States Department of State has rejected as a concept of international law.¹¹⁷ The first section is based, therefore, upon an international law concept which is not recognized by the United States Government. The "laws" referred to are the immigration laws of the State of Israel which are discriminatory in terms of the religious identification of the immigrants.

The second section refers to the historic public body functions of the Zionist Organization in behalf of the claimed constituency of "the Jewish people." It also accurately recognizes the central role of the Organization in creating the State. This historical section is only important in showing State recognition of the past functions of the Organization. Such deference is probably politic in view of the somewhat changed role of the Organization since the establishment of the State.

Section 3 is recognition in law that the Zionist Organization and the Jewish Agency are simply different names for the same institution. The phrase, "takes care as before of immigration," indicates the consistent performance of the immigration function before and after the establishment of the State of Israel in 1948.

b. The Purview Concerning Status

4. The State of Israel recognises the World Zionist Organisation as the authorised agency which will continue to operate in the State of Israel for the development and settlement of the country, the absorption of immigrants from the Diaspora and the coordination of the activities in Israel of Jewish institutions and organisations active in those fields.

117. See the text accompanying *supra* note 20.

11. The Executive is a juristic body and may enter into contracts, acquire, hold and relinquish property and be a party to any legal or other proceeding.

12. The Executive and its funds and other institutions shall be exempt from taxes and other compulsory Government charges, subject to such restrictions and conditions as may be laid down by the Covenant; the exemption shall come into force on the coming into force of the Covenant.

Section 4 provides State recognition of the Organization not merely as an agency but as "the authorized agency." Since an agency relation necessarily involves a principal, the question arises as to the identity of the principal, but the section does not answer this directly. The State, however, "recognizes" the agency status and this strongly suggests that the status is to act as agent for the State. In addition, the State has the legal authority to appoint an agent for itself but not for others such as Jews who are nationals of other states than Israel.¹¹⁸ The State authorizes the Organization to coordinate activities of "Jewish institutions and organizations" within Israel. It is difficult to avoid the conclusion that the coordination is done on behalf of the State as principal. This appears to subject the organizations coordinated to effective governmental control even though they may prefer to regard themselves as both voluntary and philanthropic.

Section 11 provides that the Organization's Executive is "a juristic body." This is analagous to article 4 of the Palestine Mandate which constituted the Organization as "a public body." The question remains as to whether the juristic entity is a public or private one. Unless it performs usual private functions, it is highly improbable that it is a private "juristic body" such as a private corporation. Since the "central task" of the Organization, the recruitment of Jewish immigrants as provided in section 5, is a public function, it is reasonably clear that the "juristic body" must be a public one.¹¹⁹ Otherwise it could not perform

118. It will be recalled that the Status Resolution, paragraph (b) of the 23rd Zionist Congress requested status "as the representative of the Jewish people . . ." See the text accompanying *supra* note 107.

119. Even if it were somehow concluded that the Organization is a private juristic body, it would still be closely linked in law to the State.

The Supreme Court has set forth a realistic approach to governmental activities in a case involving application of the Foreign Agents Registration Act of 1938, as Amended. Justice Goldberg stated for the Court in *Rabinowitz v. Kennedy*, 376 U.S. 605, 609-10 (1964):

Furthermore, although the interest of a government in litigation might be

public or governmental functions for the State. In addition the broad grant of authority to the Executive to "be a party to any legal or other proceeding" cannot be accurately construed to exclude public proceedings and functions.

Tax exemption is a typical attribute of governmental status and section 12 establishes the principle of exemption from taxes. This is probably done because the Executive and its branches and fronts are performing public functions which would otherwise be performed by the Government itself. In this respect, the Executive is simply treated as a part of the Government.

c. Zionist Immigration

5. The mission of gathering in the exiles, which is the central task of the State of Israel and the Zionist Movement in our days, requires constant efforts by the Jewish people in the Diaspora; the State of Israel, therefore, expects the cooperation of all Jews, as individuals and groups, in building up the State and assisting the immigration to it of the masses of the people, and regards the unity of all sections of Jewry as necessary for this purpose.

6. The State of Israel expects efforts on the part of the World Zionist Organisation for achieving this unity; if, to this end, the Zionist Organisation, with the consent of the Government and the approval of the Knesset, should decide to broaden its basis, the enlarged body will enjoy the status conferred upon the World Zionist Organisation in the State of Israel.

These sections deal with Jewish immigration to Israel, the political unity required, and the role of the Zionist Organization in achieving it. The use also of the broad term, "Zionist Movement," in section 5 refers to non-Zionist individuals and organizations who may be induced to cooperate with the Organization in recruiting Jewish immigrants. This interpretation is supported by the specific language which refers to the State expecting the cooperation "of all Jews as individuals and groups." The only possible basis for this cooperation is the claimed nationality entity of "the Jewish people" comprising all Jews without regard to their democratic preferences. The purpose of this expected cooperation is frankly stated to be "building up the State" rather than

labeled "financial or merchantile," it cannot be deemed only "private and nonpolitical."

merely assisting refugee Jews or performing other humanitarian activities.

Section 6 indicates that the Organization is the instrument to achieve the political unity of Jews. The provision concerning an "enlarged" Organization/Agency is a planned arrangement whereby non-Zionists may be involved more directly in Zionist activities at some future time. This same type of arrangement was previously effectuated through the "enlarged Jewish Agency" which was recognized in 1930 as the "public body" under the Mandate.¹²⁰ If the Organization decides to use this arrangement to "broaden its basis" of political support among Jews outside of Israel, it must obtain "the consent of the Government and the approval of the Knesset." This express limitation provides further indication of the subordination of the Organization to the State.

d. Legal Relations Between Organization and State

7. Details of the status of the World Zionist Organisation—whose representation is the Zionist Executive, also known as the Executive of the Jewish Agency—and the form of its cooperation with the Government shall be determined by a Covenant to be made in Israel between the Government and the Zionist Executive.

8. The Covenant shall be based on the declaration of the 23rd Zionist Congress in Jerusalem that the practical work of the World Zionist Organisation and its various bodies for the fulfilment of their historic tasks in Eretz-Israel requires full cooperation and coordination on its part with the State of Israel and its Government, in accordance with the laws of the State.

9. There shall be set up a committee for the coordination of the activities of the Government and Executive in the spheres in which the Executive will operate according to the Covenant; the tasks of the Committee shall be determined by the Covenant.

Section 7 authorizes the Organization to enter into a "Covenant" or agreement with the State to arrange the more specific details of the status of the Organization "and the juridical form of its cooperation with the Government." Although this section deals primarily with method and form, it also attempts to confer at least some status since it enables the Organization to make an agreement with the Government. Such an agreement might even give the appearance of equality of status as between Organization and State.

120. See *supra* note 61.

Section 8 manifests acceptance of the Status Resolution of the 23rd Zionist Congress as the basis of Zionist cooperation and employs the precise words, "the practical work of the World Zionist Organization and its various bodies,"¹²¹ which appear in that Resolution. It would be surprising, in view of their identity of Zionist objectives, if there were differences other than minor tactical ones between State and Organization. The "full cooperation and coordination" is to be conducted nevertheless, "in accordance with the laws of the State" (including the Status Law) to avoid any possibility of the Organization becoming a "shadow government" as it did under the Mandate.

Section 9 is of particular importance because it concerns the detailed cooperation which is to be effectuated through a committee. Although the statute provides that the committee is to be set up in the future, the committee is actually identical with the "Co-ordinating Board" which has been functioning since no later than 1951. At least this portion of the statute, therefore, is not law-making but only declaratory of the preexisting cooperation institution—whether termed "committee" or "Board." The statute, therefore, merely provides the opportunity through the Covenant device to make de jure an institution which was then functioning de facto.

Approximately a year and a half went by before the Covenant was negotiated and effectuated. There is no indication that this delay handicapped the continuing implementation of the "Jewish people" concept by Government and Organization or reduced effective cooperation between them.

C. The Covenant Between the Government of Israel and the Zionist Executive (1954)

The Status Law provides a kind of de facto legislative history for the Covenant.

1. *Interpretation of the Covenant.* The preamble to the Covenant¹²² states that it is entered into in accordance with the "Status Bill." It is clear that without the Status Law as enabling legislation the Organization would not have the authority to make a formal agreement with the

121. See the text of the Resolution, paragraph (a) in the text accompanying *supra* note 107.

122. The text of the Covenant appears in ORGANIZATION DEP'T OF THE ZIONIST EXECUTIVE, SESSION OF THE ZIONIST GENERAL COUNCIL 106-09 (July 21-29, 1954) (hereinafter cited as ZIONIST GENERAL COUNCIL). The Covenant is set forth in full in the appendix to this study.

State. There is, of course, nothing in Israel municipal law to prevent the enactment of legislation authorizing the Organization to make a "Covenant" with the Government. The question which must be raised, however, is to what extent an agreement in which one of the two parties participates by authorization of the other amounts to an actual negotiated agreement as opposed to a unilateral Government of Israel public law allocation of functions within a single sovereignty.¹²³ Whether it is a bona fide agreement or merely a unilateral allocation is not important to its effectiveness as Israel municipal law. The same issue may have, however, some juridical significance concerning the operations of the Organization outside Israel. If the Covenant is not a bona fide agreement, the Organization is apparently a part of the Government. If the Covenant is bona fide, the Organization is apparently a public body which is closely linked in law to the Government.

In the ensuing analysis the sections of the Covenant along with the annexes which are an integral part of it will be grouped according to functional subjects. As in the analysis of the Status Law, this will involve some departure from the numbered sequence. Consistent with section 11 of the Status Law, the Zionist Organization is represented by its Executive in making this Covenant and the State is, of course, represented by its Government.

a. Immigration and Other Functions of the Executive

1. The following are the functions of the Zionist Executive as included in this Covenant:

The organizing of immigration abroad and the transfer of immigrants and their property to Israel; co-operation in the absorption of immigrants in Israel; the acquisition and amelioration of land in Israel by the institutions of the Zionist Organization, the Keren Kayemeth LeIsrael and the Keren Hayesod; participation in the establishment and the expansion of development enterprises in Israel; the encouragement of private capital investments in Israel; assistance to cultural enterprises and institutions of higher learning in Israel; the mobilization of resources for financing these activities;

123. The Balfour Declaration, in contrast, appears to be a unilateral British Government announcement but is actually a negotiated agreement. The negotiations are set forth in STEIN, *THE BALFOUR DECLARATION passim* (1961) and juridically appraised in *The "Jewish People" Study* 1000-30.

LASKY 40 states that the relation of the Organization to the State "stems out of an ideology born of East European experiences and therefore not easy for a western or nonindocrinated mind to grasp."

the co-ordination of the activities in Israel of Jewish institutions and organizations acting within the limits of these functions by means of public funds.

3. In the organizing of immigration and the handling of immigrants, the Executive shall act on the basis of a plan agreed on with the Government or authorized by the Co-ordinating Board (see para. 8). Immigrants will require visas according to the Law of the Return 5711-1950.

4. The Executive shall, in agreement with the Government, co-ordinate the activities in Israel of Jewish institutions and organizations which act within the limits of the Executive's functions.

The first section sets forth and accepts each of "the fields of activity" enumerated in paragraph (e) (2) of the Status Resolution of the 23rd Zionist Congress. In addition, the latter part of the section specifies further functions to be performed.¹²⁴ The adding of functions beyond those requested demonstrates the confidence of the Government in the Organization as an efficient tool for implementing the "Jewish people" concept. The first part of the section, by emphasizing functions concerning Jewish immigration and settlement gives appropriate recognition in Zionist public law to what section 5 of the Status Law describes as "the central task of the State of Israel and the Zionist Movement in our days." Section 3 further emphasizes the importance of Jewish immigration to the State by requiring that the Executive shall "act on the basis of a plan" assented to by the Government or the Coordinating Board.

The characterization of the Keren Kayemeth Leisrael (the Jewish National Fund) and the Keren Hayesod (the United Israel Appeal) as "institutions of the Zionist Organization" is of considerable legal significance. It means that the conclusions of this study concerning the juridical status of the Zionist Organization apply equally to the Jewish National Fund and the United Israel Appeal. Each of these engage in

124. LASKY 48, n. 14 states, in part:

The American Jewish Committee has expressed satisfaction that the Status Law did not give to the Agency as much as the Zionists wished. Cf. Minutes A.J.C. Executive Committee October 23-4, 1954. The foregoing [evidence] would indicate that it gave more.

Since the Status Law gave the Organization/Agency more than it asked for, the interpretation of the American Jewish Committee is incorrect. It is not clear whether its interpretation is a serious one or merely a public relations indication that it as a "non-Zionist" group has not had its role of cooperation with the Government of Israel impaired by the Status Law.

supposed "charitable" solicitations in the United States. The contributions which are made to them by United States citizens through the United Jewish Appeal are interpreted as tax deductible charitable contributions for income tax purposes by the United States Government. The apparent assumption is that these institutions are voluntary American private associations. The Covenant indicates, however, that they are integral parts of the Zionist Organization.¹²⁵

The last clause of section 1, consistent with section 4 of the Status Law, states that the Executive shall coordinate "the activities in Israel of Jewish institutions and organizations" which act within the scope of the functions carried out by the Zionist Organization. It adds that this is to be done "by means of public funds." The conclusion which follows is that coordination employing public funds is governmental coordination.¹²⁶ It is also clear that the Executive as the coordinator is acting on behalf of the Government or as part of it. Further support for the governmental character of the coordination is provided by section 4 which points up the importance of the coordination to the Government by providing expressly that it must be done "in agreement with the Government."¹²⁷ Such agreement was probably already required by necessary implication from the authorization in section 1 to use public funds.

b. Juridical Subordination of the Organization to the State

2. Any activity carried out in Israel by the Executive or on its behalf for the purpose of carrying out the said functions, or part of them, shall be executed in accordance with the laws of Israel and the regulations and administrative instructions in force from time to time, which govern the activities of the governmental authorities whose functions cover or are affected by, the activity in question.

125. The Jewish National Fund also has its "Covenant" with the Government of Israel which was signed on Nov. 28, 1961. EXECUTIVE REPORTS, 26th Zionist Congress 345 (Dec. 1964). On the governmental functions of the Jewish National Fund see *id.* at 345-55.

126. The same conclusion is reached by LASKY 41.

127. The "Jewish institutions and organizations" coordinated are also apparently subject to Government of Israel audit control under the State Comptroller Law, 3 ISRAEL LAWS 23 (1949) under sec. 7(d) of which such control is exercised over an "institution, fund or other body . . . in the management of which the Government has a share."

Annex A (note from Prime Minister to Chairman)

I have the honour to inform you of the Government's decision that any administrative order that may be in force from time to time in regard to investigations, searches and detentions in Government offices shall apply also to the Executive and its institutions as defined in the Covenant entered into this day between the Government of Israel and the Zionist Executive.

You have agreed, and the Government has taken note, that the Zionist Executive will not maintain in Israel judicial or investigative machinery of its own, except in compliance with the laws of the State and in constant coordination with the Attorney-General of the Government of Israel.

5. The Executive may carry out its functions itself or through its existing institutions or those which it may establish in the future, and it may also enlist in its activities the co-operation of other institutions in Israel, with the proviso that it may not delegate any of its functions or rights under the Covenant without the agreement of the Government, and shall not authorize any body or institution to carry out its functions, in whole or in part, except after prior notification of the Government.

6. The Executive shall be responsible for the mobilization of the financial and material resources required for the execution of its functions, by means of the Keren Hayesod, the Keren Kayemeth LeIsrael and other funds.

7. The Government shall consult with the Executive in regard to legislation specially impinging on the functions of the Executive before such legislation is submitted to the Knesset.

11. Donations and legacies to the Executive or any of its institutions shall be exempt from Inheritance Tax. All other problems connected with the exemption of the Executive, its Funds and its other institutions, from payment of taxes, customs and other obligatory governmental imposts shall be the subject of a special arrangement between the Executive and the Government. This arrangement shall be formulated in an annex to this Covenant within eight months, as an inseparable part thereof, and shall come into force as from the date of signature of this Covenant.

Section 2 requires that the activities of the Organization within Israel be carried out consistently with law. At first glance this appears to be a routine provision but it also adds that such activities must be consistent with subordinate administrative orders which are applicable to governmental authorities. The result is another example of treatment

of the Organization as a part of the Government. Further, the background under the British Mandate when the Zionist Organization/Jewish Agency increasingly became the "shadow government" in opposition to the Mandatory Government must be recalled.¹²⁸ Because of this, it is essential that the subordination of the Organization to the public law of the State be made explicit.

Annex A, consisting of a note to the Zionist Executive from the Government, is dated the same day as the effective date of the Covenant and is appended to it. The first paragraph indicates that the Zionist Executive "and its institutions" are to be treated as parts of the Government of Israel in terms of administrative orders concerning "investigations, searches and detentions in Government offices." This is a specific implementation of section 2 of the Covenant. The second paragraph states that the Executive will not maintain, within Israel, "judicial or investigative machinery of its own" except consistent with Israel law and in cooperation with the Attorney General of Israel. It is apparent that the Zionist Organization/Jewish Agency conducted such activities in Palestine as the "shadow government" during the period of the Mandate for Palestine. The present arrangement is undoubtedly necessary to prevent duplication, overlapping, and perhaps competition, between Zionist and Government investigative and judicial activities. The note does not outlaw such Zionist functions but merely requires them to be consistent with Government law and policy. The note which appears as Annex C to the Covenant simply indicates Zionist Executive acquiescence in the legal limitations imposed on the Organization by Annex A.

Section 5 provides further evidence of the supremacy of the Government and the subordination of the Organization. The Organization may not delegate its "functions or rights under the Covenant" without the approval of the Government and may not authorize the performance of its functions by others except after notification to the Government.

Section 6 imposes an obligation on the Organization to obtain "financial and material" support for its functions from inter alia, the United Israel Appeal and the Jewish National Fund. These functions are, of course, the various public and governmental ones specified in the first section. It is well known that these national funds of the Organization and the State conduct their principal fund raising activities in the United States.

128. See the text *supra* of Section IV D.

Section 7 is another example of the supremacy of the Government over the Executive. The Government here agrees to "consult" with the Executive where proposed legislation would affect its functions. Nothing in the section, however, prohibits final determination by the Government of the content of the legislation following the consultation.

Section 11 provides directly and by further "special arrangement" to be added to the Covenant as another annex for the Zionist Organization or "any of its institutions" to have the benefit of governmental status in tax law, and hence tax exemption, within the State of Israel. In a significant contrast, the same Zionist institutions are treated as private charitable funds for tax purposes in the United States. The result is substantial tax benefits to these institutions in both Israel and the United States but upon opposite juridical bases. It must be doubted that the same fund-raising institutions can be public and governmental in Israel and private and philanthropic in the United States.¹²⁹

c. Coordination Board and Official Precedence

8. For the purpose of co-ordinating activities between the Government and the Executive in all spheres to which this Covenant applies, a Co-ordinating Board shall be established (hereafter called the Board). The Board shall be composed of an even number of members, not fewer than four, half of whom shall be members of the Government appointed by it, and half of whom shall be members of the Executive appointed by it. The Government and the Executive shall be entitled from time to time to replace the members of the Board by others among their members.

9. The Board shall meet at least once a month. It may appoint sub-committees consisting of members of the Board, and also of non-members. The Board shall from time to time submit to the Government and the Executive reports of its deliberations and recommendations. Except as stated above, the Board shall itself determine the arrangements for its sessions and deliberations.

Annex B (note from Prime Minister to Chairman)

I have the honour to inform you of the Government's decision that in the order of precedence at official ceremonies the Chairmen of the Zionist Executive and the Chairman of the Zionist General Council will immediately follow the Members of the Government; Members of the Zionist Executive will be equal in precedence to Members of the Knesset, and Members of the Zionist General Council will immediately follow Members of the Knesset.

129. See the text accompanying *infra* note 137.

The Coordinating Board, which according to section 8 "shall be established," is the same one which has been in existence since 1951.¹³⁰ The Covenant, therefore, merely formalizes it. The importance of the Board is suggested by its inclusion in the Covenant, the Status Law, and the 23rd Zionist Congress Resolution on Status as well as by its composition. The Organization is represented by members of its policy making Executive and the Government by "members of the Government," that is, by cabinet ministers. The provision for the Government and the Executive to each appoint half of the members of the Board establishes at least formal equality. The provision for the submission of the Board's deliberations and recommendations to both the Government and the Executive again maintains the formal equality of each of the Board's governmental superiors. The authority of the Board is as broad as "all spheres to which this Covenant applies." The real importance of the Board is, of course, determined by the functions it performs.¹³¹

In Annex B the Government establishes an "order of precedence at official ceremonies" which includes both Zionist and Government officials. This does not refer to diplomatic precedence extended to officials of a foreign state by the Government of Israel. Diplomatic precedence is a matter of international custom and comity and cannot be determined by the host government alone. The present note is based on "the Government's decision" concerning internal Government of Israel ceremonies. Although this may be accurately termed a matter of ceremonial precedence it is, nevertheless, a matter of substantive importance. It means that the Zionist officials are recognized in the most direct manner as being a part of the structure of the Government. It is difficult to avoid the conclusion that the order of precedence reflects the prior Government acceptance of the Zionist Organization as a functional part of the Government.

Sections 10 and 12 through 14 concern merely the procedural implementation of the Covenant and need not be set forth here. Section 12 provides that the Covenant is effectuated at the time of signature and it was signed on July 26, 1954 which is also the date of the Annexes. No further acceptance of it was necessary but the Zionist General Council then in session in Israel did nevertheless unanimously adopt this resolution, thereby augmenting the appearance of a bargained agreement:

130. See the text accompanying *supra* note 100.

131. See the text *infra* of Section V C.

The Zionist General Council accepts with profound satisfaction the formal signature of the Covenant between the Government of Israel and the Zionist Executive. The General Council notes that the Covenant gives in its principles full expression to the views of the World Zionist Organisation as expressed in the resolutions of the 23rd Zionist Congress and the resolutions of the Zionist General Council.¹³²

2. *The Coordination Board as an Instrument for Implementation of "Jewish People" Immigration.* There is no evidence of a lack of cooperation between Organization/Agency and Government in the immigration field at any time. This cooperation has been more formalized since the establishment of a Joint Government/Jewish Agency Immigration Authority by the Coordination Board in early 1967. It is described in the *Israel Digest*:

The establishment of a Joint Government and Jewish Agency authority for immigration and absorption was approved at a meeting in Jerusalem on 30 January by the Government-Agency Coordination Board, with Prime Minister Levi Eshkol in the chair. The aim of the authority is to encourage immigration and to improve the absorption process by providing a single address for the immigrant, which will deal with all his problems.

The authority, composed of four Ministers and four Members of the Agency Executive, will be headed by the Chairman of the Executive, with the Labor Minister as his deputy.

It will be administered by a joint committee of senior Government and Agency officials, headed by a representative of the Labor Ministry, and will function within existing machinery, with no additional personnel.¹³³

It would be a difficult task to draw the various lines between the roles of Jewish Agency and Government in the Joint Immigration Authority. Even if the task could be done it would not be particularly meaningful if both Agency and Government are parts of and serve the same sovereign. The central point is that the roles of "Agency," "Government," and "Joint Immigration Authority" are all subordinate to the common plan of public law implementation of the "Jewish people"

132. ZIONIST GENERAL COUNCIL 211 (July 21-29, 1954).

133. 10 ISRAEL DIGEST (Amer. ed. published by Jewish Agency-American Section) No. 3, p. 4, cols. 2, 3 (Feb. 10, 1967).

concept in immigration.¹³⁴ This involves, of course, a high level policy determination which is enunciated in both the Status Law and the Covenant. It also involves a day to day administrative process in terms of interviewing Jewish applicants for immigration to Israel. This is spelled out in the Zionist Executive Reports for 1963 as follows:

We note with great satisfaction the fullest cooperation in the field of immigration between our offices and the Israel Consulates in the United States and Canada. According to a decision of the Coordination Committee of the Israel Government and the Jewish Agency, all cases of immigration applications made to an Israel Consulate are automatically referred to the Immigration Department of the Jewish Agency which makes its recommendations in each case.¹³⁵

The application forms for immigration used by the Jewish Agency in the United States require information concerning the applicant's religious faith so that Jewish immigration may be promoted. This raises an issue concerning compliance with the First Amendment in the United States whether the Jewish Agency is appraised as a department of the Government of Israel or as its legally linked public body.¹³⁶

The admission of the existence of Israel Consulate-Jewish Agency cooperation in immigration activities in the United States is also significant for other reasons. The Jewish Agency/Zionist Organization receives the major portion of its financial support from alleged philanthropic American fund-raising institutions combined into the United Jewish Appeal. The U.J.A. transfers most of these "charitable" receipts to the Jewish Agency for Israel, Incorporated, a New York corporation, for further transfer to the Organization/Agency in Israel.¹³⁷

134. The functional identity of "Agency" and "Government" is indicated in a report on the establishment of the Joint Immigration Authority in the semi-official *Jerusalem Post*, March 7, 1967, p. 2, cols. 3, 4 at col. 4: "A decision adopted by a majority of either the Government or the Agency component [of the Joint Authority] will be binding on both."

135. EXECUTIVE REPORTS, Zionist General Council 192 (March 1963).

136. The United States Government took unequivocal action as required by the First Amendment to deny the claimed authority of Czarist Russian Government to question United States citizens concerning their religion. The issue arose when United States citizens applied to Czarist consulates in the United States for visas to travel to Russia. [1895] *Foreign Rel. U.S.* 1064, 1067 (1896).

137. The facts stated in the text are well known to the Internal Revenue Service of the Treasury Department except that it assumes inaccurately that the Organization/Agency is neither the Government of Israel nor a public body linked to it in law.

The textual statements are also directly supported by the testimony of Mr. Hammer,

The Organization/Agency then uses at least a portion of these funds in the United States for the recruitment of Jewish immigrants to the State of Israel from among United States nationals of Jewish religious faith.

If there are any humanitarian purposes involved in the solicitation of Jewish immigration to Israel, they are subordinate to the principal purpose of the Organization and the Government to build up the manpower of the State. This is spelled out in the official Executive Reports concerning the immigration regulations which were adopted by the Coordination Board in 1960:

In 1958 the need was felt to revise the regulations for immigration and for this purpose the Coordinating Board appointed a Committee composed of the Minister of Health, the Minister of Labour and the Heads of the Immigration and Absorption Departments. There was also a sub-committee consisting of the Directors of these Ministries and Departments. The sub-committee held nine meetings and proposed regulations designed to increase the proportion of immigrants of working capacity capable, from the health and social viewpoints, of becoming absorbed in the country, and to prevent the immigration of social welfare cases who could still be maintained abroad. . . .

The sub-committee of the Coordination Board approved the Immigration Regulations unanimously, and they are now binding on all those engaged in immigration and absorption work.¹³⁸

An evaluation of the importance of the Coordination Board has been provided by the late Moshe Sharett. Mr. Sharett was exceptionally well qualified to make such an evaluation because he had served on both sides of the Board. In 1954 he signed the Covenant as Prime Minister of Israel and in 1963 when he was chairman of the Zionist Executive he stated to the Zionist General Council:

I should like to place on record here the serious attitude of the Prime Minister towards the Coordinating Committee, at least in the period in which I have been participating in its meetings. Not only does he always respond to any demand to call a meeting of

executive vice chairman of the Jewish Agency for Israel, Inc., before the Senate Foreign Relations Committee Hearing Concerning the Activities of Nondiplomatic Representatives of Foreign Principals in the United States 1303-04 (May 23, 1963). The Hearing is cited fully in *infra* note 161. See LASKY 17-39.

138. EXECUTIVE REPORTS, 25th Zionist Congress 75, 77 (Dec. 1960).

the Committee, but on his own initiative he calls meetings and places questions on the agenda for joint consideration.

Resolutions are faithfully respected and when there is any matter liable to cause complications such as a clash of appeals or of financial projects, the Government always calls upon us to study the question. When we call upon the Government, there is always a response. A network of sub-committees of the Coordinating Committee has proliferated dealing with all sorts of questions.¹³⁹

D. The Juridical Effects of the Claims to Continue the Public Body Status: the Creation of a Single Zionist-Israel Sovereignty

It is not possible to understand the Status Resolution of the 23rd Zionist Congress, the Status Law, or the Covenant without an understanding of the basic Zionist ideology which is implemented in them. This ideology has been accurately described in part by Mr. Moses Lasky:

All Jews of the world form one Nation, the State of Israel is the lawful representative of that portion of the Nation dwelling in Zion [Israel], and the Zionist Organization is the authorized representative of the Nation dwelling elsewhere throughout the world. The two are coordinate representatives of one nation and thus may make covenants and treaties and cooperate with each other to a common end.¹⁴⁰

The "one Nation" is the claimed Zionist-Israel entity of "the Jewish people." The State and the Organization, although representatives of different portions of "the Jewish people" share the common juridical objective of implementing Zionist nationalism in law. In addition, the State and the Organization are controlled by the same political elite which is dedicated to establishing in international law the claimed entity of "the Jewish people." When this single political elite with a common political program seeks to implement that program through public law, it should not be surprising that the substantive law employed embodies common juridical premises and objectives.¹⁴¹ The details of juridical

139. ZIONIST GENERAL COUNCIL 210, 211 (March 18-26, 1963).

140. LASKY 49.

141. A different interpretation would probably have to postulate the existence of a long-continued series of coincidences.

implementation are all consistent with the general purpose of effectuation of the "Jewish people" nationality claims.¹⁴²

At the Zionist General Council meeting in Israel in 1954, at the time of the effectuation of the Covenant, the chairman of the committee on the "Status of the Zionist Organization (the Covenant)" stated concerning the juridical status provided for the Organization by the Covenant:

From the letters attached to the Covenant you will see that the Government has granted the Jewish Agency and its institutions the status of Government institutions. In addition it has consented to give the Chairman and Members of the Zionist General Council official status in its official ceremonies.¹⁴³

The governmental status of the Organization under the Covenant has not changed to the present time. One may expect, consequently, that the Zionist interpretation of the character of the Organization has remained consistent. This is indicated by a statement made by Dr. Goldman, president of the Zionist Organization, to a Zionist General Council meeting in 1966. His statement is also significant because it explains the relation between the Covenant and Zionist ideology:

We have entered into a Covenant and are performing many tasks which in other countries are performed by Governments. The Covenant accordingly reflects an abnormal situation; but the situation of the State of Israel is still abnormal and the majority of the Jewish people still live outside the borders of the State, and there is need of a movement bringing thousands and tens of thousands of Jews to the State. This was the reason for the Covenant. At the same time it is clear that all this—settlement, absorption and immigration—can only be carried on in cooperation with the State.¹⁴⁴

These quoted Zionist interpretations are working ones made in the course of administration of the Status Law and Covenant. As such, they

142. Even if the Covenant were interpreted as though it were an international agreement (the evidence shows it is not) its "general purpose" would still provide necessary context for its detailed interpretation. *Harvard Research in International Law*, 29 AM. J. INT'L L. SUPP. 937 (1935); RESTATEMENT sec. 147.

143. ZIONIST GENERAL COUNCIL 105 (July 21-29, 1954).

144. ZIONIST GENERAL COUNCIL 193, 194 (Jan. 11-18, 1966).

are entitled to great deference under well known interpretational criteria.¹⁴⁵

Although the negotiations which led to the Covenant took place over a period of time, there is no reason to believe that there were fundamental differences between the Organization and the State. The chairman of the Committee on the "Status of the Zionist Organization (the Covenant)" stated in the Zionist General Council Meeting at the time of the effectuation of the Covenant that "the Government of Israel had accepted most of the Amendments proposed by the Jewish Agency."¹⁴⁶ Because of the common Zionist ideology which was being implemented by Organization and State, it seems likely that the only differences which arose during the negotiations were concerned with the ascertainment of the best tactical methods to be employed. There is no reason to believe that there were differences concerning the common objective of implementation of the "Jewish people" concept. The Report of the Legal Adviser, examined above, supports this conclusion.¹⁴⁷

Even though the Covenant is an agreement in form it is a unilateral public law instrument in substance with the Zionist political elite represented on each side of the supposed negotiations. In view of the basic identity of the public law views of both the representatives of the Organization and of the Government, why was the form of an agreement employed? More specifically, why were not all of the details embodied in the Covenant spelled out in the Status Law itself, thus avoiding the need for a subsequent agreement? Apparently, the Covenant or agreement form was highly desirable as a matter of appearance since it indicates in both the title and the text that the Government of Israel and the Zionist Executive are two separate bodies. It further indicates that the Zionist Organization is such an important separate body that it is not appropriate to deal with it only through legislation, as in the Status Law, but that it is necessary to use the agreement device. The result is that the Status Law and the Covenant,¹⁴⁸ viewed together, give the appearance of at least some degree of status as a separate participant to the Zionist Organization. It would be difficult to achieve this appearance as effectively through a different device.

145. *Harvard Research in International Law* and RESTATEMENT cited *supra* note 142.

146. *Supra* note 143.

147. See the text accompanying *supra* notes 103-05.

148. The word "Covenant," also has religious meanings. See Berger, *Community Covenant or "Covenant Community": A Basis for Dialogue*, 20 ISSUES No. 4, p. 13 (Winter, 1967). A Jewish religious criticism of Zionism appears in PETUCHOWSKI, *ZION RECONSIDERED* (1966).

If it is stated that the Zionist Organization is a part of the Government of Israel, the existence of the Covenant provides a plausible response suggesting two independent bodies negotiating and agreeing with each other. The Covenant can be used more effectively to attempt to explain away the juridical connection of the Organization with the State than could a Status Law which included all of the specific provisions now covered in the Covenant. For example, in the Senate Foreign Relations Committee Hearing of 1963 concerning the Activities of Nondiplomatic Representatives of Foreign Principals in the United States, Mr. Boukstein, perhaps the preeminent Zionist Lawyer in the United States, stated:

I take very great pride in the fact that I had a hand in negotiating with Prime Minister Ben Gurion some years back the contractual arrangements between the Jewish Agency, which is a nongovernmental body, and the Government of Israel in which arrangements were provided for the orderly administration of the enormous physical task of taking people in, going through their medical examinations, setting them on the land or in industry, and so forth.¹⁴⁹

The "contractual arrangements" referred to are, of course, the Status Law and the Covenant.¹⁵⁰

The juridical result of the Covenant standing alone is that there is some distinction in Zionist public law between the Government of Israel and the Zionist Organization. In terms of the central Zionist objective of recruiting Jewish immigrants for the State of Israel, the Organization/Agency is in most respects the Government. It must, nevertheless, act on the basis of agreement with the Government as provided by section 3 of the Covenant. In the same way, the Organization acts for, but "in agreement with the Government," according to section 4, in coordinating the activities within Israel of "Jewish institutions and organizations." The method employed in the Covenant is to separate the Organization from the Government for certain key purposes and then to ensure through specific requirements governing agreement and cooperation that the Organization faithfully executes the policies of the Government. Having separated the Organization from

149. 1963 Hearing 1324 (May 23, 1963). This Hearing is cited in full in *infra* note 161.

150. This conclusion is supported by the Report of the Legal Adviser considered in the text accompanying *supra* notes 103-105.

the Government, it is then necessary, as indicated in section 11, to make special arrangements for its tax exemption. As indicated in Annex A of the Covenant, the Organization may continue to carry on "judicial or investigative" activities of its own within Israel but this must be done only in compliance with law and "in constant coordination" with the Attorney General of the Government. In the same way, since the Organization has been separated from the Government for certain purposes it is necessary to provide in Annex A of the Covenant that the administrative orders concerning "investigations, searches, and detentions in Government offices" shall also apply to the Organization and its institutions including, of course, the United Israel Appeal and the Jewish National Fund.

The provisions of the Covenant which distinguish between the Organization and the Government for certain purposes while ensuring the effective subordination of the Organization to the Government, distinguish only for efficiency and administrative convenience in pursuing the common juridical objectives of Zionist nationalism. When the Status Law is recognized as enabling legislation to empower the Organization to agree with the Government, this conclusion becomes even more persuasive. From this perspective it is clear that the Status Law and Covenant are only municipal law allocations of governmental authority in one aspect even though they are designed to have and do have an impact upon Jews who are nationals of other states than Israel.¹⁵¹ As municipal law they are analogous to the separation of powers doctrine applicable to the United States Government. The main difference between the two is that the Zionist separation of powers is based only upon administrative expediency and can be changed easily at any time whereas the United States separation of powers is required by the Constitution. Explicit recognition of the Zionist allocation of authority as a "separation of powers" was made by Dr. Goldman, speaking as president of the Zionist Organization, to a Session of the Zionist General Council in 1966:

Since the foundation of the State and the separation of powers then decided upon one of the leading ministers of the Government has served as a Member of the Executive.¹⁵²

151. RESTATEMENT 19, quoted in the text accompanying *supra* note 21 makes it clear that the claims against Jews who are not Israelis through the implementation of the "Jewish people" concept are an assertion of jurisdiction over them.

152. ZIONIST GENERAL COUNCIL 193 (Jan. 11-18, 1966).

A conclusion which is supported overwhelmingly by both the primary and secondary public law sources is that the Zionist Organization/Jewish Agency is a part, and a particularly important part, of the Government of Israel. This conclusion is based, *inter alia*, upon the Zionist working interpretations quoted above.¹⁵³ It is based also upon the Status Law and Covenant as well as the actual governmental functions performed under them. Even though the Organization has a different name and other superficial indications of separate identity, it is subject to the overriding control of the Government of Israel as is any other part of the same Government. It is necessary, consequently, to recognize that there is only one Zionist-Israel sovereignty in fact and in law. In its internal separation of powers, provision may be made for the performance of particular governmental functions by the Zionist Organization as is done presently through the Coordination Board pursuant to the Status Law and the Covenant. In the same way, the substance of the present separation of powers may be provided for *de facto* as was done prior to the Covenant. The separation of powers may also be changed in any way including a performance of the Organization's governmental functions by another part of the Government which is given a name suggesting a separate identity. Further, any existing separation of powers may be abolished with the result that all functions are performed directly by the Government as such. In the event of any such changes,¹⁵⁴ there could be no substitute for a juridical analysis which examines the governmental functions performed rather than the names employed.

An alternate conclusion which is also supported by both the primary and secondary public law sources is that the Organization/Agency is a public body closely linked in law to the Government and controlled by it. Even though section 11 of the Status Law designates the Zionist Executive as a "juristic body," this falls short of the multilateral state authority which is required to constitute a public body in international law.¹⁵⁵ However, when section 11 is combined with the other provisions of the Status Law and Covenant and the actual public body functions performed since 1948 it does provide some indication of the intent to continue public body status. If the conclusion of the public body status of the Organization/Agency should be appraised as more per-

153. See the text accompanying *supra* notes 143, 144.

154. The possible changes mentioned in the text do not, of course, exhaust the possibilities. For example, the Government could be made a dependency of the Organization.

155. See the text accompanying *supra* note 38.

suasive than the conclusion of its status as part of the Government of Israel, the same juridical effects would follow. It would then be clear that the public body is subject to all relevant legal limitations including those which bind its creator State. The Organization/Agency would still have to be recognized as an integral part of a single Zionist-Israel sovereignty because of the effective control the Government exerts over it.

The most compelling conclusion, is that the Zionist-Israel sovereignty contains an Organization/Agency component which is, in some aspects, part of the Government and in others its captive public body. Which-ever aspects predominate at a particular time and for a particular purpose, the component is nevertheless subject to effective control by the Government of Israel. The juridical effects of this study are not varied whether the Organization/Agency be appraised as government, public body, or both. In any or all three of these appraisals of status, it remains a component of the single Zionist-Israel sovereignty.

The conclusion that the Organization/Agency is both a part of the Government and a public body is not a novel one. Writing in 1956 and utilizing the public law sources then available, Mr. Lasky stated concerning the status of the Organization upon the termination of the Mandate:

The rational conclusion is that the State of Israel stepped into the shoes of the mandatory power and that the Government of Israel is to be regarded as substituted for "Mandatory" or "Administration of Palestine" or "his Majesty's Government" in all appropriate contexts. That being so, the Agency did continue as "a public body" whose function it now was "to advise and cooperate with the Government of Israel." In short, from a "recognized public instrument in the Administration of Palestine" under the Mandatory, it became an organ of the State of Israel.¹⁵⁶

VI. THE JURIDICAL STATUS AND POLITICAL ACTIVITIES OF THE ZIONIST-ISRAEL SOVEREIGNTY IN THE UNITED STATES

A. The Denial of a Right to Conduct Political Activities Under the Friendship, Commerce and Navigation Treaty with Israel

Although one such provision is deemed sufficient in some other similar treaties, there are two provisions in the Treaty of Friendship,

156. LASKY 46.

Commerce and Navigation Between the United States and Israel¹⁵⁷ which deny any right to conduct political activities. The first denial appears in article 8(3) and provides:

Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities.

The second denial appears in article 21(4) and states:

The present Treaty does not accord any rights to engage in political activities.

It is well known that under the supremacy clause of the United States Constitution a treaty constitutes a part of the supreme law of the land. The consequence is that there is no authority in law for the comprehensive Zionist-Israel political activities conducted in the United States and examined in the next section of this study. Unless a subsequent treaty or statute of the United States should grant to the Zionist-Israel sovereignty legal authority to conduct political activities in this country, such activities are without legal authority under the present Treaty.¹⁵⁸ The specific denial of any right to carry on political activities in two provisions of the present Treaty indicates the importance of the denial. Perhaps when the United States recognized the State of Israel it was not deemed necessary to consider the issue of Zionist-Israel political activities in the United States. By the time the Treaty was negotiated in 1951, the Department of State was apparently more fully aware of the facts concerning such political activities. In consequence, little reliance was placed upon the principle of international law and comity that one national state will not conduct political activities within another and the denial of authority was written into the Treaty.¹⁵⁹ The United States Government cannot obtain the benefits of these Treaty provisions unless they are enforced. Their enforcement may well provide significant steps in preventing further implementation of the

157. Aug. 23, 1951, [1954] 5, pt. 1 U.S.T. 550, T.I.A.S. No. 2948.

158. Under well established interpretational criteria for treaties and statutes each provision must be accorded some meaning. It is difficult to give the two denials of authority any meaning unless it is that political activities are forbidden.

159. The significance of the Treaty with Israel as a "typical" or model F.C.N. treaty is indicated in SENATE COMMITTEE ON FOREIGN RELATIONS, TREATIES OF FRIENDSHIP, COMMERCE, AND NAVIGATION, EXEC. REP. No. 5, 83rd Cong., 1st Sess., p. 3 (July 17, 1953).

"Jewish people" concept in the United States and in advancing United States national interests in obtaining a viable peace in the Middle East.

B. The Foreign Agents Registration Act and the Senate Hearing Concerning Activities of Nondiplomatic Representatives of Foreign Principals in the United States (1963)

The present analysis directly relates to the subject matter concerning which Senator Fulbright requested law school assistance.¹⁶⁰ The 1963 Senate Foreign Relations Committee Hearing¹⁶¹ was based upon a Senate Resolution which stated in part:

Whereas the Senate of the United States has special constitutional responsibilities in matters bearing upon the foreign relations of the United States; and

Whereas the discharge of this responsibility requires a thorough review and full public disclosure of the nondiplomatic activities of representatives of foreign governments and the extent to which they attempt to influence United States policies . . .¹⁶²

The Hearing, consequently, involved a consideration by the Senate Committee of the Foreign Agents Registration Act of 1938 as amended¹⁶³ and its enforcement. During the course of testimony by witnesses representing the Executive Branch, Mr. Katzenbach, then the Deputy Attorney General, agreed with Senator Fulbright that a broad conception of subversion was necessary in understanding the scope of the statute.¹⁶⁴ Senator Fulbright stated that "anything which tends to destroy the orderly and honest functioning of our Government would be subversive."¹⁶⁵ Mr. Katzenbach agreed and also indicated that, "The Act is very broad."¹⁶⁶

160. See the text accompanying *supra* note 2.

161. *Hearing on Activities of Nondiplomatic Representatives of Foreign Principals in the United States Before the Senate Committee on Foreign Relations* (1963). Testimony and information by the Executive Branch concerning enforcement of the Foreign Agents Registration Act of 1938 as Amended, as well as the background to the Hearing, appears in pt. 1, pp. 1-167 (Feb. 4 and 6, 1963). The principal testimony and information concerning Zionist activities in the United States appears in pt. 9, pp. 1211-1424 (May 23, 1963) and pt. 12, pp. 1695-1782 (Aug. 1, 1963). This Hearing is hereinafter cited as *Hearing*.

162. S. Res. 362, 87th Cong., 2nd Sess. in *Hearing* 1.

163. Known as the McCormack Act, 52 Stat. 63 (1938), 22 U.S.C. 611 (1964).

164. *Hearing* 61.

165. *Id.*

166. *Id.*

In his prepared statement for the Senate Committee Mr. Katzenbach stated concerning the statute:

The act provides that no person subject to it shall act as an agent of a foreign principal until he has filed with the Attorney General a registration statement containing detailed information required by the Statute and such other pertinent information as the Attorney General may require.¹⁶⁷

Senator Fulbright commented that the Attorney General has "very broad" powers to require disclosure concerning the agent's representation of his foreign principal.¹⁶⁸

In Part V of this Study, Zionist leaders were quoted in their official capacities concerning the status of the Zionist Organization/Jewish Agency and its relation to the Government of Israel. Those quoted statements, usually made in Israel, indicated a frank recognition of the governmental and public character of the Organization. In the United States, in contrast, the Zionist leaders have taken a very different position concerning the same subjects.

1. *The Evidence Concerning Organization/Agency Juridical Status.* In this Hearing the Jewish Agency appeared in the roles of three alleged entities. The first was the Zionist Organization/Jewish Agency which was sometimes termed the "Jerusalem Agency" in the Hearing.¹⁶⁹ The second was the Jewish Agency for Israel, Incorporated which was usually termed the "Inc." in the Hearing.¹⁷⁰ The Inc. had been the representative in the United States of the Jewish Agency and had been registered under the Foreign Agents Registration Act in this capacity. It was alleged that following a tax reorganization in 1960, the Inc. came under the control of "American Organizations and citizens" as a private philanthropic body and accordingly ceased to register as a foreign agent on behalf of the Jewish Agency.¹⁷¹ Mr. Gottlieb Hammer, the executive vice chairman of the Inc., described the Jewish Agency as the agent of the Inc. since 1960.¹⁷² The third entity was the

167. *Hearing 52, 53.* The power of the Attorney General to require "order pertinent information" is based upon his rule-making authority under sec. 10 of the statute. See the Attorney General's Order No. 376-67 Prescribing Regulations Under the Foreign Agents Registration Act of 1938, as Amended.

168. *Hearing 77.*

169. Testimony of Mr. Hammer, Executive Vice Chairman of the Jewish Agency for Israel, Inc. *Hearing 1216-17.*

170. *Id.* at 1217-19.

171. *Id.* at 1218.

172. *Id.* at 1218-19.

Jewish Agency-American Section which is usually termed the "American Section" in the Hearing.¹⁷³ Since 1960 it has been registered as the agent of the Jewish Agency in the United States under the Foreign Agents Registration Act.

Thus, according to the Zionist testimony, the following situation appears to exist. The Inc. is the principal and its agent in Jerusalem, Israel is the Jewish Agency. The Jewish Agency's registered agent in the United States is the American Section. It would then follow that the American Section is also the agent of the Inc. since the latter is the principal of the American Section's principal. The inaccuracy of the Zionist presentation of the structure is apparent when it is recognized that the Jewish Agency is either part of the Government of Israel, or a public body closely linked in law with it, or both. In view of this, it is far more likely than the Inc. is the fund-raising agent in the United States for the Government of Israel, or its public body, or both.

Mr. Hammer, consistent with the Zionist view in the United States, testified as follows concerning the juridical status of the Jewish Agency:

I think I should make it clear they [the Jewish Agency] are not part of the Government [of Israel], they are not a governmental agency, nor are they an agency of the Government.¹⁷⁴

Mr. Maurice Boukstein, of the firm of Guzik & Boukstein, is legal counsel in the United States for each of the three Jewish Agencies identified in the Hearing and appeared at the Hearing with Mr. Hammer of the Inc. as well as with Mr. Isadore Hamlin, the executive director of the American Section. Although he was not under oath as a witness, Mr. Boukstein volunteered information concerning the legal status of the Jewish Agency. He stated to Chairman Fulbright:

It has the same kind of special legal recognition that was given in this country to the Red Cross in the sense that it was created as a legal entity by a special act of Parliament rather than by the filing of a certificate of incorporation by a clerk in some county clerk's office.¹⁷⁵

The following colloquy took place between the Chairman and Mr. Hamlin concerning the Executive of the Jewish Agency:

173. *Id.* at 1219-20.

174. *Id.* at 1227.

175. *Hearing* 1228. The statute creating the American National Red Cross appears to be as different from the Status Law as the Red Cross is from the Zionist Organization. See 33 Stat. 509 (1905), 36 U.S.C. secs. 1-6 (1964).

The CHAIRMAN. It is incorporated by a special act of the Government of Israel, is that correct?

Mr. HAMLIN. The Jewish Agency, yes; was recognized by special act of the Israeli Parliament.¹⁷⁶

One of the Zionist practices which was described several times in the Hearing was the use of the American Zionist Council (a group allegedly controlled by American citizens) as a conduit for the transmission of funds from the Executive of the Jewish Agency to various groups in the United States.¹⁷⁷ The effect of this, as Chairman Fulbright pointed out, was to avoid the requirement of registration under the Foreign Agents Registration Act.¹⁷⁸

In the Hearing there was testimony indicating that the American Zionist Council had used the Rabinowitz Foundation as a conduit for the transfer of funds to the Council on Middle Eastern Affairs, a pro-Zionist-Israel academic organization.¹⁷⁹ The Jewish Agency apparently made payments to the Rabinowitz Foundation for further transfer to the Council on Middle Eastern Affairs. The president of the Rabinowitz Foundation wrote Senator Fulbright on July 29, 1963 and stated, *inter alia*:

Shortly after the hearing before your committee, Mr. Boukstein called me and advised me that some question had been raised before the committee as to the role of the foundation in the financing of the Council on Middle Eastern Affairs. He also mentioned the fact that the Jewish Agency was a representative of the Israeli Government.¹⁸⁰

Mr. Boukstein then denied twice that he had told Mr. Rabinowitz that the Jewish Agency was a representative of the Government of Israel.¹⁸¹ Further, Mr. Boukstein stated that he would see to it that Mr. Rabinowitz made the correction.¹⁸² Chairman Fulbright suggested to Mr. Boukstein that the legal relation between the Jewish Agency and

176. *Hearing 1309.*

177. *E.g., id. at 1315, passim.*

178. *Hearing 1707.*

179. *Id. at 1271-73.*

180. *Id. at 1709, 1710.*

181. *Id. at 1712, 1713.*

182. *Id. at 1713.* In his letter of Aug. 7, 1963 to Senator Fulbright, Mr. Rabinowitz stated that he "was in error." *Id. at 1778, 1779.*

the Government of Israel was really a matter of legal opinion rather than one of fact.¹⁸³ Mr. Boukstein, insisted, nevertheless, that the relationship was a matter of fact. In response to the Chairman's invitation to provide details he stated:

The Congress [of the Organization/Agency] does not have any delegates from the Government of Israel. The majority of the people at the Congress, the majority of the delegates are not residents of Israel. The Executive of the Jewish Agency for Israel in Jerusalem is elected by the Congress. It is responsible to the Congress and to . . . the Zionist Congress and to its institutions. It has a formal legal agreement with the Government of Israel delineating its operations in Israel which it would have to have in any country where it would operate.

Obviously, taking into account the type of activity that the Jewish Agency is engaged in, immigration and absorption, resettlement, housing and so forth, it must have, perforce, it must have if it is to succeed, the closest liaison with the Government, with the host government.

But it is not controlled by, it is not dominated by, it is to some extent aided as it should be, by the Government, but it is completely independent, and therefore, Mr. Chairman, it isn't a matter of opinion at all. It is a matter of fact.¹⁸⁴

Thereafter, in connection with testimony which indicated that the American Section undertook a jointly funded project with the Consulate General of Israel, in New York City,¹⁸⁵ Chairman Fulbright asked Mr. Hamlin whether or not the American Section had ever registered its services in connection with this project.¹⁸⁶ In response, Mr. Hamlin stated, "Sir, we were not the Agency of the Israeli Government."¹⁸⁷

An interesting feature of Mr. Boukstein's participation in the Hearing is that he was the attorney for each of the three entities with the term "Jewish Agency" in its name which were involved in the Hearing.¹⁸⁸ Since an attorney cannot, consistent with the requirements of legal ethics, represent adverse interests, this is a further indication of at least

183. *Hearing* 1712.

184. *Id.*

185. *Id.* at 1373.

186. *Id.* at 1733.

187. *Id.*

188. *Id.* at 1324.

the closeness of the relations between the three entities even though the Inc. was alleged to be a private philanthropic body.

The evidence presented by the Zionist leadership in the United States concerning the juridical status of the Organization/Agency and its relation to the Government of Israel at the 1963 Senate Hearing presents many contrasts, and indeed basic inconsistencies, with the conclusions of this study concerning the same subjects based upon the primary public law sources and the official evaluations of the Zionist leadership in Israel. The Zionist evidence presented at the Hearing is not sufficiently related to the primary public law sources to require changing the conclusions of the study. The evidence concerning political activities provides illustration of the practical use of the actual juridical status of the Organization/Agency.

2. *The Evidence Concerning Organization/Agency Political Activities.* The role of the American Zionist Council as a conduit of funds to avoid registration under the Foreign Agents Registration Act has been mentioned.¹⁸⁹ Five detailed memorandums concerning the political activities of the American Zionist Council, and prepared by it, are set forth in the Hearing.¹⁹⁰ At the time of these particular activities most of the financing of the American Zionist Council was received from the American Section of the Jewish Agency¹⁹¹ which was financed entirely by the Jewish Agency.¹⁹² All of these memorandums show political activities designed to influence, in particular, the electorate and the United States Government to make favorable decisions for Zionist-Israeli causes. Included is a Zionist attack upon the proposals of Dr. Joseph E. Johnson, the special representative of the Palestine Conciliation Commission, concerning the resolution of the Arab refugee problem.¹⁹³ This subject is considered in a highly pro-Zionist manner and without regard to United States national interests either in achieving an equitable solution of this particular problem or the related national interests in promoting a just and durable peace in the Near East.

The Hearing contains documentary evidence and testimony showing that the Jewish Agency paid \$62,000, among other substantive amounts, to the American Zionist Council for further transmittal to Zionist groups

189. See the text accompanying *supra* notes 177, 178.

190. *Hearing 1351-60.*

191. *Id.* at 1360.

192. *Id.* at 1706.

193. *Id.* at 1351-54.

in the United States.¹⁹⁴ The following colloquy took place between Chairman Fulbright and Mr. Hamlin concerning the use of this money:

Mr. HAMLIN. The Zionist Council did not use the \$62,000. The Zionist Council passed this money or made this money available to the various Zionist groups.

The CHAIRMAN. For what purpose?

Mr. HAMLIN. These were payments that had been made for many, many years, to the Zionist groups in this country as partial reimbursement to them of expenses they had, particularly in connection with their publications, and their house organs, to assist the fund-raising campaigns for Israel.

The CHAIRMAN. Then it is quite clear, if I understand you, that the Jewish Agency Executive in this manner uses the American Zionist Council as the conduit for the dissemination of funds in this country?

Mr. HAMLIN. The American Zionist Council accepted these funds and turned them over to the Zionist groups. That is right.

The CHAIRMAN. For various purposes.

Mr. HAMLIN. For the purposes I stated. Specifically to reimburse them for expenses in connection with their publications and other services they rendered to assist the fundraising campaigns for Israel.¹⁹⁵

The use of the American Zionist Council as a conduit resulted in a failure to accurately reflect the payments in the registration statement of the American Section.¹⁹⁶ In addition to the fund-raising activities for Israel, it is clear that the Zionist groups which were the ultimate recipients of the funds assisted the Zionist-Israel sovereignty in terms of obtaining effective American political support for its objectives.

Among other activities revealed in the Hearing was the payment by the American Section to the "Presidents Conference" of a substantial part of its administrative expenses.¹⁹⁷ These funds were paid by the American Section but it had been previously testified that the American Section receives all of its funds from the Jewish Agency.¹⁹⁸ The Presidents Conference is a group which consists of Dr. Goldmann as president of the Organization/Agency and the presidents of several na-

194. *Id.* at 1413, 1705-06.

195. *Id.* at 1706.

196. *Id.* at 1707.

197. *Id.* at 1756, 1757.

198. See the text accompanying *supra* note 192.

tional Jewish organizations in the United States. This group invariably takes political positions which are entirely consistent with the political objectives of the Zionist-Israel sovereignty. Mr. Boukstein made a point of denying that the Jewish Agency controls the Presidents Conference.¹⁹⁹

In 1959 the American Section paid \$10,000 to the Synagogue Council of America "to help the Council prepare and distribute educational and cultural materials in connection with the upbuilding of Israel. . . ." ²⁰⁰ During the same year the Synagogue Council of America reported to the Inc. that its representatives had testified before the House Foreign Affairs and Senate Foreign Relations Committees concerning the United States foreign aid program.²⁰¹ According to the report submitted to the Inc., it was stated that:

At this time, the mutual security grants to Israel were threatened with drastic reduction. During their testimony, the Synagogue Council leaders made a strong plea for continuing mutual security aid to Israel. Observers (including S. [sic] L. Kennen) regarded the effect of these testimonies as greatly beneficial to the subsequently improved reception to Israel's request for maintaining status quo in grants.²⁰²

In 1966 the Congress amended the Foreign Agents Registration Act and included a new subsection defining "political activities." The definition accurately describes the Zionist political activities which were set forth in the evidence before the 1963 Senate Hearing:

The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or

199. *Hearing* 1757.

200. *Id.* at 1765.

201. *Id.* at 1767.

202. *Id.* It is interesting that the report was made to the Inc. which is alleged to be an American philanthropic corporation.

public interests, policies, or relations of a government of a foreign country or a foreign political party²⁰³

Another amendment changed subsection 2(a)(4) to provide that each registrant must include in its registration statement "a detailed statement of any such activity [in behalf of a foreign principal] which is a political activity." Subsection 2(a)(6) is also amended to require the same detailed statement concerning a political activity conducted by the registrant either for himself or for any person other than his foreign principal.

As a final example, reference may be made to evidence of payments made by the American Section to the Zionist Organization of America (Z.O.A.).²⁰⁴ The Z.O.A. is engaged primarily in implementing Zionist political objectives in the United States. Mr. Boukstein provided the following information to Chairman Fulbright concerning the status of the Z.O.A.:

Mr. Chairman, I think a correct analogy would be the Confederation of Free Trade Unions. Just as that organization consists of member organizations, so the World Zionist Organization consists of member organizations, all Zionist organizations, from various parts of the world, each one completely independent and running and managing its own affairs.

The delegates meet together every few years, about 4 years, in congress and discuss their problems, and take common decisions, and elect an executive. But the World Zionist Organization does not control the affairs of the Zionist Organization of America.²⁰⁵

There can be no doubt but that Justice Brandeis, Judge Julian Mack, and the others who headed the Z.O.A. prior to 1921 regarded it as a genuine American organization. This was, of course, the principal reason for their being forced out of office by the supporters of Dr. Weizmann at the 1921 Convention of Z.O.A. Dr. Weizmann has described the differences between himself and the "Brandeis group":

This was not merely a difference in formal approach; it represented a real cleavage. The Brandeis group envisaged the Zionist Organization as henceforth [after the Balfour Declaration] a pure-

203. Section 1(o) of the Foreign Agents Registration Act.

204. *Hearing 1770-72.*

205. *Id.* at 1770.

ly economic body. Since, in their view, it had lost its political character by having fulfilled its political function, there was no longer any reason why non-Zionists who were prepared to help in the economic building up of Palestine, but who were not prepared to subscribe to political Zionism, should refuse to become members. But our reason for wishing to keep the Zionist Organization in being as a separate body was precisely the conviction that the political work was far from finished: the Balfour Declaration and the San Remo decision were the beginning of a new era in the political struggle, and the Zionist Organization was our instrument of political action.²⁰⁶

After the supremacy of the World Zionist Organization (W.Z.O.) over the Z.O.A. had been made clear, the 1921 Z.O.A. Convention then resolved:

Reaffirming our loyalty and allegiance to the World Zionist Organization and acknowledging the supreme authority of the Zionist Congress in all Zionist affairs and of such other legislative bodies established in accordance with the statutes of the Zionist Congress, we here in Convention assembled, in order to make a public record of our unalterable desire to maintain the unity of the World Zionist Organization, declare that we hold the decisions of the Zionist Congress as binding upon us and that we are under moral and legal obligations to support all institutions for the upbuilding of the Jewish National Home established and maintained by and under the authority of the Zionist Congress.²⁰⁷

The presently effective Constitution of the Z.O.A. recognizes explicitly the supremacy of the W.Z.O. by providing, *inter alia*:

The Zionist Organization of America shall be affiliated with . . . the World Zionist Organization pursuant to its statutes, rules and regulations.²⁰⁸

The presently effective Constitution of the W.Z.O. (1960) continues emphasis upon the implementation of the "Jewish people" concept and the Basle Program adopted at the First Zionist Congress (1897):

206. TRIAL AND ERROR: THE AUTOBIOGRAPHY OF CHAIM WEIZMANN 326-27 (East and West Library illus. ed. 1950).

207. ZIONIST ORGANIZATION OF AMERICA, REPORT OF THE PROCEEDINGS OF THE 24TH ANNUAL CONVENTION OF THE ZIONIST ORGANIZATION OF AMERICA 163 (Aug. 1921).

208. ZIONIST ORGANIZATION OF AMERICA, CONSTITUTION OF THE ZIONIST ORGANIZATION OF AMERICA, art. 2, sec. 1 (1940).

The task of Zionism is the consolidation of the State of Israel, the ingathering of the exiles in Eretz Israel and the fostering of the unity of the Jewish people.²⁰⁹

Articles 5 through 11 of the same Constitution provide for various detailed types of supervision by the W.Z.O. over its constituent groups such as the Z.O.A. In Article 4 it provides:

The World Zionist Organisation is the central body authorised by its Members to act for and in behalf of the whole of the Movement and of all the Members in the implementation of the Zionist Programme.²¹⁰

The "World Zionist Organization" (W.Z.O.) which has been referred to is identical with the Organization/Agency which is appraised in this study.

The legal doctrine of the supremacy of the W.Z.O. over the Z.O.A. is also manifested in other ways than an examination of the relevant constitutional texts. An example of it is provided at a session of the 1924 Convention of the Zionist Organization of America. This was after the removal of the Brandeis-Mack leadership and their replacement by a group of dedicated Zionists including Mr. Louis Lipsky who was both president of the Z.O.A. and a member of the executive of the W.Z.O. A motion was made from the floor to adopt a resolution to permit "every group of 100 contributors of not less than \$25 to the Keren Hayesod . . . to elect a delegate to the Annual Zionist Convention" [of the Zionist Organization of America].²¹¹ Mr. Lipsky, as the chairman of this session of the Convention, stated in a ruling from the chair:

I will have to rule this resolution absolutely out of order on the ground that it violates the Constitution of the International Zionist Organization. The Zionist Organization [of America] has no right to admit as a member of this organization any person who does not pay the shekel of the World Zionist Organization.²¹²

The supremacy of the W.Z.O. over the Z.O.A. was so clearly under-

209. Art. 2, sec. 2 in EXECUTIVE REPORTS, 25th Zionist Congress 601-25, at 601 (Dec. 1960).

210. Art. 4, sec. 1 in *id.* at 602.

211. THE NEW PALESTINE (periodical publication of the Zionist Organization of America) 21 (July 11, 1924).

212. *Id.*

stood that it could be applied as an accepted interpretation through a simple parliamentary act.

C. Sanctions and Enforcement of the Treaty with Israel and the Foreign Agents Registration Act

There are several significant issues and implications raised in the present study which have not been fully examined. This section will consider only some of the issues concerning sanctions and enforcement; other issues which are only suggested here may be treated in subsequent research and writing.

The conclusion that the political activities of the Zionist-Israel sovereignty in the United States are conducted without the legal authority of the Treaty of Friendship, Commerce and Navigation has been reached above.²¹³ There can be no doubt but that the United States Department of State is obligated to take all necessary steps to achieve the full enforcement of the Treaty.

One of the 1966 Amendments to the Foreign Agents Registration Act recognizes the important role of the Secretary of State in cooperating with the Attorney General under the statute. It states:

The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States.²¹⁴

The commentary of the Secretary of State based upon specialized foreign affairs responsibility and knowledge should be of very great value to the Attorney General in enforcing the statute. When the international law competence of the Department of State is added to the domestic law competence of the Department of Justice, it is evident that the United States Government has the professional skills to see both the external and internal implications of the activities of foreign agents in this country.

A few other relevant provisions of the statute should be considered briefly. One provision defines the term "foreign principal" as including:

213. See the text accompanying *supra* notes 157-58.

214. Foreign Agents Registration Act sec. 6 (b) (hereinafter cited as the "Statute").

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States . . .
- (3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.²¹⁵

The public law sources of the present study should assist in ascertaining which of the above categories the principal of the American Section of the Jewish Agency comes within. The following definition in the statute may well remove any possible question:

The term "government of a foreign country" includes any person or group of persons exercising sovereign *de facto* or *de jure* political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated.²¹⁶

Another provision of the statute concerning the contents of the registration statement which must be filed requires the following information:

Status of the registrant . . . if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control. . . .²¹⁷

This provision, requiring the registrant to file its "charter" and "constitution" as well as other relevant documents with the Department of Justice, indicates clearly that the American Section of the Jewish

²¹⁵ Statute sec. 1 (b).

²¹⁶ *Id.* sec. 1 (e). It is interesting that the quoted provision uses the word "agency."

²¹⁷ Statute sec. 2(a) (2).

Agency and its predecessor registrant, the Jewish Agency for Israel, Inc., should have on file with the Department of Justice a copy of the Status Law and one of the Covenant. This is essential because the main legal issues under this provision of the statute concern the constitutive documents of the Jewish Agency, by whatever name, provided by its creator, the Government of Israel.²¹⁸

The Statute also requires that the registration statement contain information concerning:

... the character of the business or other activities of every such foreign principal, and if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal.²¹⁹

The applicability of these provisions to the Organization/Agency is apparent.

A significant 1966 amendment to the statute added injunctive relief to the sanctions. It provides that, "Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act," the Attorney General may ask "for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder."²²⁰ In addition, where a registration statement does not comply with the statute the Attorney General shall provide notification to the registrant in which the deficiencies are specified.²²¹ Ten days after the receipt of such notification it shall be unlawful for the registrant to continue to act as

218. Some material filed with the Registration Section of the Department of Justice by the American Section of the Jewish Agency would, however, indicate that the issue concerns the relation between the American Section and the Jewish Agency. *See, e.g.*, Exhibit B to the Amendment to Registration Statement filed by the American Section on April 7, 1967 which states, in part: "There is no written agreement between the Jewish Agency for Israel, Jerusalem, and our organization." This information is substantially irrelevant.

219. Statute sec. 2 (a) (2).

220. *Id.* sec. 8(f). The importance and scope of the 1966 amendments to the statute are indicated in H.R. REP. No. 1470, 89th Cong., 2d Sess. (1966).

221. Statute sec. 8(g).

a foreign agent unless he has filed an amended registration statement in full compliance with the statute.²²² These provisions exemplify the concern of the Congress with the practical enforcement of the statute. They greatly facilitate enforcement since it is no longer necessary for the Attorney General to rely entirely upon the penal provisions.

The tax issues concerning the deduction of supposed "charitable" funds raised in behalf of the Zionist-Israel sovereignty have only been mentioned briefly.²²³ Professor Safran, after writing that the grants by the United States Government to the State of Israel are probably on a per capita basis, the largest for any country basis, continues:

Moreover, the American government never seriously attempted to question the classification of the billion dollars of donations made by American Jews as tax-exempt "charity," though this money went, in effect, into the general development budget of Israel.²²⁴

The issues thus raised directly concern the integrity of the tax system in the United States. On this subject, it would be difficult to improve upon the words of Sheldon S. Cohen, the Commissioner of Internal Revenue:

I have suggested that there is a moral base to the American tax system and I have tried to outline the primary moral responsibilities that rest on the Internal Revenue Service. . . .

In the end, however, the system stands or falls on the morality and the sense of duty of the American taxpayer.²²⁵

VII. THE INTEGRITY OF UNITED STATES POLICY FORMULATION AND IMPLEMENTATION AND THE URGENT NECESSITY FOR BUILDING AN OPTIMUM WORLD PUBLIC ORDER SYSTEM

The problems concerning sanctions and enforcement of the Friendship, Commerce and Navigation Treaty with Israel and the Foreign Agents Registration Act are not peripheral to the freedom of press and freedom of speech which are protected by the First Amendment. They provide essential implementation without which these values protected

222. *Id.*

223. See the text accompanying *supra* notes 125, 129.

224. SAFRAN, *THE UNITED STATES AND ISRAEL* 278 (1963).

225. Cohen, *Morality and the American Tax System*, 34 GEO. WASH. L. REV. 839, 844 (1966).

by the First Amendment cannot be achieved under modern conditions.²²⁶ If the First Amendment is to be something more than a monument to the problems of a simpler age, the political and propaganda activities within the United States of foreign agents and their principals must be identified accurately.²²⁷ Both the formulation and implementation of national policy is dependent today upon a clear understanding of the governmental and political forces at work throughout the world and manifested within the United States. Unless the United States Government enforces its Constitution, as well as the treaties and statutes under it, the integrity of the domestic policy processes is impaired and neither the American electorate nor its Government can act with even minimum knowledge and responsibility. The danger of misleading or distorted factual information is considerable in many situations. Without the full enforcement of the Foreign Agents Registration Act, this danger is overwhelming.

The United States is attempting to assist in building an optimum world public order system. Such a system is characterized not only by the absence of recourse to coercion and violence to solve international problems but also by the establishment of a creative and consensual environment in which each individual may seek to maximize his values without being subjected to discrimination including that based upon religious identification. The alternative to the rapid construction of such an optimum order is probably not merely the maintenance of the present inadequate minimum order system. It is more likely to be the onset of another world war which could be triggered by events in the Middle East.²²⁸ It is evident that such a war, in an era of weapons of mass destruction,²²⁹ could result in the destruction of human values throughout the world. The United States Government has the oppor-

226. "Such legislation [the Foreign Agents Registration Act] implements rather than detracts from the prized freedoms guaranteed by the First Amendment." Black, J. in *Viereck v. United States*, 318 U.S. 236, 249, 251 (1943) (dissenting opinion). There is no reason to believe that the majority of the Court differed with Justice Black on this matter.

227. In addition, the First Amendment, unless it includes a right of access to the media, permits the mass communications industry to perform the role of censorship which is denied to the government. See Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967).

228. See Yost, *The Arab-Israeli War: How it Began*, 46 FOREIGN AFFAIRS 304 (1968); NUTTING, *NO END OF A LESSON: THE STORY OF SUEZ* (1967); CAMPBELL, *DEFENSE OF THE MIDDLE EAST: PROBLEMS OF AMERICAN POLICY* (Rev. ed. 1960).

229. See Mallison, *The Laws of War and the Juridical Control of Weapons of Mass Destruction in General and Limited Wars*, 36 GEO. WASH. L. REV. 308 (1967).

tunity, in cooperation with other peoples and other governments, to take effective measures to build optimum order while there is still time. Some of the first indispensable steps in this high endeavor are within the domestic competence and jurisdiction of the United States.

APPENDIX

(See note 122, and accompanying text, of the present study.)

COVENANT

BETWEEN

THE GOVERNMENT OF ISRAEL (HEREAFTER THE GOVERNMENT)

AND

THE ZIONIST EXECUTIVE CALLED ALSO THE EXECUTIVE
OF THE JEWISH AGENCY (HEREAFTER THE EXECUTIVE)

Entered into this day, in accordance with the Zionist Organization—Jewish Agency Status Bill, 1952.

1. The following are the functions of the Zionist Executive as included in this Covenant:

The organizing of immigration abroad and the transfer of immigrants and their property to Israel; co-operation in the absorption of immigrants in Israel; youth immigration; agricultural settlement in Israel; the acquisition and amelioration of land in Israel by the institutions of the Zionist Organization, the Keren Kayemeth Leisrael and the Keren Hayesod; participation in the establishment and the expansion of development enterprises in Israel; the encouragement of private capital investments in Israel; assistance to cultural enterprises and institutions of higher learning in Israel; the mobilization of resources for financing these activities; the co-ordination of the activities in Israel of Jewish institutions and organizations acting within the limits of these functions by means of public funds.

2. Any activity carried out in Israel by the Executive or on its behalf for the purpose of carrying out the said functions, or part of them, shall be executed in accordance with the laws of Israel and the regulations and administrative instructions in force from time to time, which govern the activities of the governmental authorities whose functions cover, or are affected by, the activity in question.
3. In the organizing of immigration and the handling of immigrants, the Executive shall act on the basis of a plan agreed on with the Government or authorized by the Co-ordinating Board (see para. 8). Immigrants will require visas according to the Law of the Return 5711-1950.
4. The Executive shall, in agreement with the Government, co-ordinate

the activities in Israel of Jewish institutions and organizations which act within the limits of the Executive's functions.

5. The Executive may carry out its functions itself or through its existing institutions or those which it may establish in the future, and it may also enlist in its activities the co-operation of other institutions in Israel, with the proviso that it may not delegate any of its functions or rights under the Covenant without the agreement of the Government, and shall not authorize any body or institution to carry out its functions, in whole or in part, except after prior notification of the Government.
6. The Executive shall be responsible for the mobilization of the financial and material resources required for the execution of its functions, by means of the Keren Hayesod, the Keren Kayemeth LeIsrael and other funds.
7. The Government shall consult with the Executive in regard to legislation specially impinging on the functions of the Executive before such legislation is submitted to the Knesset.
8. For the purpose of co-ordinating activities between the Government and the Executive in all spheres to which this Covenant applies, a Co-ordinating Board shall be established (hereafter called the Board). The Board shall be composed of an even number of members, not fewer than four, half of whom shall be members of the Government appointed by it, and half of whom shall be members of the Executive appointed by it. The Government and the Executive shall be entitled from time to time to replace the members of the Board by others among their members.
9. The Board shall meet at least once a month. It may appoint sub-committees consisting of members of the Board, and also of non-members. The Board shall from time to time submit to the Government and the Executive reports of its deliberations and recommendations. Except as stated above, the Board shall itself determine the arrangements for its sessions and deliberations.
10. The Government must see to it that its authorized organs shall provide the Executive and its institutions with all the permits and facilities required by law for activities carried out in accordance with this Covenant for the purpose of carrying out the Executive's functions.
11. Donations and legacies to the Executive or any of its institutions shall be exempt from Inheritance Tax. All other problems connected with the exemption of the Executive, its Funds and its other institutions, from payment of taxes, customs and other obligatory governmental imposts shall be the subject of a special arrangement between the Executive and the Government. This arrangement shall be formulated

in an annex to this Covenant within eight months, as an inseparable part thereof, and shall come into force as from the date of signature of this Covenant.

12. All proposals for alterations or amendments to this Covenant, or any addition thereto, must be made in writing, and no alteration or amendment of this Covenant, or addition thereto, shall be made except in writing.
13. Any notification to be sent to the Government shall be sent to the Prime Minister, and any notification to be sent to the Executive shall be sent to the Chairman of the Executive in Jerusalem.
14. This Covenant shall come into force on the date of signature.

In witness whereof, etc.

Annex A

The Chairman
Zionist Executive
The Jewish Agency
Jerusalem

Jerusalem, July 26, 1954

Dear Mr. Chairman,

I have the honour to inform you of the Government's decision that any administrative order that may be in force from time to time in regard to investigations, searches and detentions in Government offices shall apply also to the Executive and its institutions as defined in the Covenant entered into this day between the Government of Israel and the Zionist Executive.

You have agreed, and the Government has taken note, that the Zionist Executive will not maintain in Israel judicial or investigative machinery of its own, except in compliance with the laws of the State and in constant co-ordination with the Attorney-General of the Government of Israel.

Yours sincerely,
(sgd.)
Prime Minister

Annex B

The Chairman
Zionist Executive
The Jewish Agency
Jerusalem

Jerusalem, July 26, 1954

Dear Mr. Chairman,

I have the honour to inform you of the Government's decision that in

the order of precedence at official ceremonies the Chairmen of the Zionist Executive and the Chairman of the Zionist General Council will immediately follow the Members of the Government; Members of the Zionist Executive will be equal in precedence to Members of the Knesset, and Members of the Zionist General Council will immediately follow Members of the Knesset.

Yours sincerely,
(Sgd.)
Prime Minister

Annex C

The Jewish Agency, P.O.B. 92, Jerusalem

The Prime Minister
Jerusalem

July 26, 1954

Dear Mr. Prime Minister,

We have the honour to acknowledge the receipt of your letter in which you inform us of the Government's decision that any administrative order that may be in force from time to time in regard to investigations, searches and detentions in Government offices shall apply also to the Executive and its institutions as defined in the Covenant entered into this day between the Government of Israel and the Zionist Executive.

We hereby confirm that the Zionist Executive has agreed not to maintain in Israel judicial or criminal investigative machinery of its own, unless approved by the Government, and that any such machinery will function in constant co-ordination with the Attorney-General of the Government of Israel.

Yours sincerely,
(sgd.)
Chairmen of the Executive