

3. Conventions and agreements, or other international contracts which do not fall within the scope of treaties, may be entered into by the Government with the authorization of the King as Head of the executive authority, without the prior approval of Parliament. If, however, those international contracts involve any financial obligations, then it becomes mandatory to present them to Parliament for consent, and they are subject to the same conditions as treaties.

41. Ireland

CONSTITUTION OF 1 JULY 1937. TEXT PUBLISHED BY THE GOVERNMENT SALES OFFICE, DUBLIN 1945

Article 29. ...

4. (1) The executive power of the State in, or in connexion with, its external relations shall, in accordance with article 28 of this Constitution,¹ be exercised by, or on the authority of, the Government.

(2) For the purpose of the exercise of any executive function of the State in, or in connexion with, its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail itself of, or adopt, any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.

5. (1) Every international agreement to which the State becomes a party shall be laid before Dáil Éireann.²

(2) The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann.

(3) This section shall not apply to agreements or conventions of a technical or administrative character.

6. No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.³

42. Israel

MEMORANDUM OF 11 MARCH 1951 FROM THE GOVERNMENT OF ISRAEL

1. The situation in Israel is at present characterized by the absence of clear and specific provisions of a legislative character. The Legislative Assembly, the Knesseth, was originally elected in 1949 as a Constituent Assembly, but after lengthy discussion it decided, in the middle of 1950, not to proceed with the adoption of a full constitution and instead to concentrate on the writing of a number of fundamental laws which, in the course of time, would become the formal constitution of the country. Until such laws are adopted the constitutional framework is provided

¹ Article 28 specifies the powers and duties of the various organs of Government.

² House of Representatives.

³ National Parliament (Dáil Éireann and Seanad Éireann).

by the following two enactments, namely: the Law and Administration Ordinance, No. 1, of the year 5708-1948 as subsequently amended, and the Transition Law, 5709-1949, as subsequently amended. Translations into English of these laws are attached to this Note.¹ The main purpose of these two sets of enactments is to provide the legal framework, from the point of view of the domestic law, for the transfer of authority and governmental powers from the former Mandatory Government to the Provisional Government of Israel which was in office from May 1948 until February 1949; and thence from the Provisional Government of Israel to the regular Government of Israel, which was first constituted in February 1949 after the general elections to the first Knesseth. Except for dealing with this transfer of authority, these enactments scarcely touched upon the substantive law, which broadly speaking remains today as it was on 14 May 1948, that is to say, the last day of the Mandatory regime.

2. This indeed is specifically stipulated in section 11 of the Law and Administration Ordinance, which provides:

“The Law which existed in Palestine on the 5th day of Iyar, 5708 (14 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.”

Having regard for this stipulation it follows that, no further enactment on the subject having been passed since the establishment of the State of Israel, the law and practice regarding the negotiation and conclusion of treaties and other international agreements is still today fundamentally what it was in the days of the Mandate with, however, such consequential modifications of those rules and practices, if any, which, while appropriate to a regime of dependence, are incompatible with the sovereignty of an independent State. These modifications are mainly in the nature of constitutional practices inseparable from the institution of an elected legislature to which the Government is responsible, which has taken the place of the Crown Colony type of government, without any legislative assembly, by which the country was governed in the period of the Mandate.

3. The Government of Israel is obviously not in a position to speak with authority on the practice of the Mandatory Government, and the remarks which follow are therefore based on its interpretation of the Mandatory Law: even less is it possible for the Government of Israel to describe the customary practice or usages of the Mandatory Government in this respect. The relevance of this aspect is due to the fact that in so far as the Mandatory Government's practice was based on law that law is still for the most part in force. Under article 12 of the Mandate the Mandatory, that is to say, His Britannic Majesty (in accordance with the fourth recital in the Preamble to the Mandate), was entrusted with the control of the foreign relations of Palestine, and this provision, together with articles 10, 18, 19 and 20 of the Mandate, conferred some degree of treaty-making power upon the Mandatory acting for Palestine; and in the sole case envisaged in the second paragraph of article 18, a very

¹ Not reproduced.

limited treaty-making power was conferred upon the Administration of Palestine itself acting on the advice of the Mandatory. The basic constitutional law during the period of the Mandate was contained in the Palestine Order-in-Council of 1922 as amended. The person appointed by the British Sovereign to administer the Government of Palestine was known as the High Commissioner. The Palestine Order-in-Council of 1922 did not specifically refer to the conclusion of international treaties. It was not strictly necessary for it to do so because, as has been seen, under the Mandate the treaty-making power was conferred principally upon the Mandatory and not upon the High Commissioner, and the Palestine Order-in-Council was concerned with the domestic provisions regulating the Government of Palestine. The jurisdiction of the British Sovereign in Palestine was governed by the Foreign Jurisdiction Act, 1890, the purpose of which was described in its Preamble in the following terms:

“Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty’s jurisdiction out of Her dominions:”

The extent of this jurisdiction in those foreign countries which come within the scope of the Act is defined by section 1 which provides:

“It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.”

It will be observed that this Act, too, is not specific on the question of the conclusion of international treaties, but it is assumed that this was implicit, as being part of the Royal Prerogative.

4. The further stipulation which is believed to be relevant to the Mandatory practice is section 46 of the Palestine Order-in-Council of 1922 which described the law to be applied by the civil courts of Palestine. Broadly speaking this provided that, subject to any written local law relevant to the subject, the jurisdiction of the civil courts shall be exercised in conformity with the substance of the common law and the doctrines of equity in force in England so far as the circumstances of Palestine and its inhabitants and the limits of His Majesty’s jurisdiction permit, and subject to such qualifications as local circumstances render necessary.

5. The consequence of the foregoing is that the treaty-making power in the time of the Mandate was exercisable in accordance with the treaty-making power of the British Sovereign in territories which the British Sovereign acquired by treaty, capitulation, grant, usage, sufferance and other lawful means, or alternatively—if it was possible for the matter to come before the civil courts—in accordance with the English common law. In point of fact, this means that the treaty-making power was, so far as concerns the domestic law, to all intents vested exclusively in the British Sovereign or in the High Commissioner of Palestine subject, from the point of view of international law, only to the limitations imposed by the Mandate. This aspect has been described more fully in this Ministry’s Note of 24 January 1950 published in A/CN.4/19, particularly at pp. 30-36.

6. This situation was retained in force during the regime of the Provisional Government of Israel, by operation of section 11 of the Law and Administration Ordinance above quoted. These substantive rules were supplemented by section 14 of this Ordinance which provided for the devolution of powers from the various British authorities which formerly exercised them to the Provisional Government, and this included the general treaty-making power, whether vested in the King or the High Commissioner. This devolution of powers to the Provisional Government was subject to a reservation in case the State Provisional Council provided otherwise in an Ordinance, but in regard to the matters which are here being discussed no such Ordinance has been passed. The powers thus vested in the Provisional Government were, by section 12 of the Transition Law, 5709-1949, later vested in the Government of Israel, and this is the position currently in force.

7. The authority which in this way is vested exclusively in the Government of Israel extends not only to negotiating and signing international treaties, whether or not they are subject to ratification. It also includes ratifying international treaties requiring ratification as well as acceding to existing multilateral conventions where the act of accession suffices to make the convention definitively binding upon the acceding State. Moreover, in strict law the Government's power is exercisable without the interposition of parliamentary consent. However, a measure of general parliamentary control exists by virtue of section 11 of the Transition Law, 5709-1949, which enables the Knesseth to express its lack of confidence in the Government. On one or two occasions, notably in connection with the signing of the Armistice Agreements with various of the Arab States, the Government's exercise of its treaty-making powers has been brought up for parliamentary discussion in this way.

8. As far as concerns the manner in which the Government uses its powers, reference should be made to section 2 (*d*) of the Law and Administration Ordinance, 5708-1948, as read together with section 12 of the Transition Law, 5709-1949. Decisions concerning the use of the treaty-making power are taken by the Cabinet as a whole, and the execution of these decisions is the responsibility of the Minister for Foreign Affairs. If the document to give effect to the Government's decisions requires the signature of the President, such document has to bear the attesting signature of the Minister for Foreign Affairs.

9. The President's functions in connection with the exercise of the treaty-making power are governed by section 6 of the Transition Law, 5709-1949, under which "the President of the State shall sign treaties with foreign States which have been ratified by the Knesseth". This means that when in fact the Knesseth has expressed its approval to the ratification of the treaty, the act of ratification will be signed by the President. In other cases the act of ratification may be signed by the President, or by the Foreign Minister. Section 7 of the said Law provides for the attesting signature of the Head of the Government or such other Minister as the Government may determine to all official documents signed by the President. By a decision of the Government dated 17 April 1949, published in the State Records, Public Notices, No. 13 of 3 May 1949 at p. 248, the Government formally decided that documents relating to treaties ratified by the Knesseth and requiring to be signed by the President shall bear the attesting signature of the Minister for Foreign Affairs. It is to

be observed that this provision is one relating to the powers of the President. It does not import any modification in the general law about treaty-making or about the authority of the Knesseth to ratify treaties. This aspect is not regulated by any law passed by the Israel Legislature and therefore remains as described above.

10. In accordance with what is understood to be British constitutional usage, and in line with decisions of the courts of the Mandatory period, the provisions of international treaties do not become executory from the point of view of domestic law by the mere fact that the acts necessary to make the instrument binding from the point of view of international law have been duly performed. If the international convention is intended to introduce changes into the domestic legislation, or requires such changes for its effective implementation, these changes can only be effected by means of a domestic law passed in the normal way. Judicial decisions such as *Jamal Eff. Husseini v. Government of Palestine* (1 *Palestine Law Reports*, 50) and *Jerusalem-Jaffa District Governor and another v. Suleiman Murra and others*, *ibid.*, p. 71, have been more fully described on pp. 41-42 of document A/CN.4/19, to which reference should here be made. Having regard for this, it has been the practice of the Government of Israel not to exercise its powers of ratification until it is certain that parliamentary authority for the domestic law will be forthcoming. This constitutional practice was established in connection with the passage of the Crime of Genocide (Prevention and Punishment) Law, 5710-1950.

In his speech introducing the first reading of the Bill, on 26 December 1949, the Minister of Justice made it clear that the Government intended to deposit its instrument of ratification after the Knesseth had adopted the necessary law. See *Divrei Haknesseth* (Official record of the proceedings in the Knesseth), vol. 3, p. 315. The absence of clarity as to the provisions of the law concerning the exercise of treaty-making power by the Government occasioned some surprise in the public's mind, and as a matter of fact on 28 December 1949 the Knesseth adopted a resolution of which the following is a translation:

"The Knesseth decides that the Convention on the Prevention and Punishment of the Crime of Genocide which was signed by the representative of Israel on 17 August 1949 shall be ratified. The instrument of ratification shall be deposited with the Secretary-General of the United Nations in accordance with the provisions of the said Convention."

But such a resolution did not have the effect of changing the law about the exercise of treaty-making powers. The constitutional precedent of suspending the ratification until the domestic law has been brought into conformity with the terms of the treaty has been followed in other cases.

11. The position can therefore be summarized in the following way:

(a) The legal power to negotiate, sign and ratify international treaties on behalf of Israel is vested exclusively in the Government of Israel and is in the charge of the Minister for Foreign Affairs;

(b) Where the Knesseth has given its approval to the ratification of the treaty, the act of ratification is signed by the President of the State;

(c) Where the President of the State performs acts connected with the treaty-making power, the documents have to bear the attesting signature of the Minister for Foreign Affairs acting on behalf and under the authority of the Government;

(d) General parliamentary control over the actions of the Government in the sphere of treaty-making power is exercised by means of the procedure of proposing motions of non-confidence;

(e) If the international treaty necessitates changes in the domestic law, the Government will not normally ratify the treaty until it is appraised of the attitude of the Knesseth.

43. Italy

CONSTITUTION OF 1 JANUARY 1948. TEXT SUPPLIED BY THE ITALIAN OBSERVER TO THE UNITED NATIONS. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

Article 80. The Chambers shall authorize by legislative enactment the ratification of international treaties which are of a political nature, or which provide for arbitration or judicial settlement, or which entail territorial changes or financial burdens or modifications of the laws.

44. Japan

(a) NOTE BY THE CHIEF OF DIPLOMATIC SECTION OF GENERAL HEAD-QUARTERS, SUPREME COMMANDER FOR THE ALLIED POWERS

Post-surrender directives of the Supreme Commander prevent, until such time as Japan regains its status as a sovereign nation, the conclusion by Japan of international agreements which have, in general, been concluded by the Supreme Commander on behalf of Japan. As a result rules and regulations have not yet been formulated for the implementation of the provisions of the Constitution appropriate to the negotiation and conclusion of treaties.

(b) CONSTITUTION OF 3 MAY 1947. TEXT SUPPLIED BY THE CHIEF OF DIPLOMATIC SECTION OF GENERAL HEADQUARTERS, SUPREME COMMANDER FOR THE ALLIED POWERS

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of State on behalf of the people:
Promulgation of amendments of the Constitution, laws, cabinet orders and treaties.

Attestation ... of full powers and credentials of Ambassadors and Ministers.

Attestation of instruments of ratification and other diplomatic documents as provided by law; receiving foreign Ambassadors and Ministers.

Article 61. The second paragraph of the preceding article¹ applies also to the Diet approval² required for the conclusion of treaties.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet...

¹ Being article 60, which prescribes the procedure to be followed when there is a disagreement between the two Houses of the Diet.

² See article 73, quoted below.