

3. Agreement for the Suppression of the Circulation of Obscene Publications of 4 May 1910<sup>1</sup>
4. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 12 September 1923<sup>2</sup>
5. International Convention relative to Motor Traffic of 24 April 1926,<sup>3</sup>

no such declaration has ever been made by the Indonesian Government to the depository of those conventions. Consequently, the Republic of Indonesia is not a party of the said conventions.<sup>4</sup>

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## Israel

*Transmitted by a note verbale dated 29 July 1963 of the  
Permanent Mission to the United Nations*

### A. OBSERVATIONS

1. The following material, which has been prepared pursuant to a request of the International Law Commission, is submitted for information only and is without prejudice to the position adopted by the Government of Israel on questions of "Succession" as appears hereafter. Account has also been taken of General Assembly resolution 1765 (XVII) of 20 November 1962, which refers specifically to the views of States which have achieved independence since the Second World War, and to the Report of the Sub-Committee on the Succession of States and Governments (A/CN.4/160), which has been adopted by the International Law Commission.

#### I. ORIGIN OF "SUCCESSION"

2. The origin of "succession" in the case of Israel is the termination of the Mandate for Palestine promulgated by the Council of the League of Nations on 24 July 1922. The Mandate contained no general provisions regarding "succession" in the event of its termination except that, by Article 28, the Mandatory was obliged to "use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the Mandate, including the rights of public servants to pensions or gratuities". As is known, the question of the future government of Palestine was referred to the General Assembly in April 1947 by the Mandatory Government. The General Assembly adopted, on this question, its resolution 181 (II) on 29 November 1947. To that resolution was attached a Plan of Partition with Economic Union. That Plan envisaged an orderly transfer of power and authority from the Mandatory authorities to the Governments of the

<sup>1</sup> De Martens, *Nouveau Recueil Général de Traités*, troisième série, tome VII, p. 266. See also: League of Nations, *Treaty Series*, vol. XI, p. 438.

<sup>2</sup> League of Nations, *Treaty Series*, vol. XXVII, p. 213.

<sup>3</sup> *Ibid.*, vol. CVIII, p. 123.

<sup>4</sup> As indicated by the Government of Indonesia "similar notes have also been sent to several other foreign Embassies in Djakarta concerning the interpretation of article 5 of the Agreement on Transitional Measures of 1949".

two States the creation of which it proposed. That orderly transition would have created a set of reciprocal rights and duties between the Mandatory Government and the successor Governments, and between the successor Governments themselves. See, for example, Part C of the Plan of Partition with Economic Union. However, events took a different turn; the Arabs rejected the plan; the Mandatory refused to implement it; the Arab State never came into existence; and the reciprocal obligations, which would have rested on a treaty basis, were never assumed.

3. There was in fact no systematic transfer of power and authority from either the United Kingdom Government or the Government of Palestine to the Government of Israel, and certain statements made on behalf of the outgoing power were understood, at the time at least, as implying that no orderly transition was being contemplated.<sup>1</sup> This also explains why some time elapsed until diplomatic relations between the United Kingdom and the State of Israel were normalized. The British Government, which had abstained on the vote of General Assembly resolution 181 (II), recognized Israel *de facto* on 29 January 1949, and *de jure* on 27 April 1950 i.e. four weeks after the signing of a Financial Agreement with Israel. This is also relevant to an understanding of the development of the attitude of the Government of Israel towards questions of State succession.

4. Since there was no orderly transfer of power and authority, from the legal point of view there occurred two disconnected actions. The first of these, chronologically speaking, was an Act of the United Kingdom Parliament known as the Palestine Act, 1948.<sup>2</sup> This provided that on 15 May 1948, "the date on which the Mandate will be relinquished, all jurisdiction of His Majesty in Palestine shall terminate, and His Majesty's Government in the United Kingdom shall cease to be responsible for the government of Palestine". This Act gave effect to the British Government's policy which, including the date on which it was to take effect, had been announced on several occasions after the adoption of resolution 181 (II) of 29 November 1947.

5. The second of these disconnected actions, chronologically speaking, was the Declaration on the Establishment of the State of Israel<sup>3</sup> proclaimed, after the adoption of resolution 181 (II), by the members of the Jewish Provisional Council of Government which had been created with the recognition of the U.N. Palestine Committee set up by that resolution. On account of the Jewish Sabbath, the Declaration, dated 14 May 1948, proclaimed that "with effect from the moment of the termination of the Mandate, being tonight, the eve of Sabbath", the State of Israel was established. This Declaration was accompanied by a Proclamation,<sup>4</sup>

<sup>1</sup> See, e.g., statements by the representatives of the United Kingdom, in the *General Assembly* on 3 May 1948 (*Official Records of the General Assembly, Second Session, First Committee, 136th meeting*) and statements made in the House of Commons by the Attorney-General (Parliamentary Debates, House of Commons, vol. 448.)

<sup>2</sup> *British and Foreign State Papers*, 150 (1948), Part I, p. 278.

<sup>3</sup> *Laws of the State of Israel*, authorized translation from the Hebrew (hereinafter cited as "Laws of the State of Israel"), 1 (5708-1948), p. 3.

<sup>4</sup> *Ibid.*, p. 6.

the significant provision of which, for present purposes, was for the continuance in force of the law which existed in Palestine on 14 May 1948, subject to the amendments and repeals therein specified. This in turn was followed on 19 May 1948 by the Law and Administration Ordinance, 5708-1948,<sup>1</sup> with retroactive effect to 15 May, dealing with the governance of Israel. This Law, which has been amended several times since, contains a number of provisions dealing with transition and the assumption of power and the exercise of authority by the Israel Government and its organs, and therefore it is relevant to the topic of "succession". A consolidated text of the relevant provisions of this enactment appears as an Annex to this Memorandum.

6. As stated, the independence of Israel was not immediately followed by either recognition or the establishment of diplomatic relations between Israel and the United Kingdom. However, on 18 May 1949, a few months after recognition *de facto*, the United Kingdom Government proposed formal negotiations with the Government of Israel on "a number of questions arising out of the termination of the United Kingdom Mandate in Palestine which will require detailed discussion between His Majesty's Government and the successor authorities in Palestine". Besides referring to matters such as the public debt, various liabilities of the former Palestine Government and its obligations to public servants, the United Kingdom Government mentioned specifically the following five questions which should be included in the agenda of the proposed negotiations:

- (1) The determination of the proportion of the assets and liabilities in Palestine of the Government of Palestine to be taken over by the successor authorities;
- (2) Certain problems connected with the assets, claims and liabilities in Palestine of H.M. Government in the United Kingdom;
- (3) Certain problems connected with the assets in Palestine of Germans and others whose property was formerly under the care of the Custodian of Enemy Property in Palestine;
- (4) Private claims and property rights in Palestine;
- (5) Treaties and other international agreements binding upon the former Mandatory Government of Palestine.

With regard to the criterion for apportionment, the hope of the United Kingdom Government was expressed that the Government of Israel would be willing to take over the liabilities of the former Palestine Government in the same proportion as they took over the assets of that Government. Finally, apart from any assets and liabilities of the Palestine Government, the United Kingdom Government intimated its willingness to dispose of certain other assets in Palestine which the United Kingdom Government would wish to offer for sale to the Israel Government.

7. The proposed agenda was accepted in principle by the Government of Israel. The negotiations commenced in Israel in the middle of 1949. Difficulties arose on general questions of principle since, having regard to the history of the matter, the Government of Israel could not see its way to commit itself to the view of the British representatives, that there existed a general doctrine of universal succession and that such

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<sup>1</sup> *Laws of the State of Israel*, 1 (5708-1948), p. 7.

a doctrine was automatically applicable to Israel. Particularly relevant, in this connexion, was the absence of orderly and systematic transfer of power and authority prior to the termination of the Mandate as envisaged by the General Assembly in resolution 181 (II). In the circumstances, the negotiations broke down, but were resumed later in London. At the resumed negotiations, the matters were discussed on a pragmatic basis not related to any theoretical issues of succession; and as a result there was signed at London on 30 March 1950 a bilateral Agreement for the Settlement of Financial Matters Outstanding as a Result of the Termination of the Mandate for Palestine.<sup>1</sup> It will be observed that this Agreement deals exclusively with certain financial assets and liabilities in Israel belonging to the former Government of Palestine or the Government of the United Kingdom, and with certain other miscellaneous material assets and liabilities, including those in the hands of the Palestine Custodian of Enemy Property (see paras. 26-28 below).

8. In the light of all the circumstances, the Government of Israel, by 1949, had reached the conclusion that the rules of State succession, at all events as traditionally expounded in the leading textbooks on the subjects, could not have application. It was observed that in the major instances of succession to which reference is normally made, particularly those of the twentieth century, the practical problems had been regulated by appropriate international treaty, being either a Peace Treaty, or a treaty itself forming part of the broader political transaction of which the grant of independence was the central feature; and that the relevant international and national jurisprudence was intimately connected with those international treaties. This factor of agreement was missing in the present case. This development was itself the consequence of a series of political events, in which the absence of orderly transfer of authority from the United Kingdom and the Palestine Governments to the Government of Israel was a phase.

9. That was the position adopted on the political level, and which, in the view of the Government of Israel, prevailed in the negotiations which preceded the Agreement of 30 March 1950. The same view was adopted independently by the Supreme Court of Israel in its two leading decisions on the topic, namely *Shimshon Palestine Portland Cement Factory Ltd. v. the Attorney-General*<sup>2</sup> and *Sifri v. the Attorney-General*.<sup>3</sup>

## II. RATIONE MATERIAE

### (a) *Treaties*

10. The position of the Government of Israel regarding the antecedent treaty obligations incumbent upon the mandated territory of Palestine is set forth in a Memorandum of 24 January 1950 submitted in response to an earlier questionnaire of the International Law Commission.<sup>4</sup> The

<sup>1</sup> United Nations, *Treaty Series*, vol. 86, p. 231.

<sup>2</sup> *International Law Reports*, 17 (1950), p. 72; *Digest of decisions of national courts relating to succession of States and Governments* (hereinafter cited as "*Digest*") (in *Yearbook of the International Law Commission*, 1963, vol. II, p. 95), para. 416.

<sup>3</sup> *International Law Reports*, 17 (1950), p. 92; *Digest*, para. 310.

<sup>4</sup> *Yearbook of the International Law Commission*, 1950, vol. II, p. 206, with particular reference to paras. 19 *et seq.*

position stated in that Memorandum continues to reflect the position of the Government of Israel.

11. The policy there explained, based upon non-recognition by the Government of Israel of any automatic "succession" to the treaty obligations of Palestine, coupled with a willingness to examine that treaty position and to accede *de novo* to such international treaties as were found to be appropriate, whether or not the mandated territory of Palestine was previously bound by them, has not given rise to serious difficulties. It has been applied both to multilateral and to bilateral treaties. For example, in 1951, by an exchange of notes with France, a Franco-British Extradition Treaty of 1876, which (on the basis of the Mandate) had been applicable to Palestine, was provisionally brought into force *mutatis mutandis* as between Israel and France and effect has been given to it by the Courts.<sup>1</sup> Similarly, an Agreement between Israel and the United Kingdom of 10 February 1950 — prior to the Agreement of 30 March 1950 — brings into force as between Israel and the United Kingdom an arrangement originally made in 1947 between the United Kingdom Government and the Government of Palestine for the Avoidance of Double Taxation.<sup>2</sup>

12. Having regard to its own position of principle on the question of "succession" and the law of treaties, the Government of Israel has had no difficulty in accepting the different positions adopted by other new States on the same topic. The Government of Israel is prepared to recognize that some new Governments may wish to regard themselves as bound by the totality of the treaty obligations binding their territories before independence while other Governments may wish to adopt other attitudes.

13. In paragraphs 12 and 13 of the Memorandum of 24 January 1950 reference was made to the problem which could arise from the fact that a domestic law passed in order to give internal effect to an international treaty binding upon Palestine remained on the Statute Book although the international treaty itself was not binding upon Israel. The view was expressed that the disappearance of the international obligations removed the basis upon which the domestic law was operative. A decision of the Supreme Court has since confirmed that full effect may be restored to such a domestic law whenever Israel assumes the international obligations which the domestic law is designed to reflect. This means that

<sup>1</sup> United Nations, *Treaty Series*, vol. 219, pp. 215, 220, 224, 228. This Agreement was renewed from time to time until replaced by a new Extradition Treaty. For judicial decision see *Waskerz v. Attorney-General*, *International Law Reports*, 21 (1954), p. 236.

<sup>2</sup> United Nations, *Treaty Series*, vol. 86, p. 211. See also the exchange of notes of 10 December 1950 regarding the application between the two countries of Article 4 of the Industrial Property Convention of 2 June 1934 in United Nations, *Treaties Series*, vol. 88, p. 211, amended on 25 January 1951, *ibid.*, p. 218. It has to be pointed out that by virtue of the constitutional law of Israel an international agreement is not part of the law of the land except in so far as it has been incorporated in domestic legislation. See United Nations Legislative Series, *Law and practices concerning conclusion of treaties* (ST/LEG/SER.B/3), p. 67 at p. 71. This has been applied of course in litigation arising out of this Agreement. See, for instance, *Association for the Protection of Bondholders v. the Minister of Finance*, *International Law Reports*, 18 (1951), p. 398; *Richuk v. the State of Israel*, to be published in the 1959 volume of the same series.

in principle the operation of those domestic laws becomes suspended during the period in which there is in existence no corresponding international obligation, and that the full effect of the law can be restored by the assumption of the international obligation.<sup>1</sup>

(b) *Nationality*

14. The Israel Nationality Law of 1952<sup>2</sup> was passed by the Knesset on 1 April 1952 and entered into force on 14 July 1952. Palestine nationality had been regulated by the Palestine Citizenship Orders-in-Council, 1925-1942. Bearing in mind the conditions, to be described subsequently (para. 30 below), for the continuity of the law in Israel, some doubts had been expressed whether the Palestine Citizenship Orders-in-Council could, in the interval, be read as legislation governing Israeli nationality.<sup>3</sup> However, these doubts were later set at rest by the Israel Nationality Law which, after it had come into force, formally repealed the Mandatory legislation with effect from 15 May 1948, and provided that any act done by the Israel authorities between 15 May 1948 and 14 July 1952 should be deemed to be valid if it would have been valid had the Nationality Law been in force at the time it was done.

15. With reference to the possible extra-territorial effects of these internal developments in the matter of nationality, this Government is unable to give an overall picture of the positions taken by other legal systems on the question of the effect of the termination of the Mandate and the establishment of Israel in 1948, and the enactment of the Israel Nationality Law in 1952, as regards the nationality status of former Palestine citizens who became Israeli nationals under the Law.<sup>4</sup>

<sup>1</sup> See *Yakimovitz v. Rubashitz*, *International Law Reports*, 23 (1956), p. 471. That case concerned the operation of the Convention on the Execution of Foreign Arbitral Awards of 26 September 1927, which Israel signed in 1951 and ratified in 1952. That Convention had previously been applied to Palestine under Article 19 of the Mandate. See paragraph 8 of the Memorandum of 24 January 1950. The domestic law required a formal announcement by the Government regarding the States in relation to which the Convention was operative. Since no such announcement had been made by the Government of Israel in due form, the Supreme Court, in this case, declined to give effect to the Convention on the internal level. The *Waskerz* case (see footnote 1 on p. 42) provides another instance, where all the necessary domestic requirements imposed by earlier legislation had been met.

<sup>2</sup> United Nations Legislative Series, *Laws concerning nationality* (ST/LEG/SER.B/4), p. 263, and supplement (ST/LEG/SER.B/9), p. 66.

<sup>3</sup> See the following cases: *Goods of Shībris*, *International Law Reports*, 17 (1950), *Digest*, para. 23; *AB v. MB*, *International Law Reports*, 17 (1950), *Digest*, para. 24; *Oseri v. Oseri*, *International Law Reports*, 17 (1950), p. 111, *Digest*, para. 25; and *Hussein v. Governor of Acre Prison*, *International Law Reports*, 17 (1950), p. 112. See also *Naqara v. Minister of the Interior* regarding non-existence of Palestinian nationality after the termination of the Mandate and the effect of the termination of the Mandate on Palestinian passports, *International Law Reports*, 20 (1953), p. 49.

<sup>4</sup> But see *Kletter v. Dulles*, *International Law Reports*, 20 (1953), p. 251. This case also refers to some questions of succession and citizenship with regard to the establishment of the Mandate for Palestine and the Treaty of Lausanne. For previous litigation regarding the same person, and the relationship of Palestine citizenship to United Kingdom nationality, see *The King v. Ketter*, in *Annual Digest and Reports of International Law Cases* (hereinafter cited as "Annual Digest"), 10 (1938-40), case No. 21.

(c) *Public property*

16. The basic principle of the Agreement of 30 March 1950 was that title to property of the Palestine Government in Israel was to pass to the Government of Israel, and that property of the United Kingdom Government in Israel was either to be purchased or to be taken by the Government of Israel, in accordance with the terms of the Agreement. This basic principle is reflected in Section 2 of the State Property Law, 5711-1951, which provides (retroactively) that property of the Palestine authorities situate in Israel is property of the State of Israel as from 15 May 1948. "Property of the Palestine authorities" is defined as including: "(1) all immovable property; (2) all mines and minerals, of whatever kind, situate in or on land or in, on or under water, including rivers, lakes, inland seas and coastal waters; (3) all movable property; (4) all rights, whether vested or contingent, which on 14 May 1948 were held by the Government of Palestine or any of its departments or services, or by the High Commissioner, whether as trustee for the Government of Palestine or otherwise, or by some other functionary of the Government of Palestine in virtue of his office, whether as trustee for the Government of Palestine or any of its departments or services or otherwise than as trustee."<sup>1</sup>

(d) *Concessionary rights*

17. Although the agenda for the negotiations with the United Kingdom Government included the question of concessionary rights, the Agreement of 30 March 1950 makes no reference to them. The Government of Israel continued to respect existing concessionary rights relating to its territory in so far as these had been previously granted or recognized by the Government of Palestine, and in the course of time has proceeded to negotiate with the concessionaires the adaptation of concessionary rights to the new conditions. The reference here is to concessionary rights possessing an international, or at least a general, character as commonly understood, the terms of most of which were incorporated in domestic legislation passed by the Government of Palestine. These must be distinguished from other private law property rights and interests which will be discussed later. This Government has occasionally been approached regarding similar concessionary rights allegedly granted by the Ottoman authorities before 1917, but in the absence of any recognition of those concessions by the Mandatory Government, has declined to deal with them.

(e) *Public debt*

18. Israel assumed responsibility for a share of the public debt of Palestine by virtue of Article 2 of the Agreement of 30 March 1950. By Article 4 of that Agreement the Israel Government became entitled to receive repayments by Municipal Corporations and the like in Israel of loans furnished them by the Government of Palestine and which were a charge on the assets which formed part of the public debt of Palestine, in return for which the Government of Israel assumed responsibility for the discharge of various liabilities likewise occasioned by certain loans floated by the Government of Palestine. By Article 6 of the same Agree-

<sup>1</sup> *Laws of the State of Israel*, 5 (5711-1950/51), p. 45.

ment, the Government of the United Kingdom, while not admitting any liability whatever in respect of claims against the Mandatory Government, undertook to give sympathetic consideration to such claims properly brought by persons who, on 30 March 1950, were resident in Israel, provided that the decision as to whether any particular claim should be paid, the amount of which should be paid in respect thereof, and the manner of payment, should be in the sole discretion of the Government of the United Kingdom. The Agreement also makes provision for the disposal of various funds, including funds held in trust by the Government of Palestine, for local purposes. No difficulty was experienced with regard to those funds intended for use in what subsequently became the territory of Israel. With regard to funds which did not have a defined territorial application, arrangements were made for the apportionment of most of such funds. The Government of Israel also regards this Agreement as conclusive in regard to any claims against Palestine and based upon the former Ottoman public debt.

(f) *Other questions of public law*

19. The most significant other questions of public law which have arisen include the following:

- (a) Public officials;
- (b) Problems arising out of the Second World War and the liquidation of the functions of the Custodian of Enemy Property;
- (c) Miscellaneous financial matters.

(g) *Public officials*

20. The question of pensions and gratuities due to former officials of the Mandatory Government not resident in Israel on 30 March 1950 was regulated by the Government of the United Kingdom. With regard to the pensions and gratuities of officials of the former Mandatory Government resident in Israel, by Article 2 (c) of the Agreement of 30 March 1950, the Government of Israel undertook to pay their pensions up to an amount not exceeding 200,000 Israel Pounds annually, the capitalized value of which was estimated at 2,400,000 pounds Sterling; and by Article 3 of that Agreement the Government of Israel undertook to reimburse the United Kingdom Government in respect of certain payments made by the United Kingdom Government to those officials between 15 May 1948 and 31 May 1950. The implementation of these provisions has given rise to certain difficulties in Israel following various devaluations of the Israel Pound, but these are not, strictly speaking, questions of "succession".<sup>1</sup>

21. The Government of Israel does not regard itself as being under any other obligation towards former officials of the Mandatory Government resident in Israel other than those of a financial character which it has undertaken by virtue of the Agreement of 30 March 1950. By the Palestine Government Employees Ordinance, 5708-1948,<sup>2</sup> every person who on 14 May 1948 was in the service of the Government of Palestine and whose ordinary place of residence was on that date within the territory of Israel, was to serve temporarily in accordance with the

<sup>1</sup> See *Richuk v. State of Israel* (cited).

<sup>2</sup> *Laws of the State of Israel*, 1 (5708-1948), p. 19.



instructions of the Government of Israel unless, before the publication of the Ordinance (3 June 1948), he was otherwise notified. By the Ordinance, the Government was given discretion to terminate the service of any such Government employee or to transfer him to another post within six months of the promulgation of the Law. Special provisions applied to members of the Police Force.<sup>1</sup>

(h) *Problems arising out of the Second World War*

22. As is known, the question whether territories under League of Nations Mandate could formally be a belligerent in a war in which the Mandatory Government was a belligerent has given rise to doctrinal controversy. As far as concerns Palestine, a formal proclamation was issued in the *Palestine Gazette* by the High Commissioner, announcing that "war has broken out between His Majesty and Germany". Similar proclamations were later issued regarding the outbreak of war with Italy, Finland, Hungary, Rumania, Japan, Bulgaria and Thailand.<sup>2</sup> The Peace Treaties of 1946 and 1947 came into force prior to the termination of the Mandate, and notifications regarding the termination of the state of war with Thailand, Italy, Rumania, Bulgaria, Hungary and Finland were likewise promulgated in the *Palestine Gazette*.<sup>3</sup> On 30 April 1948 a formal notice was made regarding the termination of the state of war with Austria as from 16 September 1947, but this was not promulgated in the *Palestine Gazette* although it appeared in a pamphlet of un gazetted legislation to which reference will be made in paragraph 31 below.

23. With regard to Germany, in October 1950 the Government of Israel was officially informed of certain intentions of the Governments of the United States, the United Kingdom and France regarding the Government of the Federal Republic of Germany, and particularly of their intention "to take the necessary steps in their domestic legislation to terminate the state of war with Germany". Those three Governments expressed the hope that the Government of Israel would find it possible to take similar action. Following is the text of the reply of 9 January 1951:

"The Ministry for Foreign Affairs presents its compliments to the British Legation and has the honour to refer to the Legation's Note of 24 October 1950 concerning decisions reached by the Foreign Ministers of the United Kingdom, the United States and France at their meeting in New York in September last.

"The Ministry has particularly noted the decision of the three Governments to take the necessary steps in their domestic legislation to terminate the state of war with Germany, and their affirmation that

<sup>1</sup> For judicial decisions regarding former officials of the Palestine Government see *Sifri v. Attorney-General*, *International Law Reports*, 17 (1950), p. 92; *Bergal v. Schwartzman and Others*, *ibid.*, p. 93; *Albohar v. Attorney-General*, *ibid.*, p. 94; *Digest*, paras. 310, 311, 314 respectively.

<sup>2</sup> See *Palestine Gazette* Extraordinary No. 929, Supplement No. 2, 11 September 1939, p. 807; same, No. 1020, 14 June 1940, p. 793; same, No. 1150, 8 December 1941, p. 1867; same, No. 1151, 9 December 1941, p. 1869; same, No. 1161, 8 January 1942, p. 83; same, No. 1169, 19 February 1942, p. 317.

<sup>3</sup> See *Palestine Gazette* No. 1467, 21 February 1946, p. 179; same, No. 1617, 2 October 1947, p. 1073.

any action by the Occupying Powers as is more particularly described in the said Note in no way prejudices the final peace settlement.

"In the Note the hope was expressed that the Government of Israel if it saw fit, would find it possible to take action similar to that decided upon by the Governments of the United Kingdom, the United States and France, whose view it was that such action would create a firmer foundation for the developing structure of friendly relationships and would remove disabilities to which German nationals were subject. The Ministry for Foreign Affairs desires to inform the British Legation that in the view of the Government of Israel, which has given the matter its most careful consideration, the exceptional circumstances of this country do not warrant action on the lines suggested.

"In bringing the above to the notice of the Legation, the Ministry for Foreign Affairs desires to point out that the Government of Israel reserves fully its rights and position in relation to Germany and its claims against that country."<sup>5</sup>

24. During the Second World War Jewish (and Arab) Palestinians enlisted in the British armed forces and a Jewish Brigade Unit was formed in the British Army and fought against the Germans on the Italian front. The territory of Palestine was subjected on several occasions to air attack by Axis forces, particularly the cities of Tel Aviv and Haifa. For the purposes of the application of the German and Italian Prize Codes (and it is understood for other purposes of "economic warfare") Palestine was treated as enemy territory and Palestinians as enemy subjects<sup>1</sup> and, conversely, by virtue of the United Kingdom Prize Act, 1939<sup>2</sup> the Supreme Court of Palestine was commissioned to act as a Prize Court. It is thus seen that the mandated territory of Palestine was fully integrated into the United Nations war effort, both militarily and economically, and, regardless of theoretical considerations, was regarded by both sides as being belligerent territory. The termination of the Mandate took place before any of the immediate effects of the war had been liquidated. Two matters in particular are relevant to a consideration of the topic of "succession", namely the assumption by Israel of the power to punish Nazi criminals, and the disposal of property held

<sup>1</sup> See, for instance, in the Italian Tribunale delle Prede, *Ministero della Marina c. Palestine Cooperative Wholesale Society (Beatrice C)*, (1941) *Bollettino del Tribunale delle Prede* (1941-5), Parte II, p. 25; *Same c. Anglo-Palestine Bank Ltd.*, (*Beatrice C*), *ibid.*, p. 106; *Same c. Braslawsky (Cilicia)*, (1941), *ibid.*, p. 179; *Same c. Magazinik (Cilicia)*, (1941), *ibid.*, p. 189; *Same c. Meshi Saks (Cilicia)*, (1941), *ibid.*, p. 198; *Same c. Barclays Bank, D.C.O. Tel Aviv (Cilicia)*, (1941), *ibid.*, p. 203; *Same c. Hanau (Cilicia)*, (1941), *ibid.*, p. 207; *Same c. Lichtenstein (Cilicia)*, (1941), *ibid.*, p. 211; *Same c. Goodrich (Cilicia)*, (1941), *ibid.*, 218; *Same c. Palestine Gas Co.*, (*Cilicia*), (1941), p. 223; *Same c. Anglo-Palestine Bank Ltd. (Cilicia)*, (1941), *ibid.*, p. 227; *Same c. The Cultivated Home (Cilicia)*, (1941), *ibid.*, p. 237; *Same c. Glickmann (Cilicia)*, (1941), *ibid.*, p. 242; *Same c. Hereuth, Tel Aviv (Cilicia)*, (1941), *ibid.*, p. 246; *Same c. Rosy (Cilicia)*, (1941), *ibid.*, p. 250; *Same c. Air Liquide, Haifa (Cilicia)* (1941), *ibid.*, p. 255; *Same c. Taya (Cilicia)*, (1941), *ibid.*, p. 269; *Same c. S.C.T.T. Groupages (Cilicia)*, (1941), *ibid.*, p. 272; *Same c. Banca Misrahi (Cilicia)*, (1941), *ibid.*, p. 277; *Same c. Chemo Orient Ltd., Tel Aviv (Cilicia)*, (1941), *ibid.*, p. 285; *Same c. Allern's Bank (Cilicia)*, (1942), *ibid.*, p. 297; *Same c. Anglo-Palestine Bank (Cilicia)*, (1942), *ibid.*, p. 370; With regard to Germany, see *Sammlung des Wehrrechts, Preisordnung und Prisengerichtsordnung* (1942), p. 39.

<sup>2</sup> *British and Foreign State Papers*, 143 (1939), p. 169.

by the Custodian of Enemy Property. In this connection, it might be noted that for certain purposes, legislation of the Federal Republic of Germany also recognizes that Israel, and Israeli nationals, may be regarded as other United Nations as regards special measures dealing with the consequences of the War. See, for instance, Allied High Commission Laws Nos. 54 and 55 of 31 May 1951.

(i) *Nazi criminals*

25. The power to try and punish Nazi criminals was assumed by the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950,<sup>1</sup> and has been applied in several instances.<sup>2</sup> The significant feature of this Law, from the point of view of "succession", is that it assumes power to try and punish these criminals for acts—violations of international law—committed in enemy territory during the period of the Second World War, and even before. The material provisions of the enactment are based upon the London Charter of 8 August 1945, the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. In that Law, the period of the Second World War is defined as beginning on 1 September 1939 (although the United Kingdom only entered the war on 3 September 1939), and ending on 14 August 1945; and enemy country is defined as Germany during the relevant period, any other Axis State during the period of the war between it and the Allied Powers and territory which was *de facto* under the rule of Germany or of any Axis State during the relevant period; and Allied Powers is defined by reference to the signatories of the Washington Declaration of the United Nations of 1 January 1942, or the States which acceded to it during the period of the Second World War.

(j) *Custodian of enemy property*

26. This functionary had been established by the Palestine Trading with the Enemy Ordinance, 1939, which substantially followed the United Kingdom Trading with the Enemy Act, 1939. The termination of the formal state of war with a number of belligerent countries shortly before the termination of the Mandate had not been followed immediately by the liquidation of the functions of the Custodian of Enemy Property as regards those countries, nor indeed had the Mandatory Custodian been able to divest himself of property belonging to nationals or residents of territory occupied by the enemy during the War, and which came within the scope of the Trading with the Enemy legislation. The question of the future of the Custodian of Enemy Property, with particular reference to international obligations assumed by the United Kingdom Government immediately following the unconditional surrender of Germany, was inconclusively discussed in the Palestine Commission set up by virtue of resolution 181 (II). Immediately on the establishment of Israel, an Israeli Custodian of Enemy Property was appointed, the 1939 Ordinance itself remaining unchanged. The Agree-

<sup>1</sup> *Laws of the State of Israel*, 4 (5710-1950/1), p. 154.

<sup>2</sup> See *War Crimes cases (Israel)*, *International Law Reports*, 18 (1951) Case No. 169; the *Eichmann case* (to be published in a future volume of the same series), *Digest*, para. 37.

ment of 30 March 1950 with the United Kingdom deals, in Article 5, with the liquidation of the functions of the Custodian of Enemy Property as regards Allied property, technically enemy, and enemy property as far as concerns those States with which a treaty of peace had already entered into force. Special provisions appear in that Article regarding German property. The functions of the Custodian of Enemy Property with regard to all property except German property were thereafter progressively liquidated, in accordance with the responsibilities which the Government of Israel took upon itself under the Agreement, for the most part on a bilateral, and inter-Custodial, basis. For the sake of completeness, it might be added that no particular problems arose regarding the liquidation of the Custodian of Enemy Property's functions in relation to Japanese property.

27. The position with regard to German property covered by the Trading with the Enemy Ordinance was more complicated. By the German Property Law of 1950,<sup>1</sup> the functions of the Custodian of Enemy Property as regards German property were transferred to the newly appointed Custodian of German Property. On 19 September 1952 an Agreement was signed between Israel and the Federal Republic of Germany by which provision was made for the payment by the Federal Republic of Germany of global recompense in respect of the criminal acts which were perpetrated against the Jewish people during the National-Socialist regime of terror.<sup>2</sup> At the same time, it was agreed that negotiations for the settlement of certain German claims relating to property in Israel which during the War had been sequestered by the Palestine Custodian of Enemy Property would be undertaken. These claims related to German nationals, resident in Palestine, who had been resettled outside the country by the Mandatory Authorities prior to the termination of the Mandate. Those negotiations were completed only by an agreement signed on 1 June 1962.<sup>3</sup>

28. Apart from these questions of administration, the Courts have had to consider generally the effects of the termination of the Mandate on the nature of the functions performed by the Israeli Custodian of Enemy Property. The Court based its decision, in a case concerning Jewish property which during the War was technically alien as belonging to a citizen of one of the German occupied countries, on the change in the very nature of the Custodian's function which followed from the termination of the Mandate, in respect to Jewish owned property which, during the War, had come within the scope of the Trading with the Enemy Ordinance.<sup>4</sup>

<sup>1</sup> *Laws of the State of Israel*, 4 (5710-1950/1), p. 142.

<sup>2</sup> United Nations, *Treaty Series*, vol. 162, p. 205.

<sup>3</sup> *Ibid.*, vol. 448, p. 227.

<sup>4</sup> See *Diamond v. Minister of Finance and Another*, *International Law Reports*, 17 (1950), Case No. 28. And for a curious case of double succession, arising from a claim against the Custodian of German Property based on the non-execution by Germany of an award rendered in 1926 by the Rumanian-German Mixed Arbitral Tribunal established under the Treaty of Versailles, see *Steinberg and Another v. Custodian of German Property*, *International Law Reports*, 24 (1957), p. 771. Subsequently the Custodian of German Property reached an out-of-Court settlement with the claimant in that case.

(k) *Miscellaneous financial matters*

29. By Section 21 of the Law and Administration Ordinance, 5708-1948, all taxes and payments which had not been paid to the Government of Palestine by 14 May 1948 were to be paid to the Government of Israel. In this connection attention is drawn to the case of *Farkas v. Attorney-General*, in which the appellant was convicted, after the termination of the Mandate, for smuggling goods into Palestine before the termination of the Mandate without payment of customs duty.<sup>1</sup> *L. v. Inspector of Income Tax* deals with the collection of income tax due but unpaid before the termination of the Mandate.<sup>2</sup> *Attorney-General v. Levitan* considers the capacity of the Attorney-General of Israel to sue on an executor's bond given in favour of the Attorney-General of Palestine.<sup>3</sup>

(l) *Questions of private law and law in general*

30. Section 11 of the Law and Administration Ordinance, 5709-1948, lays down that the law which existed in Palestine on 14 May 1948 should remain in force in so far as there was nothing therein repugnant to that Ordinance or to the other Laws which might be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as might result from the establishment of the State and its authorities. Section 13 repealed certain sections of the Immigration Ordinance, 1941, and certain regulations of the Defence (Emergency) Regulations, 1945, dealing with what, in the Mandatory period, was regarded as "illegal" Jewish immigration, and laid down that any Jew who, at any time, had entered Palestine in contravention of the laws of the Mandatory Government should, for all intents and purposes, be deemed to be a legal immigrant retroactively from the date of his entry into Palestine. At the same time the Land Transfers Regulations, 1940, were repealed retroactively from 18 May 1939, the date of their enactment, and it was provided that no judgment given on the basis of those Regulations should be a bar to the lodging of a new claim in the same matter. These repeals related specifically to legislation which had been enacted pursuant to the so-called White Paper policy of 1939, the legality of which had been consistently contested by the Jewish Agency for Palestine, the body recognized by Article 4 of the Mandate to represent Jewish interests in the implementation of the Mandate with its emphasis on the establishment of the Jewish National Home. Section 12 of the Ordinance nullified any privileges or special powers granted by the law previously in force to British functionaries as such; Section 14 provided for the devolution of all powers vested by law in the King of England or any of the Secretaries of State or High Commissioner or the Government of Palestine to the Government of Israel and vested powers which the law conferred on British Consuls and the like on similar officials to be appointed by the Government of Israel; and by Section 15 a general amendment was made to substitute "Israel" for "Palestine" wherever appearing in any law.

31. Among the more general problems which are of interest to the topic of "succession" the following may be mentioned:

<sup>1</sup> *Annual Digest*, 16 (1949), Case No. 26, at p. 71.

<sup>2</sup> See *International Law Reports*, 18 (1951), Case No. 28, at p. 67.

<sup>3</sup> *Ibid.*, Case No. 28.

(a) It may be noted that while in the premises the Mandate for Palestine terminated as an international instrument or treaty, it continued to remain in force as part of the law of Israel for certain limited purposes. In the leading case of *Leon and Others v. Gubernik*,<sup>1</sup> the Supreme Court, in one of its earliest decisions, intimated that it was prepared to examine the Mandatory legislation for its consistency with the terms of the Mandate; and in *Ahmed Shauki al-Karbulli v. Minister of Defence* the same Court decided that it regarded itself as being under the duty of examining whether any given antecedent legislation was *ultra vires* as being repugnant to the provisions of the Mandate.<sup>2</sup>

(b) The generality of Section 11 of the Law and Administration Ordinance was based on the assumption, following the general practice of the Mandatory Government and Article 24 of the Mandate, that all legislation, including subsidiary legislation, had been regularly promulgated in the *Palestine Gazette*. Shortly after the termination of the Mandate it transpired that, under special powers assumed by virtue of the Palestine Act, 1948, some legislation had not been promulgated in the *Palestine Gazette* and indeed, so far as was known to the Israel Government, had not been promulgated in Palestine at all. For shortly after the termination of the Mandate there appeared in the United Kingdom a brochure containing the texts of over forty miscellaneous pieces of ungazetted legislation. In order to remove doubts regarding the scope of the application of Section 11, that Section was amended by the Law and Administration Ordinance (Amendment) Law, 5709-1949, to the effect that "an unpublished law has no effect and never had any effect", an unpublished law being defined as a law which, between 29 November 1947 (the date of the adoption of the General Assembly resolution 181 (II)) and 15 May 1948, was not published in the *Palestine Gazette*, despite its being a law of a category publication of which in the *Palestine Gazette* was, immediately prior to that period, obligatory or customary.<sup>3</sup>

32. Among miscellaneous judicial decisions, the following may be mentioned. In *Forer v. Guterman* it was held that an Order in judicial proceedings made by the Privy Council (which was the ultimate court of appeal from the Courts of Palestine during the period of the Mandate) before the termination of the Mandate but which reached the parties in Israel after the termination of the Mandate, was binding on the parties and could be executed in Israel. The Court intimated that the position might have been different had the decision of the Privy Council been given after the termination of the Mandate.<sup>4</sup> In *Tyre Shipping Company Ltd. v. Attorney-General* it was held that, following the repeal of the White Paper legislation, a vessel engaged in the transport of illegal immigrants and which had been confiscated by the Palestine Govern-

<sup>1</sup> *Annual Digest*, 15 (1948), at p. 42.

<sup>2</sup> *Ibid.*, 16 (1949), Case No. 19. For an instance of such examination in which criminal legislation against polygamy was examined in the light of the freedom of conscience provisions of the Mandate, see *Yosipof v. Attorney-General*, *International Law Report*, 1951, Case No. 58.

<sup>3</sup> *Laws of the State of Israel*, 3 (5709-1949), p. 73.

<sup>4</sup> *Annual Digest*, 15 (1948), Case No. 21, *Digest*, para. 68. By Section 2 (1) of the Palestine Act, 1948, appeals from Palestine pending before the Privy Council on the termination of the Mandate abated on the termination of the Mandate.

ment did not on the termination of the Mandate become the property of the Israel Government.<sup>1</sup> In *Feingold v. Administrator-General* it was held that where proceedings had been commenced in 1947 by the Administrator-General of Palestine (the local equivalent of the Public Trustee), but the hearing took place only after the termination of the Mandate, the Administrator-General of Israel was not the substitute or successor of the Administrator-General of Palestine and the action could not be continued.<sup>2</sup> In *Khayat v. Attorney-General* it was held, interpreting Article 7 of the Agreement of 30 March 1950, that the termination of the Mandate did not affect a title in Israel to property which, prior to the termination of the Mandate was owned by the British Army.<sup>3</sup> In *Pales Ltd. v. Ministry of Transport* it was held that the Israel Railways Administration was not bound by a local concession for newspaper kiosks and book-stalls on Haifa Central Railway Station which had been granted to a local firm by a contract dating from 1938 made with the General Manager of the Palestine Railways.<sup>4</sup>

33. With regard to the criminal law, the question which arose in *Katz-Cohen v. the Attorney-General*<sup>5</sup> was whether a person could be tried and convicted by the Israeli Courts in respect of murder or manslaughter committed in Tel Aviv before the termination of the Mandate. The Court held that despite the change of sovereignty the authorities of Israel were entitled to bring the man to trial and that in the circumstances there was no principle of international law to deny continuity of law and continuity of the power to punish in these circumstances. The Court based its conclusion on the nature of the offence charged and not on any general question of "succession". In *Saleh Khalil v. Attorney-General*<sup>6</sup> the rule was extended with regard to an offence which had been committed prior to the termination of the Mandate in a place which came within the jurisdiction of Israel as a result of one of the General Armistice Agreements of 1949. By the General Amnesty Ordinance, 5709-1949, an amnesty was granted to persons undergoing punishment, and pending criminal proceedings were discontinued in respect to offences committed before 10 February 1949.<sup>7</sup> In consequence, there has been no further jurisprudence on this point. However, some other aspects of the administration of criminal law have been decided by the Courts. In *Abu Ras v. Minister of the Interior* it was held that preventive measures taken for political reasons by the authorities of the Palestine Government prior to the termination of the Mandate afforded no ground for depriving an individual of his right of residence in Israel.<sup>8</sup> In *Arar v. Governor of Tel Mond Prison* the applicant had been convicted in 1947 on a charge of murder and had been condemned to death. The sentence had not been carried out by the termination of the Mandate. The applicant escaped from prison and was recaptured and re-impris-

<sup>1</sup> *International Law Reports*, 17 (1950), Case No. 25, *Digest*, paras. 373 *et seq.*

<sup>2</sup> *International Law Reports*, 18 (1951), Case No. 31, *Digest*, para. 371.

<sup>3</sup> *International Law Reports*, 22 (1955), p. 123, *Digest*, para. 369.

<sup>4</sup> *International Law Report*, 22 (1955), p. 113, *Digest*, para. 210.

<sup>5</sup> *International Law Report*, 16 (1949), Case No. 26, *Digest*, paras. 31, 37.

<sup>6</sup> *Annual Digest*, 16 (1949), p. 70.

<sup>7</sup> *Laws of the State of Israel*, 2 (5709-1948/9), p. 115.

<sup>8</sup> See *Piskei Din*, 6 (1952), p. 480. No English translation of this judgment has been published.

oned by the Israel Police, and the President of Israel commuted the sentence to one of fifteen years imprisonment. On an application for an order of *habeas corpus*, on the ground that the continued imprisonment was unlawful, it was held, partly on the basis of certain transitional legislation, that there was nothing unlawful about the continued imprisonment of the applicant.<sup>1</sup> In *Stampfer v. Attorney-General* the Israeli Court exercised jurisdiction with respect to a crime committed on the high seas on a vessel of Israeli nationality. In the course of its judgment the Court had to interpret the United Kingdom Admiralty Offences (Colonial) Act, 1849, which itself only referred to "Colonies". The Court interpreted the word "Colony" as embracing territories under mandate. Since the Act of 1849 had been part of the law in force in Palestine before the termination of the Mandate, it was regarded as part of the law in force in Israel.<sup>2</sup>

### III. RATIONE PERSONAE

34. It follows from the preceding survey that all questions concerning rights and obligations between Israel and the Palestine Government or the United Kingdom Government arising out of "succession" have been regulated on the basis of the Agreement of 30 March 1950. Similar questions have not arisen between Israel and third States, except in so far as that Agreement contains *stipulations pour autrui* relevant to the matter, for instance as regards the Custodian of Enemy Property. As far as individuals are concerned, the matter is regulated exclusively by the internal Law of Israel. In *Shimshon Palestine Portland Cement Factory Ltd. v. the Attorney-General* (previously cited), which related to a claim for customs drawback based on payments made to the Mandatory Government, the Supreme Court drew attention to the necessity of establishing as a preliminary question, in all domestic litigation in which contentions based on "succession" are raised, that the general principles of international law are applicable. In particular it refused to regard as applicable any general questions of international law in litigation between an Israeli citizen and the Israeli Government.

35. In this connection, when, in 1950, Israel accepted the compulsory jurisdiction under Article 36 (2) of the Statute of the International Court of Justice, the jurisdiction was limited, *inter alia*, to disputes "which do not involve a legal title created or conferred by a government or authority other than the Government of the State of Israel or an authority under the jurisdiction of that Government". This limitation has been retained in the second Declaration of 3 October 1956 accepting the compulsory jurisdiction.<sup>3</sup>

### IV. TERRITORIAL EFFECTS

36. Since, as far as is known, the Government of Palestine held no assets and was under no liabilities in third States (other than its assets and liabilities in the United Kingdom), the question has not arisen for the Government of Israel.

<sup>1</sup> *International Law Reports*, 19 (1952), Case No. 30, *Digest*, para. 35.

<sup>2</sup> *International Law Reports*, 23 (1956), p. 284.

<sup>3</sup> For the two Declarations see: United Nations, *Treaty Series*, vol. 108, p. 239 and *ibid.*, vol. 252, p. 301.



## B. LAWS AND DECREES

1. LAW AND ADMINISTRATIVE ORDINANCE  
(AS ON 1 MARCH 1963)<sup>1</sup>

. . .

*Chapter four: The law**Existing law*

11. The Law which existed in Palestine in the 5th Iyar, 5708 (14th May, 1948) shall remain in force, in so far as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

*Unpublished laws*

11A. [As added August 24, 1948]

(a) An unpublished law has no effect and never had any effect.

(b) "Unpublished law", in this section, means a law within the meaning of the Interpretation Ordinance, 1945, which purported to have been enacted during the period between the 16th Kislev, 5708 (29th November, 1947) and the 6th Iyar, 5708 (15th May, 1948) and which was not published in the *Palestine Gazette* despite its being a law of a category publication of which in the *Palestine Gazette* was, immediately prior to that period, obligatory or customary.

*Termination of dependence on Britain*

12. (a) Any privilege granted by law to the British Crown, British officials or British subjects, is hereby declared to be null and void.

(b) Any provision in the law whereunder approval or consent of any of the Secretaries of State of the King of England is required or which imposes a duty to do anything in pursuance of his directions, is hereby declared to be null and void.

(c) Any power assigned by the law to judges, officers or members of the Police Force by reason of their being British, shall henceforth vest in judges, officers or members of the Police Force who are holders of the same office or rank in the State of Israel.

*Repeal of enactments of the White Paper of 1939*

13. (a) Sections 13 to 15 of the Immigration Ordinance, 1941, and regulations 102 to 107C of the Defence (Emergency) Regulations, 1945, are hereby repealed. Any Jew who at any time entered Palestine in contravention of the laws of the Mandatory Government shall, for all intents and purposes, be deemed to be a legal immigrant retroactively from the date of his entry into Palestine.

(b) The Land Transfers Regulations, 1940, are hereby repealed retroactively from the 29th Iyar, 5699 (18th May, 1939). No judgment

<sup>1</sup> Basic Hebrew text in *Iton Rishmi* (Official Gazette), No. 2, 21 May 1948. Subsequent amendments are indicated at their place.

given on the basis of such Regulations shall be a bar to the lodging of a new claim in the same matter.

*Devolution of powers*

14. (a) Any power vested under the law in the King of England or in any of his Secretaries of State, and any power vested under the law in the High Commissioner, the High Commissioner in Council, or the Government of Palestine, shall henceforth vest in the Provisional Government, unless such power has been vested in the Provisional Council of State by any of its Ordinances.

(b) Any power vested under the law in British consuls, British consular officers or British passport control officers, shall henceforth vest in consuls and officers to be appointed for that purpose by the Provisional Government.

*Further adaptations of law*

15. (a) "Palestine", wherever appearing in the law, shall henceforth be read as "Israel".

(b) Any provision in the law requiring the use of the English language is repealed.

*New version*

16. (a) The Minister of Justice may publish in *Reshumot* a draft of a new version of any law which existed in Palestine immediately before the establishment of the State and is still in force in the State. Such a version shall embody all the changes resulting from the establishment of the State and its authorities and all the amendments, changes and additions which occurred in that law, by virtue of legislation, after the establishment of the State.

(b) The Minister of Justice shall establish Advisory Boards of three members, one of whom — the chairman — shall be a judge appointed by the President of the Supreme Court, another the Attorney General or his representative, and the third a representative of the Bar Association or a representative of the Hebrew University.

(c) Within a time determined by the Minister of Justice, by notice published in *Reshumot*, in respect of each draft of a new version, an Advisory Board shall examine the draft version, and submit in writing to the Constitution, Legislation and Juridical Committee of the Knesset its recommendations as to the corrections which in its opinion should be made in order to bring the draft version into conformity with the original law.

(d) The Constitution, Legislation and Juridical Committee of the Knesset shall determine the new version in the light of the recommendations of an Advisory Board, and such version shall come into force on being published in *Reshumot* with the signature of the Minister of Justice.

(e) Upon a new version as aforesaid coming into force it shall become the binding law, and no other version of that law shall thenceforth have effect, and the plea that the new version deviates from the original law shall not be entertained.

(f) Where amendments have been made in a law enacted in the State, the Minister of Justice may publish such law in *Reshumot* in a version embodying all the amendments made therein, and he may, in so doing, remember, divide or combine sections.

*Chapter five: Law courts**Law courts*

17. So long as no new law concerning law courts has been enacted, the law courts existing in the territory of the State shall continue to function within the scope of the powers conferred upon them by law.

*Chapter seven: Transitional provisions**Saving of orders, etc.*

19. (a) Any order, direction, notice, demand, certificate, instrument, authorisation, licence, patent, design, trade mark and any other right or concession, and any debt, obligation or liability made, given or imposed by the High Commissioner, the High Commissioner in Council, the Government of Palestine or its authorities or officers, and which was in force in the territory of the State on the 5th Iyar, 5708 (14th May, 1948), shall continue in force until varied, amended or revoked, unless otherwise provided in any of the Ordinances of the Provisional Council of State.

(b) Regulations, orders, notices and directions published between the 16th Kislev, 5708 (29th November, 1947) and the date of publication of this Ordinance, by the Jewish Agency for Palestine, the General Council (Vaad Leumi) of the Jewish Community in Palestine, the People's Administration, or by any of their departments, in order to secure the maintenance of supplies and essential services or other economic objects, shall continue in force until varied, amended or revoked by or on behalf of the Provisional Council of State.

*Companies, etc.*

20. (a) Any company, partnership or co-operative society which on the 5th Iyar, 5708 (14th May, 1948) was registered in Palestine and which had on that date a registered office or place of business in the territory of the State, shall henceforth be deemed to be registered in the State.

(b) Any company, partnership or co-operative society which on the 5th Iyar, 5708 (14th May, 1948) was registered in Palestine but did not have on that date a registered office or place of business in the territory of the State, may apply for its registration in the State, without payment of fees within three months from the date of publication of this Ordinance.

(c) This section also applies *mutatis mutandis* to societies under the Ottoman Law of Societies, registered business names, and registered ships.

(d) The Minister of Justice shall make regulations for the implementation of this section.

*Payment of taxes, etc.*

21. The taxes and payments of every kind whatsoever which had not been paid to the Government of Palestine by the 5th Iyar, 5708 (14th May, 1948) shall be paid to the Provisional Government.

*Title*

22. This Ordinance may be cited as the "Law and Administration Ordinance, 5708-1949".

*Commencement*

23. This Ordinance shall have effect retroactively as from the eve of the Sabbath, 6th Iyar, 5708 (15th May, 1948) and its provisions amplify and interpret the provisions of the Proclamation of the Provisional Council of State of the 5th Iyar, 5708 (14th May, 1948).

David BEN-GURION

*Prime Minister*

Felix ROSENBLUETH

*Minister of Justice*

10th Iyar, 5708 (19th May, 1948)

2. LAW AND ADMINISTRATION (FURTHER PROVISIONS)  
ORDINANCE NO. 13 OF 5708-1948<sup>1</sup>

The Provisional Council of State hereby enacts as follows:

*Additional powers of Prime Minister and Ministers*

1. The Prime Minister or any Minister may assume any power which the laws within his scope of authority vest in certain officers for the purpose of their implementation.

*Construction of laws*

2. For the removal of doubts it is hereby declared:

(a) where any law enacted by or on behalf of the Provisional Council of State is repugnant to any law which was in force in Palestine on the 5th Iyar, 5708 (14th May, 1948), the earlier law shall be deemed to be repealed or amended even if the new law contains no express repeal or amendment of the earlier law.

(b) Where any law enacted by or on behalf of the Provisional Council of State amends a law which was in force in Palestine on the 5th Iyar, 5708 (14th May, 1948), or is in any way related to such a law, the new law shall be construed as one with the earlier law, even where the earlier law and the new law use different expressions for the same concept.

*Validation of Ordinances*

3. Ordinances of the Provisional Council of State signed by the Prime Minister prior to his election and by a Minister prior to the determination of his functions are hereby validated retroactively.

*Validation of Defence Army Ordinance*

4. The Defence Army of Israel Ordinance, 5708-1948, is hereby validated retroactively as if it were an Ordinance of the Provisional Council of State.

<sup>1</sup> Published in the *Official Gazette*, No. 13 of the 30th Sivan 5708 (7th July, 1948).

*Validation of acts of Prime Minister and Ministers*

5. Acts done by the Prime Minister and by Ministers prior to the conferment of their powers by the Provisional Government are hereby given effect retroactively.

*Acts of officers*

6. No act done by any judge, police officer, government officer or competent authority shall be invalidated on the ground that it was done by him before he was appointed in accordance with the law or before he received authority to do such act.

*Application of Ordinances*

7. Sections 3, 5 and 6 of this Ordinance apply to Ordinances signed and acts done between the 6th Iyar, 5708 (15th May, 1948) and the date of the coming into force of this Ordinance.

*Title*

8. This Ordinance may be cited as the "Law and Administration (Further Provisions) Ordinance, 5708-1948".

DAVID BEN-GURION  
*Prime Minister*

FELIX ROSENBLUETH  
*Minister of Justice*

24th Sivan, 5708 (1st July, 1948)

## Japan

*Transmitted by a note verbale dated 15 June 1964 of the Permanent Mission to the United Nations*

### A. TREATIES

#### (a) MULTILATERAL INSTRUMENTS

TREATY OF PEACE WITH JAPAN. SIGNED AT SAN FRANCISCO,  
ON 8 SEPTEMBER 1951<sup>1</sup>

. . .

#### *Article 2*

(a) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.

(b) Japan renounces all right, title and claim to Formosa and the Pescadores.

. . .

#### *Article 4*

(a) Subject to the provisions of paragraph (b) of this Article, the disposition of property of Japan and of its nationals in the areas referred to

<sup>1</sup> United Nations, *Treaty Series*, vol. 136, p. 45. Came into force initially on 28 April 1952.