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RECAP

The Legal Status of Israeli-Zionist Fundraising in the U.S.A.

A Lawsuit

Prepared by Abdeen M. Jabara

The Legal Status of Israeli-Zionist Fundraising in the USA: A Lawsuit

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by
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Palestine Research Center
Beirut

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Preface

The following is the text of a lawsuit brought by a number of US taxpayers against the Secretary of the Treasury of the United States and the Commissioner of Internal Revenue, Internal Revenue Service, Washington, D.C. The lawsuit has been prepared by Abdeen M. Jabara of Lafferty, Reosti, Jabara, Papakhian and James, along with Michael Fayyad.

The point of legal controversy is that certain Jewish fund-raising organizations in the USA, by incorrectly describing themselves as charitable, are being illegally exempt from taxation. Tax exempt status in the USA is granted to those organizations whose funds are to be used solely for charitable purposes, and the plaintiffs in this case allege and seek to prove that the funds raised by certain Jewish organizations in the USA are being used for *political* purposes by the Jewish Agency, an agent of the State of Israel. In fact, such contributions made by US taxpayers have a destination far from the humanitarian, non-political and charitable one alleged by these organizations. Abdeen M. Jabara gives well-substantiated and documented proof that such contributions are being used politically to further discrimination, aid oppression and perpetuate many of the sufferings which charities are usually expected to alleviate.

Fundraising is an important part of Zionist activities. The Jewish National Fund, drawing its financial resources from contributions, was established as far back as 1901, its purpose being to acquire land in Palestine for the coming Jewish state. We therefore feel that publication of this lawsuit will clarify the role played by fundraising in the Zionist enterprise, and will at the same time reveal to hitherto uninformed subscribers in the US the real destination of their subscriptions.

PALESTINE RESEARCH CENTER

UNITED STATES OF AMERICA
IN THE DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORMAN F. DACEY, PROFESSOR IBRAHIM ABU LUGHOD, PROFESSOR NORTON MEZVINSKY, PROFESSOR HISHAM SHARABI, PROFESSOR EDWIN M. WRIGHT, REV. L. HUMPHREY WALZ, Representative MICHAEL K. ROSS, and all others similarly situated who are represented by the above-named persons,

Plaintiffs,

V.

GEORGE SCHULTZ, as Secretary of the Treasury of the United States, Department of the Treasury, Washington, D.C., and JOHNNIE M. WALTERS, as Commissioner of Internal Revenue, Internal Revenue Service, Washington, D.C.,

Defendants.

Abdeen M. Jabara
LAFFERTY, REOSTI, JABARA, PAPAKHIAN & JAMES
Attorneys for Plaintiffs
Detroit, Michigan

PART 1

STATEMENT OF FACTS

I. EARLY YEARS—FROM CREATION* TO ISRAELI STATEHOOD

A knowledge of the historical purposes and development of the World Zionist Organization/Jewish Agency (hereinafter referred to as "WZO/JA"), is necessary for an understanding of its present activities, purposes and goals. This can be gained from analysis of the organization's own publications and the various charters and laws applicable to it.

The World Zionist Organization and the Jewish Agency (also "Jewish Agency for Palestine") are one and the same organization,[1] sometimes called by one name and sometimes called by the other. World Zionist Organization is the original name of the organization, the Jewish Agency denomination was added by the Mandate given to Britain over Palestine in 1920, discussed in detail *infra*.

* Of World Zionist Organization/Jewish Agency.

1. *Zionism, The Force of Change*. The World Zionist Organization Information Department, Jerusalem, 1968. The text of this book begins, "The World Zionist Organization of which the Jewish Agency is the Executive arm,...". See also the WZO-Jewish Agency Status Law, which is discussed in Part II herein, and a copy of which is reproduced in the Addendum to this Brief: Section Three of the Status Law begins, "The World Zionist Organization, which is also the Jewish Agency,..." and see the "Covenant between the Government of Israel and the Zionist Executive called also the Executive of the Jewish Agency" also discussed *infra* in Part II and reproduced in the Addendum.

A. First Twenty Years.

As its name implies, the World Zionist Organization was founded with a political and ideological, not charitable, goal. In presenting its history,[2] the WZO/JA describes it thus:

> The World Zionist Organization was founded in 1897 as the First Zionist Congress in Basle. Its aim was defined in the "Basle Programme" as being "the establishment of a national home for the Jewish people in Palestine, secured by public law."[3]

The WZO/JA sums up its activities in the period between its beginnings and the emergence of the State of Israel as political nation-building[4]:

> The World Zionist Organization played a decisive historical role in rallying the Jewish people and in preparing Eretz Israel[5] for Jewish national independence and the establishment of the State.

According to the WZO/JA, the period of the first five (5) Zionist Congresses (1897, 1898, 1899, 1900, 1901) was a time when the Congress "served as a parliamentary forum on which basic problems on organizing the Jewish people and creating its first organs were discussed. ... Stress was laid in particular on the outward form of the movements and on political statements."[6]

The period between 1901 and 1917 was one of both "practical" (actual immigration and settlement in Palestine) and

2. *Zionism, The Force of Change, supra,* at p. 5.

3. In the words of *Zionism, The Force of Change,* p. 6, "The Supreme organ of the World Zionist Organization, hence also of the Jewish Agency, is the Zionist Congress." The Congress elects the Executive and the Zionist General Council. For details of the organizational structure of the WZO/JA, see *infra,* Part II, Section D.

4. *Zionism, The Force of Change, supra,* at 5.

5. "Eretz Israel" is a Biblical term for Palestine, meaning "the Land of Israel".

6. *Zionism, The Force of Change, supra,* at 13.

"political" (efforts to obtain a charter from Turkey authorizing a Jewish national home in Palestine) Zionist activities.[7] Also, the World Zionist Organization began its defense operations in Palestine at this early stage[8]:

> In 1909, the "Hashomer" organization was established as a framework for the efforts of the young chalutzim[9] to take over guard duties in the Jewish settlements in the country. They formed the nucleus of the Jewish defense movement in Eretz Israel.

Later the defense movement financed by the WZO/JA would become the Haganah, the army of the shadow government of Israel. (See *infra,* Section C.)

B. Balfour Declaration

In 1917 the World Zionist Organization started a new phase with the Balfour Declaration, made by the British Government at the urging of the Zionists. The Declaration was signed during World War I when a British capture of Palestine from Turkey was expected. The Declaration, in full, is as follows:

> His Majesty's Government views with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.[10]

The Balfour Declaration was a political promise to the Zionists to establish a national Jewish home in Palestine. It also contained

7. *Ibid,* at 26–28.
8. *Ibid,* at 28.
9. "Chalutzim" means young farmers or settlers.
10. *Zionism, The Force of Change, supra,* at 55.

safeguard clauses for the protection of Jews outside Palestinc and Arabs in Palestine. These safeguard clauses were strongly objected to by the Zionists.[11]

C. British Mandate

After World War I the victorious allied powers met at San Remo in 1920 to decide the fate of countries captured during the war. The Zionists demanded that the League of Nations be given sovereignty over Palestine and Britain be given a mandate over Palestine which included the Balfour Declaration. These demands of the Zionists were met. The Preamble to the Mandate incorporated the Balfour Declaration.

Article 4 of the Mandate gave birth to the Jewish Agency:

> 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.[13]

The World Zionist Organization was thus recognized as the

11.Chaim Weizmann, *Trial and Error: The Autobiography of Chaim Weizmann,* 260 (East and West Library, 1950). Dr. Weizmann was the principal Zionist negotiator with the British. He was the second president of the World Zionist Organization and later the first president of Israel.

12.*Zionism, The Force of Change , supra,* at 29.

13.Preamble to Anglo-American Convention on Palestine, 44 Stat. 2184 (1925). See also Stoyanovsky, *The Mandate for Palestine* 355 (1928).

Jewish agency for Palestine set up by the Mandate to "co-operate" with the British in governing and overseeing Jewish colonization of Palestine. Since the Mandate, the terms "World Zionist Organization" and "Jewish Agency" and "Jewish Agency for Palestine" have been names for the same body. Although the term "agency" in "Jewish agency" was in lower case in the Mandate wherever it appeared[14], the Zionist Organization used it with capital A as a proper name for itself.

For a short period of time the Jewish Agency was expanded as the Mandate provided to include, in appearance, non-Zionist participation. According to the WZO/JA[15], there had been "protracted deliberations" among the Zionists over whether to enlarge the Agency; but it was decided to expand because it was politically and practically expedient—perhaps the Zionists "could gain the collaboration of the whole people in the national enterprise through the enlarged Jewish Agency," and "[the] cooperation of non-Zionist organizations in the Jewish Agency would also lead to an enlargement of the financial means at the disposal of the Movement."

The founding conference of this expanded Jewish Agency was held in 1929 at a meeting of representatives of the World Zionist Organization and individual non-Zionists. The British government recognized the expanded agency as the "Jewish agency" referred to in the Mandate.[16]

The constitution of the expanded Jewish Agency actually made non-Zionist participation unlikely, which is what then

14.Mandate, Art. 4, 6, 11.

15.*Zionism, The Force of Change, supra,* at 29.

16.*Idem.*

17.Constitution of the Expanded Jewish Agency, Sec. 5 (3), which provided, inter alia, that "The non-Zionists of various countries entitled to representation on the Council shall appoint their representatives in such manner as may appear in each case to be best suited to local conditions." The non-Zionist bodies of the various countries were not identified in the constitution. The members of the Council were to appoint the members of the other two governing bodies, the Committee and the Executive. The Council was the supreme governing body.

occurred. The President of the expanded agency was the President of the World Zionist Organization. The Zionists and non-Zionists were each to appoint one-half of the membership of three governing organs. The Zionists were appointed by the WZO; but the non-Zionists had no such organization to appoint them, since they were individuals, not organizations or representatives of organizations. Any vacancies not filled by non-Zionists were to be filled by the WZO. Since the WZO already had half the members of the governing bodies, any non-Zionist vacancies filled by it would result in control of the agency being held by the WZO.

The Executive of the expanded Jewish Agency never had a full quota of non-Zionist members.[18] Furthermore, members and officers of Zionist Organizations were appointed to fill vacancies in the "non-Zionist" positions.[19] Eventually the WZO simply resumed its identity as the Jewish Agency. By 1943 when the Jewish Agency registered as a foreign agent with the United States Government, it declared under oath that "the Jewish Agency Executive is elected by the Zionist Congress".[20]

During the Mandate period the WZO/JA was a shadow government for the Yishuv, the Zionist settlers or colonizing community in Palestine:

> The Jewish Agency acted as the "Government Under Way" which prepared the tools for the establishment of the Jewish State in Eretz Israel. During this period the Yishuv in the

18.Dr. Maurice Karpf, at the time a non-Zionist member of the Expanded Jewish Agency, wrote in 1938 in "Partition of Palestine and its Consequences," *Jewish Social Service Quarterly,* Vol. XIV, No. 3, that "In the Executive, the non-Zionists never had their full quota...The Constitution of the Agency... [was] so loosely drawn that it is possible for Zionists to be appointed, or elected, to the agency as non-Zionists. ... [A] great many...members and officers of the Zionist organizations in their respective countries...were appointed to the Agency as non-Zionists [and] whenever a question of principle arises ...naturally vote with the Zionists, so the non-Zionists are always outvoted."

19.*Idem.*

20.Exhibit C of Registration Statement.

country was organized as a "State within a State" and created the instruments which in the end led to independence. The Jewish Agency played the role of a sort of Government of the Yishuv in the country and, in certain measure, of the whole Jewish people[there]. It set up various departments: for Labour, Industry, Settlement etc., by which the Jewish national economy was created and strengthened; it organized aliyah (legal and "illegal"), initiated the "Youth Aliyah" enterprise; maintained an active Political Department which represented the Yishuv before the British authorities and the nations of the world, looked after the security of the Yishuv and led the political struggle that brought about the establishment of the State.[21]

The Agency also worked to strengthen its military position in the newly-colonized areas:

> Isolated and barren areas had to be populated with a minimum of delay to create positions of strength which could not be ignored when the decision on the political status of Palestine was taken and the frontiers were marked. New villages were made in almost military fashion—prefabricated huts, a watchtower, a stockade and tents were transported at night and put in place with the help of hundreds of volunteers. By the next morning, the new village could fend off attacks.[22]

The WZO/JA also set up an underground army, the Haganah, for self-defense against the Arabs who resented the ongoing Zionist takeover of their land and to aid in illegal immigration when immigration was limited by the British government.[23]

During World War II, according to the WZO/JA, "tens of thousands of members of the Haganah, not in uniform, were

21. *Zionism, The Force of Change, supra,* at 31.
22. "The Jewish Agency for Israel," *Israel Today,* No. 16, Jerusalem, April, 1966.
23. See *Ibid,* at 12–13.

given training in preparation for the threatened Nazi invasion of the country; units of the Palmach, the Haganah striking force, actively collaborated at a certain time with the British Army..."[24] The Haganah also worked against the British Government when, after the War, the British attempted to restrict immigration:

> But the Jewish people refused to acquiesce in the closing of the country's gates. The emissaries of the Haganah, in collaboration with the soldiers of the Jewish Brigade, set up an organization for the large-scale transfer of Jews to Palestine.[25]

Extensive WZO opposition to the British rule occurred:

> The implementation of the White Paper Policy,[26] the callous treatment of the DP's, the searches by British police and military forces in Eretz Israel for "illegal" immigrants while imposing lengthy curfew on towns and settlements, led the Yishuv [Zionist settlers in Palestine] to declare a state of disobedience against the Mandatory Government. In addition to mass demonstrations and the ending of collaboration with the authorities in various fields of activity, the disobedience found expression in various activities of a military nature carried out by Palmach units [Haganah striking force], which reached a head in the liberation of hundreds of "illegal" immigrants from the detention camp at Athlit, and in other operations which disrupted communications. In addition to *Haganah operations carried out in accordance with the policy outlined by the national institutions,* various sabotage activities against the British security forces were carried out by the

24.*Zionism, The Force of Change, supra,* at 36.

25.*Ibid,* at 38.

26.The British Government's "new" policy for Palestine, May 17, 1929, aiming at establishing an independent Palestine State with one-third ($^1/_3$) Jewish population and limiting immigration of Jews to 75,000 in 5 years. The policy was strongly objected to by Zionists.

I.Z.L. (The National Military Organization) founded by the Revisionist Zionist Organization and by L.H.I. (Israel Freedom Fighters).[27] [Emphasis added.]

In the United States, Haganah and Jewish Agency agents recruited American Zionists for the purpose of assembling machinery, arms, and ammunition to be sent to Israel. With headquarters in New York City, they secretly gathered, stored, and shipped equipment for the manufacture of weapons. In addition, they obtained, by whatever means possible, surplus weapons that were illegally transported out of the country to Israel. The entire operation was financed through contributions raised in the United States and elsewhere.[28]

Finally in 1947 the British Government announced that it saw no possibility of solving the Palestine problem and passed it on to the United Nations. The United Nations Assembly, on November 29, 1947, passed a proposal to establish a Jewish State and an Arab State in Palestine and an enclave of international rule. The State of Israel was proclaimed by David Ben-Gurion, chairman of the WZO/JA Executive on May 14, 1948, eight hours before the British Mandate was scheduled to expire.[29] At this time only 6 ½ percent of the land in Palestine was owned by Jews.

D. Fundraising

The WZO began early to gather funds worldwide to finance its Zionist political goal of a Jewish State in Palestine for all the Jews of the world. It will be shown herein that from the beginning, numerous interlocking organizations were set up in England and the United States (and later Palestine and Israel) with funds flowing from one to another, and sometimes back

27.*Zionism, The Force of Change, supra,* at 38.
28.Leonard Slater. *The Pledge* (New York: Simon and Schuster, 1970).
29.*Zionism, The Force of Change, supra,* at 38–40.

again, but with control always in the WZO/JA.

A high priority was placed on obtaining land in Palestine for the Jewish settlers. The Jewish National Fund (still in existence, and also known as Keren Kayemet Leisrael) was set up by the WZO at its fifth Zionist Congress in 1901 to acquire land in Palestine and prepare it for agricultural use. The Jewish National Fund was to draw its financial resources from contributions.[30] Land was purchased in Palestine by the National Fund with the expectation of eventual Jewish statehood in Palestine. According to the terms of its charter, purchase of the land contained a racially restrictive covenant. It was never to be resold to non-Jews.

> The principle of national land ownership underlay the Fund's activities. The land bought with money supplied by the Nation must not be alienated. Ownership of Jewish National Fund land is vested in the nation; the land is only leased to settlers for periods of 49 years.[31]

In 1907 the Jewish National Fund was registered in Britain under the name of Keren Kayemet Leisrael Limited, commonly called Keren Kayemet. The head office is now in Israel.

The Jewish National Fund raised money for the WZO in the United States soon after it was started. In 1910 an unincorporated group was formed in New York called "Jewish National Fund" and was incorporated there in 1926.[32] Its stated corporate purpose is to raise funds to acquire land in Palestine. Its charter specifies that all funds raised by it must be sent to the English corporation, Keren Kayemet Leisrael Limited, to be used in any manner the latter sees fit.[33]

30. *Ibid*, at 9.
31. *Idem.*
32. *American Jewish Yearbook*, Vol. 56, 1955, p. 533.
33. Memorandum and Articles of Association of Keren Kayemet Leisrael Limited, bearing Certificate of Incorporation No. 92825, June 16, 1936, of the Registrar of Companies.

Another fund, the Keren Hayesod (still in existence and known as the United Israel Appeal in the United States) "was set up at a conference of Zionist leaders in 1920, as a fundraising institution to finance the Zionist Movement's operations. Keren Hayesod income derives from contributions by world Jewry".[34]

The WZO/JA admits that during the time before statehood Keren Hayesod funds were spent for political nationbuilding activities, not charitable purposes:

> The Keren Hayesod was set up at a conference of Zionist leaders in 1920, as a fundraising institution to finance the Zionist Movement's operations.
>
> Until the rise of the State, the Keren Hayesod was the financial arm of the "State under way". It financed all the activities of the Yishuv in Eretz Israel: aliyah, absorption, agricultural settlement, development of water resources, vocational training, unemployment relief, building activities, public works in Jewish settlements, investments in economic enterprises (Electric Corporation, Potash Works, Zim Shipping Company, Tel Aviv Port) etc. The Keren Hayesod also defrayed the cost of the Yishuv's security operations. By 1948, the Keren Hayesod had paid for the aliyah of 487,000 immigrants and established 256 agricultural settlements.[35]

Since the emergence of the State, the Keren Hayesod has been an agent of the State (see infra Parts II and III).

The Keren Hayesod was incorporated in 1921 in England as "The Eretz Israel (Palestine) Foundation Fund Keren Hayesod Limited". Its purpose was to do everything "necessary or expedient for the purpose of carrying out the...Balfour

34.*Zionism, The Force of Change, supra,* at 8.
35.*Idem.*

Declaration."[36] To this end its purpose was stated as to raise funds and to "open branches of the association and to create collecting agencies in any form and in any part of the world."[36] Under its Articles of Association, membership is controlled by the WZO/JA: "[No person may be a member] unless such person is first approved by the Executive of the Zionist Organiization."[38] The Articles state that the WZO/JA Executive has the power to remove members[39] and to nominate and remove directors.[40] The British corporation has the power, under its articles, to commit the management of its affairs to any other company.[41]

A company was set up to be a fundraising organization for the Keren Hayesod in the United States. The "Palestine Foundation Fund (Keren Hayesod), Inc." was formed as a New York corporation in 1922 and consolidated in 1937 with the American Palestine Campaign, Inc. as the Palestine Foundation Fund (Keren Hayesod) Inc.

The purpose of the consolidated Palestine Foundation Fund was stated as raising funds

> to be devoted to and expended in furnishing aid and training for prospective settlers in Palestine; in promoting and furthering the religious, cultural, physical, social, economic, industrial, agricultural and general welfare of Jewish settlers and inhabitants of Palestine, now or hereafter resident therein; and in aiding, encouraging and promoting the development of Jewish life in Palestine.[42]

The money raised was to be forwarded

36.Memorandum of Association, Purpose A.
37.Memorandum of Association, Purpose R.
38.Articles, paragraph 1, 7.
39.Articles, paragraph 9.
40.Articles, paragraph 4.
41.Articles, paragraph 40.
42.Certificate of Consolidation, paragraph 1.

to the Eretz Israel Palestine Foundation Fund (Keren Heyesod) Limited, a corporation organized under the laws of England, which corporation shall be the agent of Palestine Foundation Fund (Keren Heyesod) Inc. in the attainment of any of the objects aforementioned, and which shall expend the funds transmitted to it as aforesaid in such manner as in the judgment of the Board of Directors of the said Eretz Israel Palestine Foundation Fund (Keren Heyesod) Limited, or in the judgment of such persons as are authorized by its charter and by-laws to expend its funds, shall be deemed best to carry out and achieve the objects aforesaid."[43]

The meaning of "agent" was obviously distorted, since the British "agent" was to spend the funds however *it* decided. Obviously, by its own articles, the American corporation was merely a fundraising organ for the British corporation, which was an arm of the Zionist Organization.

Another United States corporation that was part of the web of collecting agencies for the WZO/JA was formed as "The American Palestine Campaign of the Jewish Agency". Its successor, the United Palestine Appeal, Inc., was a New York corporation formed in 1972. Its name later changed to United Israel Appeal, Inc. Its charter states that it was organized to raise funds to promote Zionist policy of settling and developping Palestine. It was to transmit the funds it raised "to the Palestine Foundation Fund (Keren Hayesod, Inc.), [which then was controlled by the WZO via its British corporation], Hadassah [The Women's Zionist Organization], Jewish National Fund, Inc., and such other corporations or organizations as the representatives and agents of the United Palestine Appeal in the attainment of the objects aforementioned shall select".[44]

43.Certificate of Consolidation, paragraph 3.

44.See Certificate of Incorporation of United Palestine Appeal, Inc., May 10, 1927 (name later changed to United Israel Appeal, Inc).

The United Palestine Appeal's By-Laws provide that sixty percent (60%) of its members, directors, and Executive committee shall be representatives of the Palestine Foundation Fund (Keren Hayesod), Inc.[45] and the other (non-controlling) forty percent (40%) chosen "by communities in consultation with the Council of Jewish Federations and Welfare Funds".[46] The appointees of the Palestine Foundation Fund must vote as a group.[47] Thus, the United Palestine Appeal-United Israel Appeal is under direct control of the Palestine Foundation Fund, which is a fundraising organ of the British Keren Hayesod Limited, an arm of the WZO/JA.

Where did the United Palestine Appeal-United Israel Appeal get the money that it transmitted according to the designation of the WZO? From the United Jewish Appeal, a New York corporation organized in 1935 and begun with a struggle between Zionists and Jewish philanthropists for the vast moneys collected by the numerous federations and welfare funds throughout the United States.

II. STATEHOOD

After Israel became a state in 1948, the WZO/JA did not cease to function; it turned some of its functions over to the new state and continued others in a close relationship with the government of Israel. The main activities of the WZO/JA since 1948 have been in two areas: performance of functions for the state of Israel that are normally government functions (immigration and agricultural settlement) and propaganda activities outside Israel (promoting immigration, promoting political support for Israel and fundraising). The fundraising organizations, including the United Israel Appeal in the United

45.By-Laws, Art. I, Sec I; Art. II, Sec. I; Art. III, Sec. 1.
46.By-Laws, Art. I, Sec. I.
47.By-Laws, Art. II, Sec. I.

States, remained as before to supply funds to the WZO/JA.

The WZO/JA has summed up its activities since statehood thus:

> Since the emergence of the State, the Zionist Organization-Jewish Agency has engaged in encouraging aliyah, immigrant absorption, agricultural settlement, Youth Aliyah, the raising of funds for aliyah and absorption and for the development of the State; in securing the united support of world Jewry for the State, in promoting Jewish education and in Zionist information in the Diaspora.[48]

A. *The Years 1948 to 1954*

In 1948 many of the leaders of the WZO/JA shadow government became leaders of the new Israeli government and many of the new government ministries were direct transformations of the departments of the WZO/JA:

> The Agency was well prepared for the achievement of national independence. If it had been styled "a government existing side by side with the Mandatory Government", it was now to become the nucleus of the autonomous authority of a sovereign republic. Dr. Weizmann, President of the Zionist Organization, became President of the State; Ben-Gurion, Chairman of the Agency Executive, its Prime Minister; the Agency's Political Department was ready to be Israel's Foreign Ministry. Several Palestinian members of the Executive became Cabinet Ministers.[49]

As might have been expected from the history of the organization, it did not fade out after statehood but retained substantial areas of operations; and also as might have been

48. *Zionism, The Force of Change*, *supra*, at 2. See also pp. 6 and 7.
49. "The Jewish Agency for Israel", *supra*, at 7.

expected from the common background of the Zionist elite in control of the new state and of the WZO/JA, the organization and the state became partners in their joint activities and goals. The WZO/JA admitted this in one of its publications in describing the beginning of the new post-state functions of the organization.

> In August, 1948, while Israel was engaged in repelling the invasion of six Arab States, the Zionist Central Council convened in Tel Aviv, to deliberate on the functions of the Zionist Organization under the new conditions. The representatives of the State, including members of the Executive who had meantime become Ministers in the Israel Government and the representatives of the Zionist Movement abroad, were in general agreement that the continued existence of the World Zionist Organization was vitally necessary. This world body would nurture the bonds between the Jewish people in the Diaspora and the State so as to lead to its development and consolidation in all spheres.
>
> Upon the establishment of the State, all the efforts of the Movement were aimed at mobilizing aid to the new State which was fighting for its survival. It was patently clear to all that aliyah was the central and most vital factor in the new State's future. But the question arose: How would the Jews be brought to Israel and who would assist in their absorption and settlement? How was it possible to expand and develop the country's economy to such an extent as to make the absorption of the new immigrants possible? It was inconceivable that the 650,000 Jews in the State at the time, should shoulder the organization and financing of mass immigration and settlement. There was no doubt that world Jewry had to bear the burden of these duties through the World Zionist Organization-The Jewish Agency.[50]

50. *Zionism, The Force of Change, supra,* at 55.

A coordinating board comprising government and WZO/JA representatives was formed to define the new relationship between the organization and the state and to assure cooperation between them.[51] This board was later given formal status under the Status Law and Covenant, discussed *infra.* It is responsible for allocating functions and responsibilities between the government and the WZO/JA.

In 1951 the first Zionist Congress after statehood, the 23rd Congress, was held in Jerusalem. This congress adopted what is referred to as the "Jerusalem Programme":

> 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.[52]

The purpose of the organization continued to be clearly political and ideological, devoted to promoting and building a foreign state, rather than philanthropic. The United Israel Appeal, as part of the WZO/JA, was a major source of funds for implementing that purpose.

The tasks set for the WZO/JA at the 23rd Congress were organization of immigration, absorption of immigrants, youth aliyah (immigration), agricultural settlement, and land development, all to be coordinated by the coordinating body already in existence.[53]

Immigration of Jews was a prime goal of the state and the WZO/JA. During this time the government passed the Law of Return, which provided that every Jew had the right to immigrate to Israel.[54] In one of its publications, the WZO/JA

51. Information Department of Jewish Agency and World Zionist Organizaton, *Zionist Newsletter,* No. 19, Zionists' Problems Surveyed, 8, 10 (June 5, 1951).

52. "Status for the Zionist Organization" resolution passed at the 23rd Zionist Congress, Organization Department of the Zionist Executive, *Fundamental Issues of Zionism at the* 23rd *Zionist Congress*, 135-136 (1952).

53. *Idem.*

54. 4 Laws of the State of Israel 114 (1950).

describes this law as defining immigration to be "an inherent privilege bestowed automatically on every Jew and as a basic purpose of the State."[55]

The 23rd Congress requested the state to provide formal status for the organization through legislative act, since the organization no longer had status under the Mandate.[56] This request was granted in the passing of the Status Law in 1952.

B. *The Status Law.*

The World Zionist Organization-Jewish Agency (Status) Law, 5713-1952, was passed by the Knesset (Israeli legislature) on November 24,1952.[57] It is set forth in full in the Appendix. The Executive Reports of the 24th Zionist Congress (at 23, 24) include a "Report by the Legal Advisor" that he prepared drafts and negotiated with the Israeli government concerning the Status Law and the Covenant that followed it. He also reported that "much of this work was done in closest cooperation with the Legal Advisor to the Government of Israel."

The first three sections of the Status Law introduce the two parties concerned: the State of Israel is the "creation of the entire Jewish people" and is open to "every Jew wishing to immigrate to it" (Status Law, Section 1); and the World Zionist Organization "carried the main responsibility for establishing the State of Israel" (Section 2) and at the time of the writing of the Status Law had already established that it "takes care as before of immigration and directs absorption and settlement projects in the State" (Section 3).

In Section 4 the State granted status to the WZO/JA as the "authorized agency", with the State as principal, which would continue to operate in Israel for (1) "the development and

55."The Jewish Agency for Israel" *supra,* at 23.
56.*Zionism, The Force of Change, supra,* at 55.
57.*Ibid,* at 55.

settlement of the country", (2) "the absorption of immigrants from the Diaspora", and (3) "the coordination of the activities in Israel of Jewish institutions and organizations active in those fields". The Executive of the agency was to be a "juristic body" that could make contracts and own property (Section 11) and would, with its funds and institutions be exempt from taxes (Section 12). The organization was given power to expand with consent of the government (Section 6), in terms reminiscent of the authority to expand that had been given the Jewish agency in the Palestine Mandate (which had spawned the short-lived, Zionist-controlled Expanded Jewish Agency).

Section 5 describes immigration of Jews to Israel, or the "ingathering of the exiles" as the "*central task of the State of Israel and the Zionist Movement* in our days" (emphasis added). Certainly this Section shows that when the WZO/JA, through the funds of the United Israel Appeal, aids Jewish immigrants to Israel and promotes Israeli immigration, any seemingly philanthropic effects are entirely incidental and secondary to the main goal of building up the State of Israel.

Sections 7,8 and 9 of the Status Law speak of a covenant to be drawn up between the State and the WZO/JA to detail their cooperation (Section 7). This covenant is to be "based on the declaration of the 23rd Zionist Congress" that the goals of the World Zionist Organization require "full cooperation and coordination" between the two bodies in accordance with the laws of the State (Section 8). A Coordination Committee was also to be set up by the covenant (Section 9).

C. *The Covenant*

The covenant referred to in the Status Law was signed by the WZO/JA (by Nahum Goldman and G. Locker of the Executive) and the government of Israel (by Moshe Sharett, Prime Minister) on July 26,1954. The full title of the covenant

is "Covenant Between the Government of Israel (Hereafter the Government) and the Zionist Executive Called Also the Executive of the Jewish Agency (Hereafter the Executive)".[58] It is set out in full in the Appendix.

The covenant lays out the functions of the WZO/JA under the new state and sets forth the formal connection between the two signers to the agreement, in accordance with the Status Law. It is further evidence that the WZO/JA is an agent of the government of Israel, with which it shares a common goal—the building up of the State of Israel through immigration of world Jews to Israel.

Under Section 1 of the covenant the functions of the WZO/JA are

(1) the organizing of immigration abroad and the transfer of immigrants and their property to Israel:
(2) cooperation in the absorption of immigrants in Israel
(3) youth immigration
(4) agricultural settlement in Israel
(5) the acquisition and amelioration of land in Israel by the institutions of the Zionist Organization, the Keren Kayemet Leisrael and the Keren Hayesod (United Israel Appeal in the United States)
(6) participation in the establishment and the expansion of development enterprises in Israel
(7) the encouragement of private capital investments in Israel
(8) assistance to cultural enterprises and institutions of higher education in Israel
(9) the mobilization of resources for financing these activities
(10) the coordination of the activities in Israel of Jewish institutions and organizations acting within the limits of these functions by means of public funds.

58. *Ibid*, at 56.

These include all the activities enumerated in the Status Resolution of the 23rd Zionist Congress, with some additional ones added.

The WZO/JA through this covenant agreed to be the agent of the State of Israel in performing these "tasks which in other countries are performed by governments."[59] No philanthropic or charitable purpose is evident.

Section 6 states that the WZO/JA is responsible for raising the funds to perform the functions it is charged with in Section 1 of the covenant "by means of the Keren Hayesod (United Israel Appeal), the Keren Kayemet Leisrael (Jewish National Fund for land acquisition and development) and other funds"; i.e., these funds are part of the WZO/JA and the money raised by them is for the purpose of carrying out the functions that the WZO/JA is to perform for the State of Israel.

Some sections of the covenant specifically deal with the subordination of the WZO/JA to the wishes of the State. The covenant sets up a Coordination Board (Section 8), "half of whom shall be members of the Government [of Israel] appointed by it, and half of whom shall be members of the Executive [of the WZO/JA] appointed by it". Organizing immigration to Israel is to be done by the WZO/JA "on the basis of a plan agreed on with the Government or authorized by the Coordination Board" (Section 3). This Board is under the chairmanship of the Prime Minister of Israel.[60] Either this Board or the Government must oversee the WZO/JA plans for immigration, and further, the immigration visas will be required according to the Law of Return (Section 3) which recognizes all Jews as having the right to immigrate to Israel.

Section 5 charges the WZO/JA with performing itself the covenanted functions it raises funds for and not delegating them

59.Statement by Nahum Goldman, President of the WZO/JA to Zionist Council meeting in 1966, *Zionist General Council,* 193 (Jan. 11–18, 1966).

60.*Zionism, The Force of Change, supra,* at 41.

unless by "agreement of the Government". In Section 2 the WZO/JA agrees to carry out its activities in accordance with the Laws of Israel and also in accordance with "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", just as any other governmental agency would, apparently. In Section 7 the Government agrees to "consult the Executive in regard to legislation specially impinging on the functions of the Executive before such legislation is submitted to the Knesset", but retains the power to make the final decision on such legislation.

The Status Law and the covenant are formal written documentation of the ties between the WZO/JA and the State of Israel, the goals of the WZO/JA, its subordination to the desires and needs of the Government of Israel, and for what purpose money raised for the WZO/JA through its funds the United Israel Appeal and the Jewish National Fund actually is used—the building up of a foreign state. The conclusion must be that WZO/JA is either a public body closely tied to the Government of Israel, and controlled by it as an agent by its principal; or else that it is actually functioning as part of the Government, though named something else; or both.[61]

D. *Structure and Organization of the Jewish Agency*

The Jewish Agency was established under the British Mandate as an advisory body for Jewish affairs to the British Administration of Palestine. The Zionist Organization was originally recognized as the Agency under the Mandate (see Part I, Section

61.These conclusions are propounded by the eminent authority on international law, W. T. Mallison, Jr., in "The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency, 9 *William Mary Law Review 554* (Spring, 1968).

C, *supra*) and functioned as such until 1971. The Zionist Executive, "whose function it is to adminster the affairs of the Zionist Organization and of the Jewish Agency in Israel and abroad",[62] was first elected in 1921 by the Twelfth Zionist Congress[63] and held control of the Agency for the next fifty years. It maintains constituent bodies in both Jerusalem and New York.

Prior to the reconstitution of the Jewish Agency in 1971, the Agency was under the control of the supreme institution of of the WZO, the Zionist Congress. The Zionist Congress meets every four years for the purpose, among other things, of electing the Executive of the Jewish Agency and the Zionist General Council (to which the Executive is responsible). The organ of the Council to which the Executive must report directly is the Permanent Committee on Budget and Finance.[64] To "ensure that the Executive's work is carried out in accordance with the decisions of Congress and the General Council", the Congress also elects the Comptroller of the Jewish Agency, to whom the Executive is also responsible.[65]

The Executive operates through functional departments with headquarters in Jerusalem. Each department is controlled by a member of the Executive who is known as the "Head of the Department". The operations of the Executive in Israel are conducted by the Immigration and Absorption, Agriculture, Settlement, Children's and Youth Aliyah, and Investment Corporations Departments. Abroad, the Executive functions through the Organization, Information, External Relations, Youth Hechalutz, Education and Culture, Emissaries Division, and Torah Education and Culture Departments. To coordinate activities between the Executive branches in Jerusalem and

62.*Zionism, The Force of Change, supra,* at 6.
63."The Jewish Agency for Israel", *supra*, at 9.
64.*Zionism, The Force of Change, supra,* at 6.
65."The Jewish Agency for Israel", *supra*, at 22.

New York, the Plenary of the Jewish Agency Executive meets periodically. The administrative tasks of the Executive are performed mainly by the Finance, Administration and Supplies Departments. In addition, the Agency maintains the Zionist Central Archives, the Bialik Institute, and the Zionist Library.[66]

As noted above, one of the departments of the Executive is the Investment Corporations or Companies and Investment Bureau. It was established for the Jewish Agency "in order to give general expression to Jewish partnership in Israel's economy".[67] Its function is to supervise all companies under the full or partial ownership and control of the WZO, the Jewish Agency for Palestine, the Keren Hayesod, and the Jewish National Fund.[68] Its management powers include the ultimate decision making on all proposals for the creation of new companies, mergers, liquidations, reorganizations and all new investments.[69]

The Bureau now supervises at least 59 economic companies in Israel which are under the full or partial control of the national institutions listed above. These enterprises include chinchilla farms, development companies, an agricultural export business, the Exhibitions and Fairs Company and El Al Airlines.[70]

Up to 1960, the Jewish Agency for Israel, Inc., operated in the United States as the registered "foreign agent" of the Jewish Agency in Jerusalem (see Part III, Section B, *infra*). Due to certain legal problems with the Internal Revenue Service, as explained *infra* (see Part III, Section B), the Jewish Agency for Israel deregistered as a foreign agent in 1960. In its place, the Jewish Agency in Jerusalem created the Jewish Agency-

66.*Zionism, The Force of Change, supra,* at 6.
67.Reports submitted to the Twenty-Seventh Zionist Congress in Jerusalem for the period April, 1964–December, 1967, 283 (June, 1968).
68.Statutes of the Companies Bureau, Section 1 (a), 6 February 1967, as cited in Reports to the Twenty–Seventh Congress at 283.
69.*Ibid.* Sections 4 (a) and (b) at 284–285.
70.Reports to the Twenty–Seventh Congress, *supra*, at 298–299.

American Section to act as its "foreign agent" in America. The American Section has remained under the control of the Jerusalem Agency ever since.

In 1971, the entire Jewish Agency in Jerusalem was reorganized to provide for the legal separation of the WZO and the Jewish Agency (see Part II, Section E, *infra*). The Agency is now allegedly independent of the WZO, operating under its own governing bodies. As will be seen in Part III, however, the reorganization was of form only, insofar as the Zionist elements still maintain complete control, and the Jewish Agency continues to perform the same functions that it performed prior to the reorganization.

III. FROM STATEHOOD TO THE PRESENT TIME

A. *The Years 1954-1968*

During the years 1948 through 1968, the WZO/JA continued to pursue its policy of building up and strengthening the State of Israel, especially through immigration. Moshe Sharett, chairman of the Zionist Executive, described the organization as "striving to get in motion the largest possible movement of the Jewish masses to the State of Israel".[71] In keeping with the government's avowed desire "to increase its population in order to settle the desolate parts of the country and to increase the country's security,"[72] he emphasized that the Israelis had to be prepared so they could effectively defend their homeland: "They must be helped to strike root, to become productive citizens, capable of defending their own country."[73]

71.Session of the Zionist General Council; Second Session after 25th Congress, Jerusalem. April, 1961, Addresses, Debates, Resolutions; page 15.
72.Reports submitted to the Twenty-Fourth Zionist Congress in Jerusalem for the period April, 1951–December, 1955, 69 (April, 1956).
73.Session of the Zionist General Council; Second Session after 25th Congress, Jerusalem. April, 1961, Addresses, Debates, Resolutions, p. 28.

Immigration and absorption were perceived as a necessary and vital incident to the continued existence of the Jewish State. It assumed two major roles in Zionist philosophy. First, as an ideological force it remained the central object in the life of every true Zionist. If he had not immigrated, it was his duty to do so at the earliest possible moment; if he had immigrated, it was his duty to encourage it in others. Second, as a military force, immigration served to increase the Jewish population and, consequently, the personnel available for military service. Population and protection of Israel's outlying border areas, the Zionists contended, could only be achieved through increased immigration. Thus, by the Twenty-Seventh Zionist Congress in 1968, the idea that immigration was a function of the national defense as well as Zionist ideology, was clearly established:

> Planning of absorption must be placed on the same level as planning for national security. Immigration in the last resort, is a function of security.[74]

The Executive of the Zionist Organization foresaw, following the Six Day War, that the newly-aquired territories could not be held without colonization: "No political victory, no proclamation, can convert these territories into Jewish territories if they are not settled by Jews."[75] Accordingly, the Executive's Immigration Department intensified its efforts to encourage "aliya" in foreign nations, enlisting the aid of existing and newly established Jewish bodies "to give aliya [sic] a position of centrality in their operations".[76]

As noted in Part II, the Coordinating Board (created under the covenant) established the Joint Government and Jewish Agency Immigration Authority to encourage and facilitate

74.Reports submitted to the Twenty-Seventh Zionist Congress in Jerusalem for the period April, 1964–December, 1967 (June, 1968), p. 54.
75.*Ibid,* at 53.
76.*Ibid,* at 55.

immigration and absorption. The respective roles of the two entities forming the joint authority, however, were not clearly delineated and information regarding the specific activities of the Board and its members is not readily available. It is clear, nevertheless, that the Coordinating Board is responsible for allocating functions between the government and the Jewish Agency.

In 1960 a new constitution was passed for the WZO/JA. The philosophy and objectives of the Organization, however, did not change. The Zionist Program adopted at the Congress in Basle (see Part I, Section A, *supra*) was reaffirmed[77] as was the task of Zionism as defined by the Twenty-Third Congress, namely, "the consolidation of the State of Israel, the ingathering of the exiles in Eretz Israel, the fostering of the unity of the Jewish people".[78] Within the framework of these goals, the constitution cites the United Israel Appeal as one of the enterprises "recognized by the Executive as carrying out central tasks within the Zionist movement".[79]

The Congress was set up again as the "supreme organ of the World Zionist Organization".[80] The delegation to the Congress was created in such a way that United States' delegates could not have a majority: Israel 38%, United States 29%, other countries 33%.[81] Members of the Organization were to be Zionist Territorial Organizations.[82] The United Israel Appeal and United Jewish Appeal were not members.

Also in 1960, as a result of an Internal Revenue Service inves-

77.The Constitution of the World Zionist Organization as adopted by the General Council at its session in December, 1959–January, 1960; in session of the Zionist General Council, Fifth Session after the 24th Congress, December, 1959–January, 1960; Addresses, Debates, Resolutions at 279, Chapter One, Article 2, Section 1.

78.*Ibid,* Chapter One, Article 2, Section 1.

79.*Ibid,* Chapter Two, Article 14.

80.*Ibid,* Chapter Two, Article 12.

81.*Ibid,* Chapter Two, Article 17, Section 2.

82.*Ibid,* Chapter One, Article 5, Section 1.

tigation, the organization structure of the Zionist apparatus in the United States was "reorganized" (See Section B, *infra*, Fulbright Hearings). The Jewish Agency for Israel, Inc., deregistered as a foreign agent, purportedly divesting itself of certain political activities, the continuation of which would have caused the loss of its tax exempt status, and reorganized "in order to satisfy the requirements of the Internal Revenue Service with respect to domestic organizations operating overseas".[83] In its stead, the Jewish Agency-American Section was created and registered to carry on the activities of the Jewish Agency, Jerusalem, in the United States.

The investigation and subsequent reshuffling of the Zionist apparatus was prompted primarily by the discovery that substantial United Jewish Appeal funds were transmitted to Israel for the support of Israeli *political parties.* From 1951 to 1959 over Eighteen Million Dollars ($18,000,000.00) were distributed out of United Jewish Appeal funds to these political groups in Israel.[84] The Jewish Telegraphic Agency, the information and news agency of the WZO/JA, reported that the reorganization was finally undertaken, and the subsidies stopped in 1961, so that the fundraising organizations could retain their tax exempt status in the United States.[85]

The basis for UJA financial support of Israeli political parties derived from an agreement entered into after the creation of the state between the UJA and the parties, pursuant to which the latter agreed not to conduct independent appeals in the United States if the UJA would contribute a specified sum of

83.Hearings on Activities of Non-Diplomatic Representatives of Foreign Principals in the United States, before the Senate Committee on Foreign Relations, 1218 (1963); see also *The UJA Funds "Reorganizations"* by Lessing J. Rosenwald, American Council for Judaism, 1960.

84.*American Jewish Yearbook,* Vols. 54–56, 1953–55, and *Council of Jewish Federations and Welfare Funds Reports,* April 16, 1960.

85.Jewish Telegraphic Agency, *Daily News Bull.,* Vol. XXVIII, No. 70, April 11, 1960, p. 3.

money annually for their support.[86] Although the subsidies were allegedly terminated in 1961, the UJA continues to support these political groups in Israel through the Jewish Agency, Jerusalem. This is accomplished by the Agency allocating specified sums to "construction projects" of the political parties through the parties' world organizations.[87] The world organizations simply serve as conduits through which the UJA funds are eventually channelled to the Israeli political groups.[88]

This same device is also utilized by the Jewish Agency-American Section which is supported by the Jewish Agency in Jerusalem which is funded by the UJA. For example, in its supplemental registration statement filed in June, 1971, pursuant to the Foreign Agents Registration Act of 1938, as amended, the American Section indicated that specific amounts were granted to the World Union of General Zionists,[89] the world organization of the Israeli Liberal Party. If these funds were originally received from the Jerusalem Agency, which received at least a portion of them from the UJA,[90] the UJA is supporting Israeli political parties through the conduit Jewish Agencies.

In addition to uncovering the obviously noncharitable and wholly political purposes for which certain UJA funds were spent, the forced reorganization of 1960, and the Fulbright Hearings that followed three years later, exposed a principal-agent relationship between the Jewish Agency for Israel, Inc.,

86. *Haaretz,* September 23, 1971, Jerusalem.

87. *Maariv,* October 14, 1971, Jerusalem.

88. Under this scheme, Israeli political parties receive the following amounts for the 1971–72 fiscal year: The National Religious Party receives 3,422,000 Israeli pounds; the Israeli Liberal Party receives 1,807,000 pounds; and more than one million pounds is transmitted to the Independent Liberal Party. Other parties, including leftist groups in Israel, also receive grants in differing amounts, all of which is under the observation of the Jewish Agency in Jerusalem. *Maariv,* October 14, 1971.

89. Supplemental Statement filed by the American Section of the Jewish Agency for Israel, June 1,1971, Schedule 7, pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as amended.

90. Hearings, *supra,* at 1321.

and the Jewish Agency, Jerusalem, respectively. If the true nature of this relationship has not changed, as the hearings and subsequent developments indicate, then the issue of tax exemptibility for the United Jewish Appeal and its affiliates is ripe once again for judicial and governmental consideration. The question of who really maintains control of funds collected in the United States (i.e., who is the principal and who is the agent) is explored more fully in Sections B, C and D.

B. *The Fulbright Hearings*

In May and August of 1963, Isadore Hamlin, Executive Director of the Jewish Agency for Israel-American Section, and Gottlieb Hammer, Executive Vice-Chairman of the Jewish Agency for Israel, Inc., appeared under subpoena before the Foreign Relations Committee of the United States Senate. The Committee was charged with the "thorough review and full public disclosure of the nondiplomatic activities of representatives of foreign governments and the extent to which they attempt to influence U.S. policies".[91]

The hearings were held primarily to determine the true nature of the interlocking relationships of various American groups with the Jewish Agency and the relationship of the American Section of the Jewish Agency to the Jewish Agency for Israel, Jerusalem. Consequently, the Senate Committee considered the application and enforcement of the Foreign Agents Registration Act of 1938, as amended,[92] which requires all foreign agents to file a registration statement with the Attorney General before they may act in a representative capacity for their foreign principals.

As noted in Part A, the Jewish Agency-American Section was born of the "reorganization" of the Jewish Agency for

91. S. Res. 362, 87th Congress, 2nd Session in Hearing 1.
92. The McCormack Act, 52 Stat. 63 (1938), 22 USC 611 (1964).

Israel, Inc., in 1960. At that time the American Section registered as the agent of WZO/JA in the United States under the Foreign Agents Registration Act. It was controlled by the Jewish Agency (WZO/JA) Executive, which, at the time of the Hearings, was composed of 22 members, only six of whom resided in the United States.[93] The Jewish Agency for Israel, Inc., deregistered with the United States Department of Justice as a foreign agent of the WZO/JA and allegedly submitted to the control of "American Organizations and Citizens" as a private charitable entity.[94] Mr. Hammer testified that although prior to 1960 the Jewish Agency for Israel, Inc., was an agent for the Jewish Agency, Jerusalem (WZO/JA), after the purported reorganization the Jewish Agency for Israel, Inc., a New York corporation, became the principal and the Jewish Agency, Jerusalem, the agent.[95] This assertion was made despite the contradictory admission by Mr. Hammer that the Jewish Agency for Israel, Inc., required the authorization and consent of its "agent", the Jewish Agency, Jerusalem, to pay out funds to the Jewish Telegraphic Agency.[96]

Even more important, however, was a most revealing statement made by Louis H. Pincus, Chairman of the Zionist Executive in 1970. Apparently having forgotten the difficulties encountered by his compatriots seven years earlier at the Hearings in their attempts to prove that the Jerusalem Agency was not the principal of the Jewish Agency for Israel, Inc., and that American funds were not just collected in the United States but also controlled by the American organization, he flatly stated that the American groups "just collected the money and sent it to the Jewish Agency (in Israel) to spend". According to Mr. Princus, not until the reconstitution of the Jewish Agency

93. Hearings, *supra,* at 1308–1309.
94. *Ibid,* at 1218.
95. *Ibid,* at 1237.
96. *Ibid,* at 1237–1238.

in 1971 did the American organizations have any participation in fixing the budget or setting expenditure priorities.[97]

If the WZO/JA (Jewish Agency, Jerusalem) is either a part of the Israeli government or its agent, or both (as explained in Part II, Section C), the first assertion that the WZO/JA is controlled by a private and independent philanthropic organization within the United States is false. The implication of Mr. Hammer's second and contradictory assertion and Mr. Pincus' outright admission that the WZO/JA in reality controlled the Jewish Agency for Israel, Inc., accurately reflects the true structure of the Zionist organizational fundraising network as it exists today.

Another point of major significance in the Hearings was the exposure of the unregistered American Zionist Council (AZC)[98] as a "conduit", prior to 1963, for propaganda funds of the Jewish Agency-American Section, the registered agent of the WZO/JA.[99] Although Mr. Hammer testified that the AZC enjoyed tax exempt status,[100] he also admitted that substantial AZC funds were used to pay for public relations services rendered by I. L. Kenen, a registered lobbyist in Washington, who was actively associated with the American Israel Public Affairs Committee and editor of "a rather lively newsletter called *The Near East Report*".[101] According to Mr. Hammer, the AZC "wanted to make it possible for the Council to make subscriptions to this newsletter available to leading American Zionists, to schools, to newspapers, to other interested parties".[102]

97. *The Jewish News*, September 4, 1970, Newark, New Jersey, p. 2, col. 5.

98. The American Zionist Council, although allegedly under the independent control of American citizens, is characterized as "the Jewish Agency's main subsidiary" in Robert Silverberg, *If I Forget Thee O Jerusalem*, 471 (New York: William Morrow & Co., Inc., 1970), an historical account of the participation of American Jews and the United States in the creation of the State of Israel.

99. Hearings, *supra*, at 1305.

100. *Idem*.

101. *Ibid*, at 1251–1252.

102. *Idem*.

Testimony further indicated that unexplained amounts in the AZC budget were paid to the Rabinowitz Foundation to be distributed to the Council on Middle Eastern Affairs, an academic group publishing a pro-Israel journal dealing with Middle Eastern affairs.[103]

Other AZC funds were used to finance "tours" conducted by the American Christian Palestine Committee to Israel for private American citizens,[104] the purpose of which was to support "the general effort to create a pro-Israel climate".[105]

In the course of the Hearings it was uncovered that the AZC, in January of 1963, had resolved to accept no further funds from the Jewish Agency-American Section so as to avoid registration under the Foreign Agents Registration Act. [106] By thus separating the activities of the two bodies and circumventing registration, the American Zionist Council was allowed to continue to disperse propaganda and elicit political support for Israel through its Department of Information and Public Relations without designating its material and political activities as those of a "foreign agent".

A similar situation exists with respect to the Jewish Telegraphic Agency (JTA), another unregistered organization "which specialized in the dissemination of Jewish news". [107] Mr. Hammer testified that prior to March 13, 1960—the reorganization period—the Jewish Agency for Israel, Inc., owned most of the voting shares of the JTA. Payments were made to the JTA by the Jewish Agency for Israel, Inc. from the time of its (JTA) organization in the early 1950's until the reorganization of the Jewish Agency for Israel, Inc., in 1960. No notice was given to subscribers or the Justice Department

103. *Ibid,* at 1271–1273.
104. *Ibid,* at 1275.
105. *Ibid,* at 1292.
106. *Ibid,* at 1365. See also Hearings, *supra,* at 1707, wherein Senator Fulbright noted that the separation was undertaken to avoid registration.
107. *Ibid,* at 1284.

that the Agency controlled and funded the JTA. [108]

After the formation of the Jewish Agency-American Section, the registered agent of theWZO/JA, ownership of the JTA was transferred to it. Contributions continued to be made to the JTA by the American Section until early 1963.[109] Although payments by the American Section allegedly stopped at that time, it still retained control of the JTA and the latter remained unregistered.

Thus, although the American Section was publicly reorganized and registered as the foreign agent of its principal, the WZO/JA, its subsidiary political organizations continue to distribute propaganda and operate as seemingly independent American entities.

The Fulbright Hearings clearly established the existence of an interlocking political and fundraising apparatus operating within the United States and centrally controlled in Israel. The foregoing statements prove that no real change was made in the relationship between the Jewish Agency for Israel, Inc., and the Jewish Agency, Jerusalem, after the purported 1960 reorganization and accordingly, that the activities of the Jewish Agency for Israel, Inc., remain under the direction of the Jewish Agency in Israel. Moreover, it is obvious that the Jerusalem Agency also controls the publishing and distribution of purely political propaganda in the United States, by such organizations as the American Zionist Council and the Jewish Telegraphic Agency, through its registered agent, the American Section. With the exception of the American Section, however, none of these organizations are registered, as required by law, as the foreign agents of their foreign principal, the Jewish Agency, Jerusalem. Consequently their political activities continue unrestrained by the Federal government and they retain their cherished tax exempt status.

108. *Ibid,* at 1288.
109. *Ibid,* at 1366.

C. *Fundraising*

The United Jewish Appeal (UJA), the major Jewish fundraising organization in the United States, is a partnership of the United Israel Appeal (UIA) and the American Jewish Joint Distribution Committee (JDC).[110] Its organization in 1939 was a major triumph for American Zionists, whose efforts at the time were directed at gaining control of existing Jewish welfare funds and local federations that were then controlled by non-Zionist leaders.[111] In only two years the Zionists, through the UJA, were receiving contributions from 3,371 communities as compared with only 700 communities five years earlier.[112] Seventy percent of all UJA speakers were supplied by the United Palestine Appeal (predecessor to the United Israel Appeal) rather than the Joint Distribution Committee, the largely non-Zionist arm of the organization. The Zionist (UIA) share of annually increasing income of the UJA was to jump from 26.1 percent in 1939 to 51.1 percent in 1950 to 67 percent of the first 55 million dollars raised each year and 87.5 percent of the remainder in 1967. This latter formula has been in operation since 1951 and will remain effective through 1973. In terms of dollars, from its inception in 1939 through the fiscal year of 1970, the United Israel Appeal (formerly the United Palestine Appeal) received approximately $1,479 million dollars from the United Jewish Appeal, which funds were then transferred to the World Zionist Organization/Jewish Agency.[113]

The United Jewish Appeal itself received cash payments totalling about 2,363 million dollars between 1939 and 1971 from American contributions. The peak campaign year for the UJA was 1967. It received pledges for its regular campaign

110. *American Jewish Yearbook,* Vol. 69, 1968, p. 304.

111. Samuel Halperin, *The Political World of American Zionism,* 198–200 (Detroit, Wayne University Press, 1961).

112. *Ibid,* at 201.

113. *American Jewish Yearbook,* Vol. 72, 1971, p. 191.

in the amount of 67 million dollars and 173 million dollars for the Emergency Fund. In 1968 regular contributions increased to 69.7 million dollars but Israel Emergency Fund (created by the UJA in 1967 to collect money for the Six Day War effort in the United States) pledges dropped to 80 million. In 1969 they rose to 74 million dollars for the regular campaign and 99 million for the Emergency Fund. Regular contributions increased again in 1970 to 78 million dollars and to 124 million for the Emergency Fund.[114] Actual cash receipts, as distinguished from pledges, of the UJA in 1970 amount to 80.7 million dollars in regular funds.[115]

On the whole, about 4.2 billion dollars was raised in the United States by the major Jewish community organizations from 1939 through 1970. About 1.1 billion dollars of it was raised since the Six Day War in 1967.[116]

Sixty-five percent of the Jerusalem Agency's budget is funded by contributions from United States citizens. The next largest contribution was from England at only five to seven percent per annum.[117] The UIA share—the Zionist's share—went to the Jewish Agency for Israel, Inc., which sent the funds directly

114. *Idem.*
115. *Ibid,* at 192.
116. *Ibid,* at 181.
117. Hearings, *supra,* at 1303; 1971 *Israeli Journalists' Yearbook,* p. 179. According to this Yearbook, between 1920–1948 70% of the Jewish Agency's budget came from fundraising in the U.S. Between 1948–1970 the breakdown of expenditures for the Jewish Agency was as follows:

Immigration and absorption	$573,900,000
Medical Services	77,100,000
Education	74,600,000
Youth Immigration	156,200,000
Immigrant Housing	432,500,000
Agricultural Settlement	945,800,000
Educational and Cultural Work	294,200,000
Activities outside Israel	160,500,000
Miscellaneous	301,600,000
	$3,016,400,000

The deficit between the budget and money raised outside Israel was covered by grants from the Government of Israel and loans from lending institutions.

to the WZO/JA in Israel.[118] With the exception of minor administrative expenses and certain questionable allocations channelled through the American Zionist Council (which Mr. Hammer testified came from "non-UJA sources"[119]) *all* Jewish Agency for Israel, Inc., funds collected in the United States were sent to the WZO/JA in Israel.[120]

To eliminate the Jewish Agency for Israel, Inc., as the conduit middleman in the transmission of funds to Israel, the Jewish Agency for Israel, Inc., consolidated operations with the United Israel Appeal in 1966. The consolidated corporation is now the United Israel Appeal, Inc.[121]

After the 1960 "reorganization" of the Jewish Agency, no change was made in the financial relationship between the WZO/JA and the Jewish Agency for Israel, Inc. (see Section B, *supra*). The reorganization only guaranteed American control of funds collected in the United States as long as they remained in America. Nothing assures that the money will be spent in Israel at the request and direction of the American organization, except the assertion that the Jewish Agency for Israel, Inc. (now consolidated with the United Israel Appeal under the latter's title) is the principal and the Jewish Agency, Jerusalem, the agent.[122]

Since the Jewish Agency for Israel supports the Jewish Agency, Jerusalem, and the Jerusalem Agency maintains the Jewish Agency-American Section as its registered government agent, the clear effects are that the American Section is also the agent of the Jewish Agency for Israel. Correspondingly, the unregistered Jewish Agency for Israel, Inc., must be engaged in illegal political activities—i.e., supporting an agent. This point was

118. *Ibid,* at 1332.
119. *Ibid,* at 1303–1304.
120. *Ibid,* at 1304.
121. Certificate of Consolidation of the Jewish Agency for Israel, Inc., and United Israel Appeal, Inc., June 1, 1966.
122. Hearings, *supra,* at 1237.

raised by Senator Fulbright in the Hearings during the testimony of Mr. Hamlin, Executive Director of the American Section:

Mr. Hamlin: UJA funds go to various parts of the world. The part for Israel goes via the Jewish Agency for Israel, Inc. directly to Israel. ... we received our funds from Jerusalem and Geneva.

The Chairman: I do not quite understand, Mr. Hamlin, how you can so categorically say that none of your funds came from the UJA when, at the same time, you state that a large amount of the funds granted, not all of them from UJA, go to the Jewish Agency in Jerusalem.
It seems quite logical that at least part of those funds necessarily come from UJA only by way of Jerusalem. Is that not a logical conclusion?

Mr. Hamlin: It may perhaps be a logical conclusion.[123]

Neither Mr. Hamlin nor Mr. Hammer were able to produce any evidence that American citizens maintained direction over the spending of funds abroad. It is illogical that the American organization could be principal of an organization which maintains a registered foreign agent in this country and still be a charitable organization. Either the Jewish Agency for Israel, Inc., too, is an agent of the Jewish Agency or else it is conducting political activities itself by financing and controlling a registered agent. Nor can this conclusion be escaped by saying the American Section's agency is unrelated to the purposes of the Jewish Agency's alleged agency because the American Section sits on the Jewish Agency for Israel, Inc.'s board of directors. All three organizations are deeply involved in the fundraising campaign.

Moreover, it should be noted that the Israeli government must also be implicated in this interlocking financial network.

123. *Ibid,* at 1321.

After Mr. Hamlin testified that the Jerusalem Agency received "several tens of millions of pounds" as contributions from the government of Israel,[124] his attorney, counsel for the American Section, Maurice Bookstein, added that the Israeli government contributed large sums to the Jerusalem Agency from the money it received as German reparations, *in addition to* direct contributions made by the government.[125]

D. *The Six Day War*

The United Jewish Appeal immediately created a subsidiary organization, the Israel Emergency Fund, to handle fundraising efforts in the United States for the war. The Zionist Executive reported, "Sympathy for Israel expressed itself in financial aid, it is true of a magnitude unprecedented in Zionist annals—or for that matter among any nation in the world."[126] At a single luncheon of 200 community leaders in New York, on the first day of the war, the Fund collected pledges of 15,000,000 dollars in fifteen minutes.[127] During the first three weeks of the fundraising camapaign, American donations to Israel exceeded 100,000,000 dollars. A primary condition placed upon all Jewish agencies seeking authorization to undertake public fundraising on behalf of Israel projects "was the agreement by each agency to respect and assure the priority of the Israel Emergency Fund and the regular UJA campaign with regard to campaign timing and publicity".[128] As a result, the Israel Emergency Fund alone collected 173,000,000 dollars in the United States in 1967.[129]

The central coordinator for Jewish support of Israel was, of

124. *Ibid,* at 1322.
125. *Ibid,* at 1323.
126. Reports to the 27th Zionist Congress, *supra,* at 52.
127. Robert Silverberg, p. 5.
128. Report of the 27th Zionist Congress in Jerusalem on Activities in North America for the period April 1, 1967 to December 13, 1967 (1968), page 15.
129. *The Jerusalem Post,* Special Supplement, June 21, 1971, p. 14, col. 5.

course, the Jewish Agency-American Section, the foreign agent in America of the WZO/JA. "It was in fact the nerve center of the American Jewish mobilization on behalf of Israel."[130]

As a result of Israel's victory in the war, she increased her land mass considerably. By the ceasefire lines established in June, 1967, her territory now includes all of Sinai, the richest western territories of Jordan, and the westernmost corner of Syria. To date, the Israeli government has refused to relinquish all or part of these occupied areas.

E. *The Reorganization in 1971*[131]

Following the Six Day War and the tremendous increase in foreign contributions to Israel, Louis A. Pincus, chairman of the Jewish Agency Executive, began discussions with world Zionist and non-Zionist leaders who supported Israel for the

130. Report of 27th Zionist Congress in Jerusalem on Activities in North America for the period April 1, 1964 to Dec. 31, 1967 (1968), p. 15.

131. The Reorganization of 1971 is the second Zionist experiment in enlarging the Jewish Agency. As discussed in Part I, Sec. C, the Agency was expanded for the first time by the Zionist Organization in 1929 to enlist the financial support of wealthy non-Zionists for the existing Jewish settlement in Palestine. The plan was greeted with strong opposition from both sides. The non-Zionists were especially opposed to supporting the political goals of the Zionist Movement. Many , particularly in the United States, felt that the establishment of a Jewish state was not only unrealistic but contrary to the patriotic duties and obligations owed by them to their own countries. The Zionists, however, recognizing that Zionist contributions were not sufficient in themselves to support their objectives, united, and succeeded in convincing the non-Zionists that ideological differences could be temporarily set aside until the Jewish settlement was strong enough to overcome its then impending doom. Consequently, the "Pact of Glory" was agreed upon and the new Agency met for the first time on August 11, 1929. According to the original plan the new body was composed of 50% Zionists and 50% non-Zionists, with 40% of the non-Zionist places going to American Jewry. However, as in the case of the 1971 reorganization, the non-Zionist group included many admitted Zionists. For several reasons, not the least of which was the basic ideological conflict between Zionist and non-Zionist, the new Agency faltered until 1943 when the Zionists once again assumed complete control. Samuel Halperin, *The Political World of American Zionism* (Detroit, Wayne State University Press, 1969), pp. 192–195; *The Jerusalem Post,* Special Supplement, June 21, 1971, pp. 5–6.

purpose of reorganizing the WZO/JA. By 1970 an agreement had been reached whereunder the WZO and the Jewish Agency for Israel would legally separate but establish a new partnership with world Jewish fundraising bodies designated in the Agreement.[132] The Agreement for the Reconstitution of the Jewish Agency for Israel was finally signed on June 21, 1971, and the new partnership formally designated as the Reconstituted Jewish Agency for Israel.[133]

Although reconstitution of the Agency was allegedly undertaken to mobilize available resources and "obtain active participation of Jews throughout the world in the work of rescue, rehabilitation, resettlement and reconstruction in Israel",[134] Mr. Pincus more clearly delineated the reason for the change:

> Why separation between the Jewish Agency and the World Zionist Organization? Why can't we be in one body? Indeed, we were pressed by many countries, not only England, South Africa, Australia and others. We took the course that we did because of situations in certain countries, particularly the United States. The separation is a necessity born out of a complex of legal developments which I shall not even attempt to define at this moment.
>
> Therefore, the Zionist movement came to the conclusion that it would accept a partnership on basis of separation but it would not push that separation any further than the legal obligations compel it...[135]

The Agreement itself is even more explicit: "The functions and tasks and programs administered by the Agency or to which

132. Agreement for the Reconstitution of the Jewish Agency for Israel, Article I, Section A and Article II, Section A.

133. *Ibid*, Article II.

134. *Ibid*, Preamble, Section 6,

135. Louis A. Pincus, "The Reconstituted Jewish Agency", *Dispersion and Unity—Journal on Zionism and the Jewish World*, No. 12, World Zionist Organization, Department of Organization and Information, Jerusalem (1971), p. 39.

it may contribute funds, shall be only such as may be carried on by tax exempt organizations."[136]

According to Mr. Pincus, before the new reorganization American fundraising groups had no control over funds collected after they left the United States. Today, he asserts, American groups are part of the decision-making process. In an interview with the Jewish Telegraphic Agency, Pincus stated:

> Previously the fundraising organizations just collected the money and sent it to the Jewish Agency to spend. Now they help in fixing the budget and setting our priorities.[137]

Note that Mr. Pincus' statement that American organizations had no control over funds after leaving the U.S. is in direct conflict with assertions made during the Fulbright Hearings in 1963 that American funds, although transmitted directly to Israel by the Jewish Agency for Israel, Inc., were still under the control of the American organization.[138]

American donors and fundraising groups still *do not* control the spending of American funds in Israel. Mr. Michael Sacher, Chairman of the Joint Palestine Appeal in London and leader of the British delegation to the Founding Assembly of the reconstituted Jewish Agency, declared that:

> It is not my view that the Diaspora members of the new Agency should attempt to control the direction in which monies are spent. But I do not believe they have a function in drawing attention to areas which may have been ignored, or to more efficient ways of spending money already in the budget.[139]

Thus, although the Zionist organizational structure has seem-

136. Agreement for the Reconstitution of the Jewish Agency for Israel, Article I, Section D.
137. *The Jewish News*, Newark, New Jersey, Sept. 4, 1970, p. 2, col. 5.
138. See footnoes 20 and 21 and accompanying text.
139. *The Jerusalem Post*, Special Supplement, June 21, 1971, p. 11, col. 1 and 2.

ingly changed once again, its philosophy of operation has remained the same.

Moreover, although the new Agency is supposed to represent the interests of both Zionists and non-Zionists alike, the Zionists hold a clear majority in its governing bodies. Dr. Israel Goldstein, chairman of the Keren Hayesod (United Israel Appeal), admitted that many individuals representing the so-called non-Zionist side of the expanded agency are outright Zionists.[140]

Under the agreement, the governing bodies of the new Agency are the Assembly, the Board of Governors, and the Executive.[141] The first Assembly consists of 296 members, 50% of whom are designated by the WZO on behalf of Israel and itself, 30% by the United Israel Appeal, Inc., of New York, and 20% by Jewish communities in countries other than Israel and the United States.[142] The functions of the Assembly are:

To receive reports from the Board of Governors and the Executive;
To review needs and programs;
To determine basic policies;
To consider and act upon budgets submitted by the Board of Governors;
To elect the Board of Governors;
To elect the officers.[143]

The Board of Governors, as indicated above, is elected by the Assembly. The first Board consists of 40 members based on the same percentage representation standard as the Assembly.[144] It is charged with the responsibility of managing the affairs of the Agency and controlling its activities.[145]

140. *Ibid,* p. 10, col. 3 and 4.
141. Agreement for the Reconstitution of the Jewish Agency for Israel, Article II, Section B.
142. *Ibid,* Article II, Section C, 1.
143. *Ibid,* Article II, Section C, 5.
144. *Ibid,* Article II, Section D, 3.
145. *Ibid,* Article II, Section D, 1.

The day to day operations of the Agency are the responsibility of the Executive, subject to the control of the Board of Governors.[146] Its principal office is located in Jerusalem. The members of the Executive with the exception of the chairman, who is also the chairman of the Assembly, are elected by the Board of Governors.[147]

It is the Executive which must now prepare the annual budget of needs, receipts, and expenditures of the Agency to be submitted to the Board for its approval, subject to the recommendations of the Assembly.[148] Among the financial resources of the new agency listed in the agreement are fundraising activities, income on investments and from collection of debts, and *grants from the government of Israel.*[149]

Regarding the relations between the government of Israel and the Agency Executive, Louis A. Pincus described the relationship "as one of mutual understanding and cooperation. The Coordinating Forum [recognized under the Status Law and Covenant and responsible for allocating functions and duties between the government and the Jewish Agency, see *supra,* Part II A] between the government and the Agency Executive meets once every three months; its subcommittees meet more frequently."[150] The Prime Minister of Israel is always a member of this Coordinating Body.

146. *Ibid,* Article II, Section E, 1.
147. *Ibid,* Article II, Section E, 3.
148. *Ibid,* Article II, Section F, 2.
149. *Ibid,* Article II, Section F, 1.
150. *The Jerusalem Post,* Special Supplement, June 21, 1971, p. 3, col. 5; in a recent interview with Aryeh Doltzstien, the treasurer for the Jewish Agency, Mr. Doltzstien was asked why the government of Israel didn't assume all responsibility for immigration, absorption and settlement. His answer: "The government cannot carry out this burden for a simple reason. Every campaign for money outside Israel goes for immigration and absorption. Eighty percent of the money that is collected is exempt from income tax in the U.S. Israel cannot use this money except for the Jewish Agency—a recognized authority in the U.S., Britain and Canada as the collector and spender of the money for humanitarian purposes." *44–Haaretz* Supplement, Feb. 18, 1972, p. 8

F. *American Emigration*

"Aliyat revacha"—voluntary immigration from prosperous countries to Israel—has been a primary concern of the Israeli government and the Zionist Executive since the Twenty-Fifth Zionist Congress, the Congress of Immigration, in 1960. In 1964 the Executive reported to the Twenty-Sixth Congress that:

> Continuous efforts have been made to spread the message of aliya among Jews from the more prosperous countries where there is an enormous potential of immigrants from every section of society—professionals, artisans, craftsmen and the well-to-do ... This immigration is of particular importance in view of the ... great need of the state for trained manpower.[151]

These efforts, however, particularly with respect to Jews in the United States, have been markedly unsuccessful.

> So far as most American Jews are concerned, the propaganda efforts that the Jewish Agency and other Zionist groups have conducted here have succeeded overwhelmingly in one respect, and have failed just as emphatically in another. They have instilled in American Jews (and in Americans in general) a feeling that the State of Israel is a necessary and permanent national entity, deserving of American support, and, if needs be, of American military protection. But no momentum whatever has been created for an American aliya, an American migration to Israel, an aliya not of dollars but of Jews.[152]

In the period between and including the years 1948 and 1956, American immigration to Israel ranged from only 369 persons in 1948 to a high of 440 in 1952 and back down to 287 in 1956.

151 Reports submitted to the Twenty-Sixth Zionist Congress in Jerusalem for the period April, 1960–March, 1964 (1964), pp. 83–84.

152. Robert Silverberg, *supra*, at 476.

As a result of the dispatch of Immigration Department emissaries (schlichim) to the United States in 1957, the first real evidence of increased formal efforts to encourage American emigration, emigration almost doubled over the previous year. Following the Twenty-Fifth Zionist Congress, emigration figures significantly increased again from 853 in 1960 to 1,357 in 1961.[153] From that time to the end of the Six Day War, the number of emigrating Jewish American citizens steadily increased but in relatively small annual increments of about 100 persons.[154] Since the Six Day War, however, about 24,000 Jews have emigrated from North America, most of whom were residing in the United States.

There appears to be several reasons for the lack of enthusiasm on the part of American Jews to emigrate to Israel. According to the Zionist Executive, "It seems that these Jews are not conscious of any need for personal redemption by coming to Israel. They are not conscious of any obligation to take part in the reconstitution of the Israel Commonwealth."[155] More importantly, however, they are deterred by unsatisfactory absorption schemes in the realm of employment, housing and education for their children.[156]

To overcome the lack of interest displayed by American Jews in actually immigrating to Israel, the government of Israel and the Jewish Agency and its affiliates have increasingly stepped up their efforts to promote it by emphasizing the ideas of immigration as a central part of the life of every Jew. For example, discussions among members of the Zionist Movement produced the resolution that "it is necessary to make it obligatory for every Jew, as a condition of affiliation to the Zionist movement,

153. Reports to the Twenty-Sixth Congress, *supra,* at 83–84.
154. Reports to the Twenty-Seventh Congress, *supra,* at 60; Report submitted to the Zionist General Council for the period from April to November, 1969 (1970), p. 115.
155. Reports to the Twenty-Seventh Congress, *supra,* at 52.
156. Reports to the Twenty-Sixth Congress, *supra,* at 85.

and certainly as a condition of holding office in the Zionist Movement, to make a real effort to prepare for his own settlement in this country (Israel), and at the very least to prepare his children for aliyah, at an earlier or later date."[157] "The individual Jew must also be made constantly conscious of his obligation to settle in Israel."[158]

As part of the campaign to induce the "need for personal redemption" among American Jews, the number of schlichim (immigration emissaries) in the United States of the Immigration Department was increased from four in 1964[159] to eight in 1968[160] to twenty in 1970.[161] "Aliyah Movements" and offices have been established in the United States for the purpose of "propagating the idea of immigration and deepening immigration consciousness" by distributing literature and information in Jewish communities and locating professional people and other desirable immigration candidates.[162] The Zionist Executive has enlisted the aid and cooperation of such groups as the B'Nai B'rith Young Israel, Union of Conservative Rabbis, the Organization of Orthodox Rabbis and the American Jewish Committee.[163] "Aliyah Months" have also been organized during which the general propaganda effort is intensified.[164]

Although much greater emphasis has obviously been placed on American emigration in the last decade, there was no significant increase in the number of Jewish Americans who did emigrate until after the Six Day War. During the twenty years preceding the War, only 6 ½ percent of the total number of immigrants were from the affluent countries (including the

157. Reports to the Twenty-Seventh Congress, *supra,* at 53.
158. *Ibid,* at 53–54.
159. Reports to the Twenty-Sixth Congress, *supra,* at 242–243.
160. Reports to the Twenty-Seventh Congress, *supra,* at 55.
161. Report submitted to the Zionist General Council for the period from April to November, 1969 (1970), p. 6.
162. *Ibid,* at 6.
163. Reports to the Twenty-Seventh Congress, *supra* at 55.
164. *Ibid,* at 55–56.

United States, Canada, the Latin American countries and the Western European countries). However, in 1968 the percentage increased to forty-one percent and up to forty-seven percent in 1969.[165] The needs of their immigration, settlement and absorption are provided for by the Jewish Agency in Jerusalem out of tax exempt contributions from the U.S. and elsewhere.

G. *The years 1968 to 1972*

From 1968 to the present time, the "1968 Jerusalem Programme", adopted at the Twenty-Seventh Zionist Congress, has provided the fundamental guidelines for the Zionist Movement around the world. The Programme lists the aims of Zionism as:

> The unity of the Jewish people and the centrality of Israel in Jewish life;
> The ingathering of the Jewish people in its historic homeland, Eretz Israel, through Aliyah from all countries;
> The strengthening of the State of Israel which is based on the prophetic vision of justice and peace;
> The preservation of the identity of the Jewish people through the fostering of Jewish and Hebrew education and of Jewish spiritual and cultural values.[166]

The epicenter of WZO and Jewish Agency activity has been the Immigration Department of the Zionist Executive. Its major concern has been immigration from the affluent countries: "The crucial question confronting us is how are we to populate with Jews the newly-liberated areas (following the Six Day War), at a time when Jews living in countries from which egress is possible are unwilling to come and settle here

165. *Davar,* Feb. 27, 1970.
166. *The Jerusalem Post,* Special Supplement, June 21, 1971, p. 13, col. 3.

[Israel]."[167] Consequently, the operations of other departments have been directed toward the aliyah movement in an effort to recruit new immigration candidates and bolster disappointing immigration figures.

As part of the overall immigration and absorption plan, the establishment of new settlements within the expanded borders of Israel has been and continues to be of major importance. As discussed in Section III, Part A, absorption and settlement of immigrants in Israel is considered simply a function of the national defense.[168] As a result, over 50 new settlements have been created throughout the country and along its borders since the Six Day War.[169] To maintain the current rate of settlement, and increase it if possible in the future, the Twenty-Eighth Zionist Congress resolved in early 1972 to vigorously pursue its policy of colonization "as a basis for the rebuilding of the land, the dispersal of Israel's population. . . and the security of her borders".[170]

As will be discussed in the next Section, this planned process of colonization of Palestine by immigrant Jews has resulted in the intentional and often brutal displacement of much of the indigenous Palestinian Arab population.

The most significant event of the past four years for the Zionist Movement and the WZO/JA has been the reconstitution of the Jewish Agency for Israel (discussed in Section E, *supra*). Although allegedly reorganized to allow greater participation in the affairs of the Agency by its fundraising organs, Louis A. Pincus, chairman of the Jewish Agency Executive, admitted that the separation of the WZO and the Jewish Agency arose

167. Reports to the Twenty-Seventh Congress, *supra,* at 52.
168. See footnote 4 and accompanying text.
169. Resolutions of the Twenty-Eighth Zionist Congress, 1972, Committee on Settlement and Land Development, Section A (1); as cited in *Journal of Palestine Studies*, Vol. 1, No. 3, p. 185 (1972).
170. *Ibid,* Section A (3).

out of a "complex of legal developments" which he did not care to define.[171]

Looking forward, it is apparent that Zionist policy of the next three or four years will simply be an extension of the past four years. In its 1972 resolutions, the Twenty-Eighth Zionist Congress restated and re-emphasized the cardinal rule under which the Zionist Movement has operated in the past:

> Congress instructs the incoming Executive to ensure that all territorial Zionist organizations and individual members of the Zionist Movement use their influence with the Jewish international, national and local organizations and associations which operate in the political, religious, youth, educational, welfare, cultural or social fields, in order to make them more Israel-oriented in accordance with the principle of the centrality of Israel in Jewish life.[172]

H. *Racial Discrimination*[173]

Racial discrimination in Israel today fundamentally derives from Zionist history and ideology. The Zionist concept of

171. Louis A. Pincus, "The Reconstituted Jewish Agency, Dispersion and Unity"—*Journal on Zionism and the Jewish World,* No. 12, World Zionist Organization, Dept. of Organization and Information, Jerusalem (1971), p. 39. See also footnote 59 and accompanying text.

172 Resolutions of the 28th Congress, Committee on Relationship with Organized World Jewry, Sec. 4; as cited in *Journal of Palestine Studies,* Vol. 1, No. 3, p. 186–187 (1972).

173 The following discussion on Racial Discrimination in Israel does not encompass racially discriminatory practices carried out in territory occupied by Israel since 1967 (in which the Jewish Agency, Jerusalem, now directs the establishment of colonies and settlements). Comprehensive reports regarding discrimination in these areas may be found in the reports of the United Nations Commission on Human Rights,Report of the SpecialWorking Group of Experts Established Under Resolution 6 (XXV) of the Commission on Human Rights, U.N. Document E/CN.4,1016,Add.1–5,1970; Report of the Special Committee to Investigate Israel: Practices Affecting the Human Rights of the Population of the Occupied Territories, U.N. Document A/8089, 1970; and Middle East Fact Finding Mission of the I.A.D.L., International Association of Democratic Lawyers, Brussels, 1968.

Israel as the "land of destination" and "national homeland" for all Jews has engendered from its very beginning a feeling of the need for racial exclusiveness in historic Palestine. The natural and intended result has been the alienation and oppression of a single group of "non-Jewish" inhabitants of Israel —the Palestinian Arabs.[174] As will be shown below, Israel's discrimination against this segment of the population is part of a preconceived Zionist plan, dating back to and inherent in the founding of the Zionist Movement, for the expropriation of Palestinian Arab lands and the expulsion of its non-Jewish Palestinian Arab inhabitants.

The first real evidence of the Zionist objective to make Israel an exclusively Jewish state through the systematic expulsion of Palestinian Arabs and colonization by Jews is contained in the diary of the founder of the Zionist Movement, Theodor Herzl. In 1895 he wrote:

> We shall try to spirit the penniless population across the border by procuring employment for it in the transit countries, while denying it any employment in our own country. Both the process of expropriation and the removal of the poor must be carried out discreetly and circumspectly. Let the owners of immovable property believe that they are

174. It is important to note here that at the time of the signing of the Balfour Declaration in 1917, the indigenous Arab population in Palestine constituted 93% of the total and owned 97.5% of the land. Although the Jewish population at that time was thus only 7% of the total, the Balfour Declaration referred to the Palestinian Arab people—the vast majority of the population—as the "existing non-Jewish communities".

By 1947, as David Ben Gurion reported to the United Nations Committee on Palestine (UNSCOP), the Palestinian Arabs still owned 94% of the land and the Jews only 5%. U.N. Document A/364, add. 2,p. 17. After the establishment of the state in 1948, however, the United Nations Conciliation Commission for Palestine estimated that more than 80% of Israel's total area represented land previously owned by Arab refugess.

As a result of the further carrying out of the Zionist plan to make Palestine an exclusively Jewish state, the Jewish National Fund and the Jewish people of Israel today own 94.5% of the land and constitute 90% of the population.

cheating us, selling things for more than they are worth. But we are not going to sell them anything back.[175]

To implement these guidelines, the Fifth Zionist Congress founded the Jewish National Fund in 1901. The Fund was charged with the purchase, development, and resettlement of lands on behalf of the whole Jewish people. It is based on the principle that "its land shall not be sold, but shall remain the property of the people and shall be given on lease only."[176] Its lease form rules (article 23) openly stipulated that "only Jewish labour" could be employed on the land and prescribed fines and eviction penalties for those violating the rules. In 1929 the new Constitution of the Jewish Agency for Palestine approved the Fund's exclusivist policies and added its own:

> (d) land is to be acquired as Jewish property and subject to the provisions of Article 10 of this Agreement, the title to the lands is to be taken in the name of the Jewish National Fund, to the end that the same shall be held as the inalienable property of the Jewish people.
> (e) The Agency shall promote agricultural colonization *based on Jewish labour,* and in all works or undertakings carried out or furthered by the Agency, it shall be deemed to be a *matter of principle that Jewish labour shall be employed.* [Emphasis supplied.][177]

To this the Palestine Foundation Fund (Keren Hayesod) added the requirement that Zionist settlers borrowing its funds had to agree to "hire Jewish workmen only" (Article 7). The natural vehicle for the accomplishment of this objective in this and other areas of labor was the Histadrut, the General Federation of

175. *The Complete Diaries of Theodor Herzl,* vol. I, Herzl Foundation, 1960, p. 88.
176. Reports to the Twenty-Sixth Congress, *supra,* at 345.
177. Constitution of the Jewish Agency for Palestine, Article III, Section (d) and (e), 1929.

Labor in Palestine, which strongly embraced the Zionist ideology and enthusiastically carried out its goals. Moreover, when the Jews themselves began producing goods for sale, Jewish Agency officials and Zionist leaders encouraged, often forcibly, a boycott of Arab goods and mixed government schools.[178]

Regarding the effect of the Zionist land alienation rules and the corresponding labor boycott, Sir John Hope Simpson, in his elaborate report to the British government in 1929 on the situation in Palestine, observed that:

> the result of the purchase of land in Palestine by the Jewish National Fund has been that land has been extra-territorialised. It ceases to be land from which the Arab can gain any advantage now or in the future. Not only can he never hope to lease or to cultivate it, but by the stringent provisions of the lease of the Jewish National Fund, he is deprived forever from employment on that land. The land is in mort-main and inalienable. It is for this reason that Arabs discount the professions of friendship and good will on the part of the Zionists in view of the policy which the Zionist Organisation deliberately adopted.[179]

The plan, of course, was to force the emigration of indigenous Palestinian Arabs to areas without the borders of Palestine where their labor and goods were more readily marketable and their opportunity for a successful livelihood was infinitely greater in comparison to their decreasing chances of survival in Palestine. The overwhelming success of the plan and the confiscation of land under a series of laws (discussed *infra* at pages 60–68) is

178. *Palestine A Study of Jewish, Arab and British Policies*. Published for the Esco Foundation for Palestine, Inc. (New Haven, 1947), Vol. I, pp. 559, 560, and Vol. II, pp. 1160, 1165.

179. John Hope Simpson: *Report on Immigration, Land Settlement and Development* (Command 3686, 1930), Vol. I, p. 54.

demonstrated by the fact that the Jewish National Fund owns over 90% of all land in Israel today, although total Jewish owned land in Palestine at the time of the creation of Israel did not exceed 6 ½ %.

Zionists in Palestine so rigorously adhered to Herzl's precepts and their fulfillment that by 1919 the American King-Crane Commission could publicly report that the clear Zionist goal in Palestine was the "practically complete dispossession" of the indigenous Palestinian Arab inhabitants.[180] And by 1929, as the Zionist goals were being transformed into reality, through the exclusive Zionist institutions noted above, the Shaw Commission could declare that "the position is now acute. There is no alternative land to which persons evicted can remove. In consequence a landless and discontented class is being created."[181] Nevertheless, in 1942, the Zionists reiterated their demands for an exclusively Jewish state and added, in the Biltmore Program, a demand for Zionist control of immigration in Palestine through the Jewish Agency.[182] Finally, in January of 1948, just three months before the major outbreak of hostilities between Arab and Israeli forces, the United Nations Palestine Commission informed the Security Council that the British High Commission had reported a "steady exodus" of Palestinian Arab families who could afford to leave the country.[183] Soon after, the more well-to-do families were followed by the poorer rural villagers so that by May 15, 1948, some 250,000 refugees had left Jewish-occupied territory.

By December, 1949, following the end of British rule, the

180. Harry N. Howard, *The King-Crane Commission,* "Appendix; the Recommendations of the King-Crane Commission", Beirut, 1963, p. 351.

181. Quoted in Erskine B., Childers, "The Wordless Wish: From Citizens to Refugees", *The Transformation of Palestine,* ed. Ibrahim Abu-Lughod, Evanston, 1971.

182. Jewish Agency for Palestine, *Book of Documents submitted to the General Assembly of the United Nations,* May, 1947.

183. United Nations Document A/AC.21/9.

proclamation of Israeli statehood, and the initial and major Arab-Israeli armed conflicts of the period, the United Nations Economic Survey Mission for the Middle East reported that an estimated 726,000 Palestinian Arabs had fled Israel during the 1948 conflict and were then refugees because they were prohibited by the Israeli government from returning to their homes.[184] Although there is conflict in the evidence as to why the Palestinian Arabs left the country at that time, whether it was because of fear and panic induced by real or alleged acts of terrorism,[185] because they were forcibly expelled,[186] or because they simply sought temporary refuge in noncombat areas, it is really irrelevant today. The most significant fact is that once having left they were categorically denied by Israel the right to return to their homes after the cessation of hostilities.

After several pleas by Arab governments and others, including the highly respected U.N. Mediator Count Folke Bernadotte (who was subsequently assassinated in Jerusalem), on behalf

184. United Nations Document A/AC.25/6, Part I, p. 22.

185. One event, most certainly responsible for the flight of many Palestinian Arabs, was the Deir Yassin incident. As reported in newspapers around the world, a special Zionist armed unit entered the nonbelligerent village of Deir Yassin and massacred and mutilated the bodies of 250 men,women and children, and then paraded several survivors through the streets of Jerusalem on open lorries. *Daily Telegraph* (London), April 12, 1948; *New York Times*, April 10, 1948; and *Herald Tribune*, April 10, 1948.

As a result of the Deir Yassin incident, Manachem Beigin, then commander of the Irgun, reports that the Arabs throughout the country were seized with limitless panic and started to flee for their lives. Thus Kolonia Village, which had previously repulsed every attack of the Haganah, was evacuated overnight and fell without further fighting. Beit-Ikso was also evacuated. Those two villages overlooked the main road and their fall, together with the capture of Kastel by the Haganah, made it possible for the Zionist forces to keep open the route to Jerusalem. In the rest of the country, too, the Arabs began to flee in terror even before they clashed with Jewish forces. Menachem Beigin, *The Revolt: The Story of the Irgun*, 164 (New York, 1951).

186. United Nations Mediator Count Folke Bernadotte reported to the United Nations as follows: "The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumors concerning real or alleged acts of terrorism, or expulsion. Almost the whole of the Arab population fled or was expelled from the area under Jewish occupation." U. N. Progress Report, Sept. 16, 1948, Part I, Paragraph 6; Part III, Para. 1.

of the displaced Palestinian Arabs, the United Nations finally took note of the severity of the refugee problem on December 11, 1948. The General Assembly adopted Resolution 194 (III), designed to aid the refugees through programs providing for repatriation, compensation and resettlement. The Resolution reads in pertinent part:

> The General Assembly...
> 11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;
> Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation...[187]

Five months later, on May 12, 1949, the Israeli delegation signed the "Protocol of Lausanne"—a document prepared by the United Nations Conciliation Commission regarding the rights and property of Palestinian refugees—under which Israel, as an implied condition to its admission to the United Nations, agreed to accept and abide by the directives of Resolution 194 and others passed by the General Assembly for the purpose of solving the general Middle East problem and the more specific Palestinian Arab refugee dilemma. Notwithstanding its commitment under the Protocol, however, Israel steadfastly ignored both it and Resolution 194—and continues to do so—claiming finally in 1965 that the Resolution was "obsolete by the course of

187. United Nations Resolution 194 (III) of 11 December, 1948.
188. See United Nations Document A/927 of 21 June, 1949.

events".[189] Nevertheless, the General Assembly has reaffirmed its position on the issue every year by annually repassing Resolution 194 in the hopes that Israeli intransigence will somehow diminish and lead to the eventual implementation of the Resolution's programs.

In total contravention of the underlying principles of Resolution 194, and every pertinent U.N. resolution that has been passed since, Israel has retained and continues to enforce two series of laws originally promulgated by the British colonial regime in Palestine entitled the Emergency Laws (1936) and the Defense Laws (1939). In 1945 the British elaborated these laws in a more comprehensive form for use against both the Palestinian Arab populace and the secret Zionist terrorist organizations, Irgun Zvai Leumi and the Stern gang. They were violently opposed by all Zionists in Palestine.

As soon as the Zionists in Palestine proclaimed the creation of the State of Israel, however, these laws were adapted for use by Israel against the Palestinian Arab population remaining in that portion of Palestine which lay within the armistice lines of Israel. Under the Defense Laws[190] the Palestinians were divided into three principle regions under military regimes. The Minister of Defense was empowered to appoint military commanders over these areas. On appointment the governor automatically became a competent authority with power to enforce, at his own discretion, all the powers covered by what had become the Israeli Defense Laws.

The military governor had the power to declare an area closed and restrict entrance and exit to it (Article 125). Passes were required for movement into or out of these areas. He was empowered to issue an administrative order for police supervision of any person. An individual under such an order may

189. United Nations Document A/APC/SR.433 of 19 October, 1965—Official Records of Special Political Committe.

190. *Official Gazette*, No. 1442, 27 September, 1945.

be restricted in his movements and must inform the police of them; his contacts with other persons may be rigorously controlled; his professional work may be supervised and restricted; he must inform the police of his whereabouts at all times, appear at the nearest police station when so required, and remain indoors between sunset and sunrise; the police have access to his home at any hour of the day or night (Articles 109 and 110). Article 111 allows the administrative detention of anyone whom the military government may decide to detain, for any reason whatsoever, *for an unlimited period without trial and without charge*. The military government may confiscate or destroy a person's property if the military government suspects that a shot has been fired or a bomb thrown from such property (Article 119). Moreover, the military government may expel a person from the country (Article 112) or confiscate a person's property (Article 120). A total or partial curfew may be imposed in any village or area (Article 124). In practice, Israel has used more frequently those powers provided for by Articles 109 (expulsion), 110 (police supervision), 112 (administrative detention, 124 (curfews), and 135 (closed areas and movement permits).

It was only in 1966 that the military regions, and the requirement of permission for movement into and out of these regions, were abolished. However, use of identity cards was maintained and all other provisions of the Israeli Defense Laws continued in full force and effect.

These laws, and others subsequently enacted, have operated to deprive Israel's Palestinian Arab people of their most fundamental human rights. Moreover, they have been utilized to expropriate the land of these people, in accordance with Herzl's grand design to make Palestine exclusively Jewish, and force them across the borders.

The following discussion deals with the specifics of Israeli land expropriation and discrimination in respect of civil and

political rights; that is, how the government has authorized and directed the confiscation of land from its indigenous Palestinian Arab population since the establishment of the state and how it has violated the most fundamental of human rights through the enforcement of patently discriminatory laws.

In 1950 the Knesset approved the Law of Return which granted all Jews the right to immigrate to Israel (see Part II, Section A, *supra*). In 1952 it passed the Nationality Law[191] granting automatic Israeli citizenship to all Jews by virtue of the Law of Return. With regard to the citizenship of Israel's Palestinian Arab population, however, the law contains entirely different provisions. For a Palestinian Arab to be considered an Israeli citizen, regardless of whether he was born in Israel or has lived there most of his life, it must be established that (a) he was registered as a resident in Israel on March 1, 1952, by virtue of the Population Registration Law of 1949; (b) he was a resident in Israel on April 1, 1952; and (c) he was, from the date of the establishment of the state and until April 1, 1952 in Israel, or in an area that was attached to it after the establishment of the state, or had entered Israel legally during that period.[192] On the basis of these provisions the government refused to recognize the nationality of Palestinian Arabs who were without the borders of Israel on the date of the establishment of the state, even if they were in areas later annexed or occupied by Israeli forces.[193] Since many of the Palestinian Arab inhabitants of Israel were not registered during the first years following statehood, oftentimes due to the lack of cooperation of military administration, or ignorance of the legal enactment in the midst of chaos, they were forever denied the fundamental right to citizenship.

191 6 Laws of Israel 50, No. 32, 1952.

192. 6 Laws of Israel 50, No. 32, 1952, paragraph 3.

193. Sabri Jiryis. *The Arabs in Israel*, 178 (Beirut: The Institute for Palestine Studies, 1969).

More importantly, the deprival of citizenship is inherited. That is, a child born of a "stateless" couple is not granted citizenship by virtue of his birth in Israel, but rather inherits his parents' citizenship status—no citizenship at all. His only recourse is to apply for citizenship between his 18th and 21st birthday. Unfortunately, the majority of young Arab inhabitants to whom this law applies are not aware of its existence. Once they pass 21 years of age without applying they have completely lost their right to citizenship and must pass their "stateless" status on to their descendants.

Even if he is granted citizenship, the Palestinian Arab may be subject to a series of confiscatory land laws that deprive him completely of his rights to land that may have been owned and occupied for generations by members of his family. The first in this series is the Law on the Acquisition of Absentees' Property of 1950.[194] The purpose of the Law was to define the legal status of the property of absentees who had left their homes during specified periods. Their property was transferred by force of law to the "custodian of absentees' property" who was appointed under the law. The most important provision of the law is the definition of "absentee":

> ...(b) the word "absentee" shall mean the following: 1. any person who was a citizen of the land of Israel, and left his ordinary place of residence in the land of Israel at any time between 29 November, 1948 and the day on which it is announced that the State of Emergency declared by the Provisional Council of State is abrogated, shall be regarded as an "absentee" if he left the country (during the above period) to: (a) a place outside the land of Israel before 1 September, 1948, or (b) a place inside the land of Israel at that time occupied by forces that wished to prevent the establishment of the State of Israel or fought against it after its establishment.[195]

194. 38 Laws of the State of Israel 86, 1950.
195. *Ibid,* paragraph 1.

The effect of this provision was to cause the confiscation of the property of indigenous Palestinian Arabs (since the government had no interest in confiscating the property belonging to Jews) who had temporarily left their homes before September 1, 1948, without returning before Israeli occupation. Since much of the land that was to become a *de facto* part of Israel under the armistice agreements was held by Arab forces prior to September 1, 1948, when Israel occupied these areas, many Palestinian Arab families temporarily fled to neighboring towns or villages in the hopes of returning when peace was fully restored. Under the Law on the Acquisition of Absentees' Property, their land was expropriated and the owners left without a single remedy.

Commenting on this law, one member of the Israeli Knesset stated:

> This law is a symbol; it is an expression of the discrimination practised against the Arabs of this country... By virtue of the provisions of this law, thousands of the Arab inhabitants of Israel are regarded as absentees and are deprived of their rights to legally dispose of their property. This law does not allow them to enjoy their rights to their lands and their homes and they are quite unjustifiably regarded as 'absentees.'
>
> The main function of the Custodian of Absentees' Property is to steal more and more...

The Defense Laws (State of Emergency), 1945, discussed in a similar context above, constitute the second set of discriminatory land expropriation laws in this series. The operative section is Article 125.[197] It authorizes the military governor of a territory to declare specific areas "closed areas" which no one may enter or leave without a written permit from the governor or his representative.

196. *The Knesset Debates*, vol. 8, pp. 789-790, 16 January, 1951.
197. *Official Gazette*, No. 1442, 27 September, 1945, Supplement 2, p. 855.

Although Article 125 was originally promulgated by the British for security purposes, it has since operated to prevent absentee Arab inhabitants from returning to their homes after they have voluntarily left them, been expelled from them, or been intentionally prevented from returning to them. If the government decides that certain land should be settled by Israelis, the military governor simply declares it a closed area and refuses to grant permits to enter it for reasons of state security. In one case, the inhabitants of the village of Ghabisya were expelled on the order of the Military Governor of Galilee, after which the village was declared a closed area. A complaint was brought against the Governor in the Supreme Court.[198] The Court held that the act of closing the area was not valid until it was published in the Official Gazette. In response to the Court's decision the local authorities refused to allow the villagers to re-enter until the order for closing the area was actually published in the Gazette. That event, of course, validated the order and gave proper legal authority to the Governor's action in closing the area. The land was subsequently conveyed to the inhabitants of neighboring Jewish settlements.[199]

Complementing the Defense Laws for the purpose of expropriating Arab lands in Israel are the Emergency Laws (Security Areas) 1949.[200] Under this series, the Minister of Defense, with the approval of the Knesset Foreign Affairs and Security Committee, may declare a "Protected Area"—a strip of land inside Israel stretching the length of the frontier[201]—or a portion thereof, a "Security Area". No one may enter or leave such an area without a special permit. Under Article 8(1),

198. *Jamil Aslaw, et al v the Military Governor of Jerusalem,* Appeal No. 51, 220, 6 Judgements of the Supreme Court 284.
199. Sabri Jiryis, *supra,* at 66–67.
200. 11 Collected Laws 169, 27 April, 1949.
201. The "Protected Area" stretches 10 kilometers to the North and 25 kilometers to the South of latitude 31 N., the whole length of the frontier.

the appointed law enforcement officer may "order a permanent resident in a Security Area to leave it" within 14 days or appeal to the Appeal Committee (under Article 10) within 4 days. If the Committee ratifies the order, the appellant must leave within five days of the Committee's decision. This law has enabled the Minister of Defense to expel thousands of Arab villagers in the Security Areas. Since the Appeal Committees were appointed by the Minister of Defense himself, the Palestinian Arabs' legal remedy is one of form only.

The most recent employing of this measure by the government of Israel occurred on July 23, 1972, when the Arab Israeli citizens of two villages, Ikrit and Berem, were barred from returning to their homes by Israeli authorities. In November, 1948, the villagers had peacefully surrendered. One month later they were expelled from their homes and their stone houses destroyed and lands parcelled out to six kibbutzim. The villages were declared a "closed military area". The land involved was taken over by the Custodian of Abandoned Property (today the National Lands Authority). The *New York Times* of July 24, 1972, reports that former Premier, David Ben Gurion, commented several years ago on this issue, "These are not the only villagers living a long way from their home villages. We do not want to create a precedent for the repatriation of refugees." In commenting on the government decision, the current Premier, Golda Meir, noted that the issue was not so much security as creating an undesirable precedent.

The fourth in this series of confiscatory laws is the Emergency Articles for the Exploitation of Uncultivated Lands.[202] The alleged purpose of the Emergency Articles was to encourage landowners to cultivate their land by authorizing the Minister of Agriculture to take possession of it if it is not. In practice, however, the law has been used to deprive Arab landowners of

202. *Official Gazette* 3, 15 October, 1948.

their rights in the land and transfer it to nearby Jewish colonies. The Minister of Defense simply declares a specific area of land a "closed area" under the Emergency Laws. The Military Governor refuses to grant permits to the owner to enter upon the land, which then becomes "uncultivated". The Minister of Agriculture then declares the land to be uncultivated and orders it conveyed to another party, a Jewish settler, who is prepared to exploit it.

To supplement the foregoing laws, the Law for the Requisitioning of Land in Times of Emergency, 1949, was promulgated.[203] This law empowers the government to appoint a "competent authority" entitled to "give orders for the requisitioning of land" on a "settlement order" in all cases where it is convinced that such orders are "required for the defense of the State and the security of the people, to safeguard essentiel provisions or essential public services, or to absorb immigrants or settle retired soldiers or men disabled while on active service". The effect of the law is to allow the government to "requisition" Arab lands in the name of the national defense.

To give final legal effect to the expropriation measures taken by the government under the above laws, the Law for the Acquisition of Land (Operations and Compensation) 1953, was passed.[204] The law authorizes the irrevocable transfer of requisitioned land to the State.

More recent legislation has reinforced these laws and has entered new territory in denying Arabs *any* share in Jewish owned lands. The first of these laws is the Agricultural Settlement Law (Restrictions on the Use of Agricultural Land and of Water, 5727–1967)[205] passed by the Knesset on August 1, 1967. Its alleged purpose is to ensure the proper and most efficient use and cultivation of the land by its occupants. One

203. 27 Laws of the State of Israel, 1, 23 November, 1949.
204. 122 Laws of the State of Israel, 58, 20 March, 1953.
205. 21 Laws of the State of Israel, 105 (1966/67).

who violates the law is liable to the termination of his rights in the land and the water allocated for that land. A "non-conforming use" of the land under the law includes vesting any rights in the land or crops of the land in a tenant. The real effect of the law is to prevent Jewish occupants from leasing or sharing their land in any manner whatever with the local Arab inhabitants. It complements nicely the rules of the Jewish National Fund and Keren Hayesod discussed *infra*. One of the very few dissenting members of the Knesset, Uri Avnery, expressed his attitude toward the law prior to its enactment as follows:

> ... There are two conflicting trends in this law; it is a Dr. Jekyll and Mr. Hyde law. To all appearances what we have is a law with an extremely positive social aim; the landlords who, through various kinds of favouritism, have succeeded in obtaining from the Israel Land Authority State land on cheap and easy terms, are to be compelled to return that land to the Israel Land Authority if they transfer their right to cultivate it to others. That is to say that the proposers of the law approve of the principle that the land should be in the hands of those who cultivate it, not in the hands of those who have friends at court or other parasites—the new class of party effendis.
>
> What they really aim at are the Jewish effendis and the Arab cultivators. What is meant is the land that was confiscated from the Arabs and handed over through favouritism to Jews who then leased it back to the Arabs who have thus become its cultivators. This is the real reason for this law. This has been frankly stated in the press; it has been published in press statements which did not appear of their own accord —someone must have put them out.
>
> If we are going to expel Arab cultivators from the land that was formerly theirs and was handed over to the Jews, we

shall be acting in accordance with the verse which says "Hast thou killed and also inherited?" The Jews took the land from them; somehow or other they go back as cultivators; and now they are to be driven out again.[206]

Another member of the Knesset, expressing similar sentiments regarding the Agricultural Settlement Law but exposing the true relationship between Arab and Jew today in rural areas, stated:

> The official blue paper, the language of law and justice... takes care not to refer in black and white to the racism and national discrimination that the enforcement of this law will lead to. This law is not intended to serve agricultural planning, or the principle that the owner should work his own land. The bitter truth that many are trying to evade or conceal is that this law is really intended to prevent Arab labourers from working on land that is called "land of the nation", "redeemed land", to use the terminology of experts in the eviction of Arab farmers from the land.
>
> The government ministers who approved this law, the civil servants who drafted it, the leaders who made them do it and many Members of the Knesset know very well what this law is for, but here in the Knesset they will not talk about it openly. But a number of articles have been written about it in the press during the last two years, full of inflammatory and clamorous propaganda against Arabs being allowed to work on "land of the nation".
>
> The Knesset should take the trouble to find out how a situation arose in which thousands of Arab cultivators in the villages of the Triangle, in the North and in Galilee are obliged to cultivate the land of Jewish settlements as tenants or partners, under conditions of gross exploitation. Those

206. *The Knesset Debates* (31/10/1966), pp. 164-165.

who control the land exploit the sweat of the Arab farmer and his family to make vast profits. There are cases in which the Arab farmer works as a tenant on his own land, the land which the authorities confiscated and handed over to others. He moves on to the land as a tenant or a simple partner, to endure shocking exploitation.

This situation is a consequence of the confiscation of the lands of Arab farmers, as a result of which tens of thousands of them in the villages of the Triangle and Galilee have no land... They are looking for a source of livelihood and they have found one, but under difficult conditions, working in the town as daily paid labour doing disagreeable jobs, or working on the land as tenants or daily paid labour, cruelly exploited by those who control the land in the kibbutzim and moshavim—those who cannot work the land themselves or who make large profits from renting it to the experienced Arab farmer, who works under bad conditions, along with his children and other members of his family. The land is confiscated from the Arab farmer—"redeemed from him"—an appropriate and charming expression—to become land of the nation, which means that it belongs to Jews only. It is given to Jews and it does not matter whether the Jew who gets it is a farmer, a land worker, a merchant or businessman. He may even be a Military Governor...[207]

No reply was made to these charges and the law was passed with overwhelming support.

The most recent legislation passed in the Knesset manifesting a gross disregard for the rights of its Palestinian Arab constituents is the Discharged Soldiers (Reinstatement of Employment) (Amendment No. 4) Law, 5730–1970.[208] Initially passed to deal with the problems of reintegrating discharged soldiers,

207 *The Knesset Debates* (21/10/1966), pp. 166–69.
208. 599 Laws of the State of Israel, 209, 22 July, 1970.

the amendment under discussion here authorized the payment of cash grants to discharged soldiers and their families. Today, however, it is used to implement the Zionist plan to increase the Jewish population in Israel by subsidizing Jewish families. This is accomplished, without also subsidizing Arab families that otherwise qualify, by defining a qualifying "soldier" (in Article 1) as anyone who is serving or has served in the Israel Defense Army, the Police or the Prisons Department, and anyone who was on recognized military service before May 15, 1948. Since only a very small fraction of the Arab population can qualify under this definition, and since the vast majority of Jews in Israel do qualify, the intended effect of the law is to subsidize only Jews to the complete exclusion of Israeli Arabs.

The Knesset debates on this law produced the following revealing remarks from member Uri Avnery:

> I said at the first reading that this law was infamous, shameful and scandalous. It has not become less infamous, less shameful or less disgraceful because a certain committee has approved it. I know that I shall not make anyone change his vote on it. My reservations will be unavailing and the law will be passed. I am now speaking for the record. If you please, may it be placed on record that the day this scandalous law was passed sounds of joy were heard in the Knesset because it had been passed. But the day will come when the Knesset will be ashamed of this law that has been passed...
>
> The intention is to encourage births among one part of the population of Israel and to effect the opposite among the other part, to pay grants to the hungry children of one part of the population and withhold them from the hungry children of another part, the distinction—it is obscure but quite obvious to anyone who knows the facts—being an ethnic one...
>
> There is a smart answer: there are Druzes who have served

in the Israeli army and they receive [the grants]. There are Arabs who are serving and have served in the police and they will receive the grants. This is true: 0.01 percent of the Arabs and 99.9 percent of the Jews will receive the grants. I warn the Knesset of one thing only: we shall hear of this law for many years to come from public tribunals, just as we hear about certain laws in certain other countries. I am very sorry that this idea has not struck any of you.[209]

The majority of Israeli legislators failed to heed this warning.

On numerous occasions the United Nations has taken note of these gross violations of Palestinian Arab human rights. Most recently, on March 22, 1972, the United Nations Commission on Human Rights adopted a resolution detailing specific acts and policies of the Israeli governmant that seriously impair, if not wholly abrogate, the fundamental rights of its Palestinian Arab inhabitants. The following is an excerpt from that resolution:

The Commission on Human Rights,

Bearing in mind the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August, 1949,

Gravely concerned with all acts and policies that effect the status or the character of those occupied territories and the basic rights of the inhabitants thereof, such as:

(a) The declared intention to annex certain parts of the occupied Arab territories,

(b) The establishment of Israeli settlements on those territories and the transfer of parts of its civilian population into the occupied territories,

(c) The evacuation, transfer, deportation and expulsion of the inhabitants of occupied territories,

209. *The Knesset Debates* (14/7/1970), pp. 2493-2494.

(d) The destruction and demolition of villages, quarters and houses and the confiscation and expropriation of property,
(e) The denial of the right of the refugees and displaced persons to return to their homes,
(f) Collective punishement and ill treatment of prisoners and detainees,
(g) Administrative detention and holding prisoners incommunicado,
[*Notes*] *with regret* that the aforementioned acts have not been rescinded in spite of the numerous resolutions adopted on the subject."[210]

Earlier, on December 3, 1971, the United Nations General Assembly adopted three resolutions aimed at inducing Israel to take affirmative action to rectify the existing injustices perpetrated on the Arab population in Israel. The following paragraph of the first resolution acknowledges the "inalienable rights" of Palestinian Arabs and the need for reconcilation and justice as requisite to a peaceful Middle East:

The General Assembly
1. Recognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations;
2. Expresses its grave concern that the people of Palestine have not been permitted to enjoy their inalienable rights and to exercise their right to self-determination;
3. Declares that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East.[211]

In light of Israeli repression in the areas of human rights

210. Resolutions of the United Nations Commission on Human Rights, U.N. Document E/CN.4/L 1195, 1972.
211. Resolutions of the United Nations General Assembly, U.N. Document A/8547, 1971.

discussed above, it should not be surprising that Palestinian Arabs are denied their political rights as well. Such rights have been specifically denied these people ever since the signing of the Balfour Declaration (See Part I, Section B, *supra*), which provided the "non-Jewish" people of Palestine with civil and religious rights only. The mass exodus of Palestinian Arabs at the time of the establishment of the state of Israel seriously impaired the remaining minority's chances for political representation, especially since most of their wealthy and more influential leaders left the country for safety, and the strict enforcement of the Defense Laws and Emergency Laws have since further discouraged the rise of an organized Arab voice in Israel.

When a popular representative Palestinian Arab group, Al-Ardh (The Land), did appear in 1958, the Israeli government and judiciary quickly manifested their opposition to it. The government, exercising its power granted under the Defense Laws, refused to allow the group to publish an Arab weekly and the Israeli Supreme Court denied legal relief without stating its basis therefor.[212] Again in 1964, in another effort to reach its supporters publicly, the group attempted to register its association with the Journalists' League under the name of Al-Ardh Movement. A copy of its constitution, one of the objectives of which was to "achieve complete equality and social justice for all classes of people in Israel" was accordingly sent to the authorities. Not long after, certain of Al-Ardh's leaders were arrested and a search conducted in most of its centers in Nazareth, Tayyiba, Haifa, and Jerusalem. A week later the Minister of Defense, invoking the Defense Laws, declared that:

The group of persons known as the Al-Ardh Group, or the

212. *Al-Ardh Group* v *The District Commissioner,* Northern District, Case No. 39/64.

> Al-Ardh Movement, or whatever its name happens to be from time to time and the group of persons calling themselves the Al-Ardh Company, Limited [the group's legally organized publishing company], and, in general, the group of persons formed as a result of the joint activities of some or all of the shareholders in the said company, constitute an illegal association.[213]

The penalty prescribed for engaging in any activities associated with Al-Ardh was ten years' imprisonment. As a result, of course, Al-Ardh has ceased to function as the public representative of Israel's Palestinian Arabs, other groups and individuals are strongly deterred from seeking a similar role, and Israel's original inhabitants largely remain political non-entities.

These examples of the denial of political rights, active land confiscation, and withholding of citizenship should offer the reader ample evidence of Israel's policy of discrimination and repression against her Palestinain Arab people. The consequence has been increasing tension within her borders and throughout the Middle East. Although practically every free world nation, and the United Nations collectively, has strongly and actively criticized the Israeli government for continuing these practices, they have been powerless to abate them. Therefore, in light of the fact the Executive and Judicial branches of the United States government have refused to support American institutions, through tax exemptions, that practice racial discrimination in this country, it is imperative that we discontinue now our support of foreign institutions, through the same tax exemptions, that operate with and through a foreign government authorizing repression and racial discrimination within its own borders.

213. Collected Declarations, No. 1134, 23 November, 1964, p. 638.

APPENDIX TO PART 1

GLOSSARY OF MAJOR ZIONIST ORGANIZATIONS

AMERICAN ZIONIST COUNCIL

Headquartered in the United States, the American Zionist Council is responsible for eliciting political support for Israel and Zionism and distributing pro-Israel propaganda. Before 1963 it was supported financially by the Jewish Agency-American Section, but is now allegedly maintained by groups independent of the Jewish Agency. It organizes and supports other pro-Israel, pro-Zionist groups operating within the United States. The Council is not registered as a foreign agent of the Israeli government.

JEWISH AGENCY-AMERICAN SECTION

The Jewish Agency-American Section was organized in 1960 to take over the operations of the Jewish Agency of Israel, Inc., to carry on the activities of the Jewish Agency, Jerusalem, in the United States. It is the registered "foreign agent" of the Jerusalem Agency in this country. There is evidence that indicates that it is supported financially by the United Jewish Appeal.

JEWISH AGENCY FOR ISRAEL, INC.

Originally a New York corporation registered as the "foreign agent" of the Jewish Agency, Jerusalem, to carry on the activi-

ties of the Jerusalem Agency in the United States, the Jewish Agency for Israel, Inc., acted as the conduit middleman for the transmission of United Israel Appeal funds to Israel. It deregistered in 1960 (delegating its previous functions to the new Jewish Agency-American Section) and allegedly submitted to the control of American organizations. Zionist leaders contend that it now controls the Jerusalem Agency; that is, that the Jewish Agency for Israel, Inc., is the principal (in the United States) and the Jerusalem Agency (in Israel) is the agent. In 1966 it consolidated operations with the United Israel Appeal, Inc., and now both organizations function under the name of United Israel Appeal, Inc.

JEWISH AGENCY, JERUSALEM (Jewish Agency for Palestine)

Established in 1922 under the British Mandate, the Jewish Agency, Jerusalem, was immediately identified with the World Zionist Organization; until 1971 they were considered one and the same organization. Headquartered in Jerusalem, it controls the entire Zionist fundraising apparatus throughout the world, and maintains the Jewish Agency-American Section as its registered "foreign agent" in the United States. In 1971 it was purportedly reorganized to allow the participation of world fundraising organizations in its government. As a result, the World Zionist Organization and the Jewish Agency, Jerusalem, are allegedly now legally separated and operating under different governing bodies.

JEWISH NATIONAL FUND (Keren Kayemet Leisrael)

Founded in 1901 by the Fifth Zionist Congress, the function of the Jewish National Fund is to purchase, develop and settle land in Israel. It now owns over 90% of all land in Israel and leases most of it to Jewish settlers on the condition that they

employ only Jewish labor and do not sublease it to other than Jewish workers. The organization maintains corporate branches in both the United States and London for the purpose of raising money. The American branch was organized and incorporated in the United States in 1926 under the title Jewish National Fund, Inc. Its charter specifies that all funds raised in the United States must be sent to the English corporation, Keren Kayemet Leisrael, Limited, for the latter's own use.

JOINT DISTRIBUTION COMMITTEE

Founded in 1944 as a largely non-Zionist fundraising group to aid Jewish war victims, today it operates as a Zionist philanthropic organization active in the development of Israel, but not greatly involved in political Zionism. It receives 33% of the first 55 million dollars raised each year by the UJA and 13% of the remainder.

UNITED ISRAEL APPEAL (Keren Hayesod or Palestine Foundation Fund)

Established in 1920, the sole purpose of the UIA is to finance operations of the Zionist Movement. It was incorporated in England in 1921 as the Palestine Foundation Fund Keren Hayesod, Limited, and in the United States in 1922 as the Palestine Foundation Fund (Keren Hayesod), Inc. Both the British and American organizations are major fundraising organs of the WZO. The United Israel Appeal receives 67% of the first 55 million dollars raised by the UJA each year and 87.5% of the remainder.

UNITED ISRAEL APPEAL, INC. (American Palestine Campaign of the Jewish Agency or United Palestine Appeal, Inc.)

Formed originally as the American Palestine Campaign of the Jewish Agency, the United Israel Appeal, Inc. was later incor-

porated in the United States in 1927 under the title United Palestine Appeal, Inc., for the purpose of raising funds in the United States for the support of Zionist policy in settling and developing Israel. Its name was later changed to United Israel Appeal, Inc. In 1966 it was consolidated with the Jewish Agency for Israel, Inc., under the name of United Israel Appeal, Inc.

UNITED JEWISH APPEAL

A New York corporation organized in 1939, the United Jewish Appeal is Israel's largest fundraising organization in the United States. It is composed of a partnership between the Joint Distribution Committee and the United Israel Appeal and is responsible for coordinating Zionist and non-Zionist collections in the United States. It transmits funds to Israel through the conduit organization, the United Israel Appeal. Since its inception, it has collected over 2 billion 363 million dollars in the United States.

WORLD ZIONIST ORGANIZATION

Founded in 1897 at the First Zionist Congress in Basle, the stated objective of the WZO at that time and ever since has been the establishment and development of the state of Israel on behalf of world Jewry. Operating in close cooperation with the government of Israel, it controls Zionist activity throughout the world and is the Zionist's primary source of political power. It was identified with the Jewish Agency, Jerusalem, until 1971, when the Agency was reorganized and supposedly made a separate legal entity.

ZIONIST CONGRESS

The Zionist Congress is the supreme institution of the World Zionist Organization. It is composed of members of the

Executive and the Zionist General Council plus representatives of various Zionist organizations throughout the world. Since 1897 the Congress has met about every four years for the purpose of overseeing and directing the operations of the entire Zionist Organization and Jewish Agency.

ZIONIST EXECUTIVE

The Executive is composed of the Executive of the World Zionist Organization and the Jewish Agency. Its primary function is to administer the affairs of the World Zionist Organization and the Jewish Agency, Jerusalem, both in Israel and abroad. It accomplishes this through its functional departments, each of which is responsibe for a specific area such as immigration. It maintains constituent bodies in both Jerusalem and New York and is responsible in its operations to the Zionist Congress and the Zionist General Council.

ZIONIST GENERAL COUNCIL

The Council is a constituent body of the Zionist Organization that functions in place of the Congress when the latter is not in session. During inter-Congress periods it has ultimate authority in deciding upon all matters relating to the World Zionist Organization and its institutions, including the Zionist Executive over which it exercises direct control.

PART 2

MEMORANDUM OF LAW

I

THE EXEMPTION OF THE UNITED JEWISH APPEAL AND UNITED ISRAEL APPEAL FROM INCOME TAXES AND THE DEDUCTIONS ALLOWED FOR CONTRIBUTIONS TO THESE ORGANIZATIONS BY THE INTERNAL REVENUE SERVICE ARE NOT AUTHORIZED BY THE LAWS OF CONGRESS.

Section 1 of the Internal Revenue Code of 1954 (26 U.S.C. S1) imposes a tax on the income of every individual; Section 2 imposes the income tax on corporations. Thus, all income is taxable unless specifically exempted by Congress. The Defendants are not collecting taxes on the income of the United Jewish Appeal (UJA) or the United Israel Appeal (UIA), nor on the income of individuals that represents "contributions" to these corporations. Plaintiffs allege that these exemptions are not authorized by Congress through the Internal Revenue Code. Defendants have granted the UIA and UJA tax exempt status under Section 501 (c) of the Internal Revenue Code and have allowed deductions for contributions to these organizations under Section 170. Plaintiffs allege that these rulings are incorrect under the clear language of the Code sections.

Exemptions granted by Congress in the Internal Revenue

Code should be strictly construed. A United States Court of Appeals, in disallowing an exemption for a claimed scientific foundation explained:

> Equitable tax statutes should tax equally. An exemption is in derogation of the common right. When the law provides an exemption the courts should not construe the provisions beyond the exact and express requirements of the language used. [*Universal Oil Products Corp v Campbell,* 181 F 2d 451 (7th Cir 1950)]

The *Universal Oil* court then cited *Yazoo and Mississippi Valley Railroad Company v Thomas,* 132 U S 174 (1889); *A Schrader's Son, Inc v U S,* 51 F 2d 1038 (2d Cir 1931); and *Sun Herald Corp v Duggan,* 73 F 2d 298 (2d Cir 1943). See also *United States v Community Services,* 189 F 2d 421 (4th Cir 1951), holding that tax exemptions are a matter of legislative grace and should be carefully scrutinized.

Under Section 501, certain corporations are exempt from income taxation; the UIA and UJA are supposedly exempt under Section 501 (e) (3) which exempts,

> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The three conditions for exemption set forth in this section have long been held to be necessary for exemption. *In United*

States v Community Services, supra, the court described the requirements for statutory exemption under the similarly-worded employment tax act. Under that decision, the organization seeking tax exemption must (1) be organized and operated *exclusively* for the specified exempt purposes, (2) no part of the net earnings of which inures for private benefit, and (3) no substantial part of which is employed to carry on propaganda. Each condition must be satisfied before tax-exempt status is granted. Many other courts have similarly held. See for example, *Duffey v Birmingham,* 190 F 2d 738 (8th Cir 1951), and *Universal Oil Products Corp v Campbell,* 181 F 2d 451 (7th Cir 1950).

There is an added requirement under Section 170 (c) (2) for contributions to a corporation, trust, or community chest, fund, or foundation to be deductible from income—the organization must be domestically created or organized:

> (2) A corporation, trust, or community chest, fund, or foundation—(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States;
>
> (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;
>
> (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
>
> (D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest,

fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

Plaintiffs allege and will prove that the UIA and UJA are conduits for the WZO and the Jewish Agency and do not meet the three conditions of Section 501 or the extra requirement under Section 170.

A. *The UIA and UJA are not organized and operated for charitable and educational purposes, but substantially for political and ideological ones, thus making exemption under section 501 and deductions under section 170 invalid.*

The reason for the existence of exemptions for charitable activities is that the exempted taxpayer performs a public service in that he releases the public from a burden it would otherwise sustain. *Duffey v Birmingham,* 190 F 2d 738, 740 (8th Cir 1951). "The Government is compensated for its loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from public funds." H. Rep. No. 1860, 75th Cong., 3rd Sess. 19 (1938). Correspondingly, if the exempted taxpayer performs substantial functions that do not serve public needs and would not ordinarily be supported by public funds, the exemption should be withdrawn or denied.

The Internal Revenue Code, Section 501 (c) (3), denies the charitable exemption to any organization, a "substantial part of the activities of which is carrying on propaganda. . . ." Since it is quite plain that the major functions of the WZO and the Jewish Agency are directed toward the dissemination of propaganda in the United States (see factual brief), this aspect of their operations alone is sufficient to revoke the exemption of the UJA and the UIA because the latter tax-exempt organi-

zations are the fundraising organs of the propaganda-distributing organizations in this country.

The United States Supreme Court has held that a single non-exempt activity or purpose, if substantial, will defeat the exemption. *Better Business Bureau of Washington, D.C. v United States,* 326 U S 279 (1945). The Bureau claimed an exemption from employment taxes under the Social Security Act and the Court held, at 284, that the exemptions in that act were meant to be the same as those allowed under the income tax act. The Court held, at 283, that even if the statute were liberally construed it could not consider the Better Business Bureau to be organized and operated exclusively for educational and scientific purposes:

> Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such actions are to be ignored.

The Supreme Court held that the activities of the Better Business Bureau were directed to ends other than education. In a similar manner, the activities of the UIA and UJA are substantially directed at ends other than charitable, namely the building up of the State of Israel. (see factual brief.)

Following *Better Business Bureau,* the United States Court of Appeals for the Seventh Circuit disallowed an exemption in *Universal Oil Products Corp v Campbell,* 181 F 2d 451 (7th Cir 1950), *cert. denied,* 320 U.S. 756. This court found that a foundation promoting science for the sake of business was not entitled to exemption because the "resulting benefits to the public were only incidental". In the case at bar, there is incidental charity for the sake of political and ideological purposes.

Virtually all the circuits have recognized that a single non-exempt purpose or activity, if substantial, will defeat exemption. See, for example, *Gagne v Hannover,* 92 F 2d 475 (2d Cir 1947);

Lesavoy v Commissioner, 238 F 2d 589 (3rd Cir 1956); *United States v Community Services,* 189 F 2d 421 (4th Cir 1951); *Commissioner v Battle Creek,* 126 F 2d 405 (5th Cir 1942); *Underwriters Laboratories v Commissioner,* 135 F 2d 371 (7th Cir 1943), *cert. denied,* 320 U S 756; *Northwestern Jobbers v Commissioner,* 37 F 2d 880 (8th Cir 1930); and *Bear Gulch Water v Commissioner,* 116 F 2d 975 (9th Cir 1941), *cert. denied,* 314 U S 652.

Plaintiffs allege, have shown in the accompanying factual brief from the UIA, UJA, and WZO/JA's own publications, statements, charters, and agreements, and will further prove at trial that the operation and purpose of these organizations is in substantial part not charitable nor otherwise exempt.

B. *Although the UIA and UJA are incorporated in the United States, they do not retain control over the funds raised and are thus not exempt organizations under section 170.*

Section 170 (c) (2), set out *supra,* requires that organizations to which contributions are deductible be created or organized in the United States or its possessions. Plaintiffs allege that the UIA and UJA are merely conduits for funds going to the WZO and the Jewish Agency which are not United States corporations but integral parts of the Government of Israel.

From the Internal Revenue Service's own rulings, such transfers of funds and responsibility makes contributions to such corporations non-exempt. See Revenue Ruling 63–252, 1963—A Cum. Bull. 101, which posits two hypothetical situations, similar to the UIA and UJA operations, where deductions are not allowed. The first was a situation in which persons in the United States formed a charitable organization with a charter providing that it would receive contributions and send them to foreign corporations. Plaintiffs allege that this is precisely how the UIA in fact operates, sending funds to the WZO/Jewish Agency partnership. The second IRS hypothetical is where a

foreign corporation entered into an agreement with an Amerian corporation to have the American corporation raise funds for it. Plaintiffs again allege that in fact the UJA performs this service, through the UIA for the WZO and Jewish Agency.

It has been established that the UJA and UIA do not retain control over funds they raise, but rather submit to the direction of the Israel-based organizations with respect to the expenditure of funds raised in the United States. The WZO, largely a *political* organization, has continuously exercised its control over these funds since the establishment of the UJA and UIA. In the hopes of disguising its true relationship with American fundraising groups, the WZO/JA underwent its purported reorganization in 1971. However, it is clear that the United States organizations still serve as mere conduits; that the WZO has not changed its political character; and that the WZO, the Jewish Agency, and the State of Israel remain the true recipients and controllers of money collected in the United States.

C. *The funds collected by the UIA and UJA are a gift to a foreign government and therefore not deductible under section 170.*

Plaintiffs allege and have shown in their accompanying factual brief that the real recipient of UIA and UJA funds, WZO/JA, is an arm or agent of the State of Israel. Under the Israeli Covenant and Status Law (see factual brief at Part II, Sections B and C, and Appendix), the WZO and Jewish Agency collectively perform governmental functions for Israel. And in its purpose and objectives, the WZO/JA aims to build up the State of Israel through financing immigration of Jews to Israel and performs other governmental functions so as to free Israeli government funds for the defense of the State of Israel. Further, the WZO/JA maintains a registered foreign agent in the United States: the Jewish Agency-American Section, a third shareholder of the UIA.

It has been held that a gift to a foreign government is not exempt as "charitable" because a foreign government is not organized and operated exclusively for charitable purposes. *Continental Illinois National Bank and Trust Co v United States,* 403 F 2d 721 (Ct C1 1968), *cert. denied,* 394 U S 973.

Section 170 (c) (1) now expressly allows, *in addition to* those exemptions for religious, charitable, educational, etc. organizations in 170 (c) (2), "deduction of contributions to any state or possession of the United States or political subdivisions thereof if used for public purposes". This section does not allow deductions for contributions to foreign corporations. It is clearly not the legislative intent to allow contributions to foreign governments deductibility under Section 170. Plaintiffs allege that, in fact, contributions to the UIA and UJA are contributions to a foreign government and should not be deductible.

II

THE TAX EXEMPTIONS GRANTED BY THE INTERNAL REVENUE SERVICE TO THE UIA AND UJA AND THE ALLOWANCE OF DEDUCTIONS FOR CONTRIBUTIONS TO THESE ORGANIZATIONS VIOLATE THE CIVIL RIGHTS ACT OF 1964.

The Civil Rights Act of 1964 provides in part:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 110 Cong. Rec. 10076, S601 of Title VI of the Act.

Plaintiffs argue that tax exemptions are a form of federal financial assistance within the scope of the 1964 Civil Rights

Act and that the exemptions for the UIA and UJA and their contributors are in violation of this act if these organizations are racially discriminatory.

This proposition was the basis of the decision by a three-judge panel in *McGlotten v Connaly,* 338 F Supp 448 (D Dc 1972). In *McGlotten* exemptions for investment income of a racially discriminatory fraternal organization and deductibility of contributions to it were held to be in violation of the Civil Rights Act. The *McGlotten* panel found the exemptions to be a benefit provided by the government and the allowance of deductions for contributions to be a "Government matching grant". *McGlotten, supra,* at 462. The court held, at 461, that "assistance provided through the tax system is within the scope of Title VI of the 1964 Civil Rights Act". The *McGlotten* panel then found there to be little question that the tax deductions for charitable contributions are a grant of federal financial assistance within the scope of the act. *McGlotten, supra,* at 462.

In *Green v Connally,* 330 F Supp 1150 (D DC 1971), an earlier three-judge panel that disallowed tax exemptions for racially-discriminatory schools did not base its holding on tax benefits being violative of the 1964 Civil Rights Act but considered the Act to be a statement of federal policy, which such exemptions violated. However, the *Green* panel did find that "tax exemptions and deductions certainly constitute a Federal Government benefit and support" which is "in the nature of a matching grant". *Green, supra,* at 1164–65.

In the 1970 opinion in *Green,* in support of an order for a preliminary injuction, the panel found the support provided by tax deductions for private schools substantial: "The general significance of these tax deductions as supportive of the pertinent activity can hardly be gainsaid, and may, indeed, be the subject of judicial notice." *Green v Kennedy,* 309 F Supp 1127, 1134 (D DC 1970). The *Green* panel then cited *Tank Truck Rentals, Inc v Commissioner of Internal Revenue,* 356 U S 30 (1958), in

support of the proposition that tax benefits can encourage violations of public law or policy.

Therefore, since the funds contributed to the UIA and UJA and the income they generate are employed for patently racially discriminatory purposes in Israel (see factual brief), this Court should hold that the Internal Revenue Service is forbidden under the Civil Rights Act of 1964 to grant exemptions to the UIA and the UJA and their contributors.

III

IF THE EXEMPTIONS AND DEDUCTIONS GRANTED THE UIA AND UJA AND THEIR CONTRIBUTORS DO NOT VIOLATE THE INTERNAL REVENUE CODE, THEN THE CODE VIOLATES THE EQUAL PROTECTION GUARANTEES OF THE FIFTH AMENDMENT.

Plaintiffs are here challenging not state, but federal government action that fosters racial discrimination; however, the duty of the federal government not to foster such action is no less than that of the states. The due process clause of the Fifth Amendment does not permit the federal government to aid private racial discrimination in a manner which would be prohibited to the states by the Fourteenth Amendment. *Bolling v Sharpe*, 347 U S (1954).*

It is well established that government actions resulting in aiding discrimination are not exempted from the constitutional prohibition merely because the purpose of the government action is non-discriminatory or neutral. *Green v Kennedy*, 309 F Supp 1127 (D DC 1970); *Coffey v State Educational Finance Commission*, 296 F Supp 1389 (S D Miss 1969); *Burton v*

* See also *Simkins v Moses H Cone Memorial Hospital*, 323 F 2d 959 (4th Cir 1963), *cert. denied*, 376 U S 938 (1964) *Hobson v Hansen*, 296 F Supp 401 (D DC 1967), aff'd sub nom, *Smuck v Hobson*, —— F 2d —— (D C Cir 1969).

Wilmington Parking Authority, 365 U S 715 (1961); *Reitmen v Mulkey,* 387 U S 369 (1967).

Government action that aids discrimination is prohibited even though the action is otherwise for generally benevolent purposes. In *Simkins v Moses H Cone Memorial Hospital,* 323 F 2d 959 (4th Cir 1963), *cert. denied,* 376 U S 938 (1964), federal funds to support a private hospital that discriminated were disallowed.

The tax exemptions granted the UIA and UJA and their contributors constitute much of the support of these organizations and are affirmative benefits or subsidies granted by the federal government to them. (See part II, *supra,* for discussion of tax benefits constituting a subsidy). They are thus subject to the constitutional command of equal protection.

In *McGlotten v Connally,* 338 F Supp 448, 456–457 (D DC 1972) it was held that through allowance of deductions for contributions to fraternal organizations, the government became sufficiently entwined with private parties so as to give rise to a duty to insure compliance with the Fifth Amendment by the parties through whom it has chosen to act, even though the private discrimination itself could not be enjoined. The *McGlotten* panel held, at 459, that the Internal Revenue Service's granting of exemptions for a racially discriminatory fraternal organization's unrelated business income under Section 501 (c) (8) of the Code was a benefit provided by the government, indicated approval of the organizations and their practices, and aided discrimination by providing federal tax benefits. Since the organization discriminated in membership, the exemption was barred by the Fifth Amendment.

In *Green v Connelly,* 330 F Supp 1150, 1165 (D DC 1971) a three-judge panel noted that since federal tax exemptions to racially discriminatory private schools were federal support to these schools, "it would be difficult indeed to establish that such support can be provided consistent with the Constitution".

The *Green* court then avoided these "serious constitutional claims" by construing Sections 170 and 501 of the Internal Revenue Code to avoid the constitutional claims and to avoid "frustrations of Federal policy". The *Green* court thus issued a decree declaring that "the Internal Revenue Code requires a denial of tax exempt status and deductibility of contributions to private schools practicing racial discrimination". 330 F Supp at 1171.

The *Green* panel, though avoiding decision on the constitutional issue that *McGlotten, supra,* decided, did go on to indicate that such support was probably unconstitutional:

> We think the government has declined to provide support for, and in all likelihood would be constitutionally prohibited from providing tax-exemption-and-deduction support for educational institutions promoting racial segregation. 330 F Supp at 1169.

The *Green* panel further warned that their discussion should make plain that there were "strong constitutional aspects" to Plaintiffs' case, which were prominent and substantial. If the Internal Revenue Service had not changed its policy and stopped granting tax exemptions to such schools and if the Court had acquiesced in that interpretation, the Court would "in all likelihood have been required by the Constitution to enter a decree ordering the Service to cease violating Plaintiffs' constitutional rights". *Green, supra,* at 1171.

A three-judge federal panel in Wisconsin has held that state tax exemptions to organizations that discriminate on the basis of race are violative of the Fourteenth Amendment, finding itself compelled by *Green v Connally, supra,* to so hold. *Pitts v Department of Revenue for the State of Wisconsin,* No. 69–C–260, E D Wisc, 10/18/71. Like *Green,* the *Pitts* panel found that tax exemptions are significant state action and must be enjoined when the beneficiaries engage in racial discrimination. The

Pitts panel did not rest its decision on whether or not the organizations were actually permitted exemptions under the statute (which was a state statute) but on the ground that tax benefits that aid such organizations are in violation of the federal constitution.

There are also numerous earlier cases concluding that tax exemption is an element of state support giving rise to a duty of non-discrimination. See, for example, *Evans v Newton,* 382 U S 296 (1966); *Burton v Wilmington Parking Authority,* 365 U S 715 (1961); *Eaton v Grubbs,* 329 F 2d 710 (4th Cir 1964); *Griffin v County School Board of Prince Edward County,* 377 U S 218 (1964).

Plaintiffs have shown in the statement of facts and will further prove at trial that the UIA and UJA fail to meet the test of equal protection and non-discrimination under the Fifth Amendment, and therefore allowance of tax benefits to them and their contributors under Internal Revenue Code Sections 170 and 501 must cease.

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APPENDIX B

KEREN KAYEMET LE JISROEL, LIMITED
V.
COMMISSIONERS OF INLAND REVENUE

Revenue—Income Tax—Association for settling Jews in Palestine and Elsewhere—Charity—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 37.

An Association incorporated as a company limited by guarantee had as its main object, as stated in its Memorandum of Association, "to purchase, take on lease or to exchange or otherwise acquire any land, forests, rights of possession and other rights, casements and other immovable property in ... Palestine, Syria, or other parts of Turkey in Asia and the Peninsula of Sinai for the purpose of settling Jews on such lands." Then follow in the Memorandum twenty-one specified objects and powers which included power to cultivate and improve any lands and erect buildings thereon, to let any land of the company to any Jews, to acquire, construct and manage tramways, railways, harbours, docks, hydraulic works, telegraphs, telephones, factories and workshops, and to purchase and sell, work and develop mines and mining rights, and to carry on the business of mining and metallurgy. All the twenty-one objects or powers were stated to be subject to a proviso that they were to be "exercised only in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object." No part of the income of the Association was distributable by way of dividend, bonus or otherwise by way of profit to the members of the Association, nor, in the event of a winding up, were the surplus assets distributable among them:—

Held (affirming Rowlatt J.), that the Association was not "a body of persons ... established for charitable purposes only" within s. 37, sub-s. 1 (b), of the Income Tax Act, 1918, so as to be

entitled to exemption from income tax in respect of consolidated stock owned by it and representing donations. The Association had widely philanthropic objects, but it fell within none of the four principal divisions into which charity was divided by Lord Macnaghten in *Commissioners for Special Purpose of Income Tax v. Pemsel* [891] *A. C.* 531, 583.

APPEAL from a decision of Rowlatt J. on a case stated under the Income Tax Act, 1918, s. 149, by the Commissioners for the Special Purpose of the Income Tax Acts.

1. At a meeting of these Commissioners held on July 10, 1929, Keren Kayemeth Le Jisroel, Ld. (hereinafter called "the Association"), appealed against the refusal of the Commissioners of Inland Revenue to grant exemption from Income Tax under s. 37 of the Income Tax Act, 1918, on the interest of 32,000*l.* consolidated stock owned by the Association and representing donations, the Commissioners being of opinion that the Association was not a charity within the meaning of that section.

2. The Association was a company limited by guarantee forming part of the Zionist organization, the objects of which were the restoration of Jews to and their settlement upon the Holy Land. The primary object and function of the Association was the acquisition in perpetuity of land in the Holy Land as the inalienable property of the Jewish people for the purpose of settling Jews on such land.

No part of the income or property of the Association was payable or transferable directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the Association, nor, in the event of the winding up of the Association, were the surplus assets distributable among them.

3. In addition to the acquisition and letting of land to Jews, the Association had, under its ancillary powers, installed a water supply on much of such land, planted forests, cultivated plantations, and in a few cases in urban districts had erected homesteads for workers, and had, in carrying out such operations and otherwise, trained and found employment for agricultural and other workers. The Association had also granted land for and advanced money in connection with the erection of synagogues, orphanages, hospitals, social clubs for homeless workers, technical, art and other schools, instructional farms, the Hebrew University, a Jewish national museum, and other religious, charitable and educational institutions.

The settlers to whom land had been let by the Association and for

whose benefit the funds of the Association had otherwise been employed, had been destitute Jewish refugees from Eastern Europe and elsewhere, consisting largely of fugitives from religious persecution and the homeless dependants of victims of massacres, and other impecunious Jewish settlers who could not without such assistance have followed their agricultural or other occupations in the Holy Land. The funds of the Association had been collected by subscriptions, donations and bequests on the understanding that they would be so employed, and in many cases donations and bequests to the Association had been allocated by the donors themselves to a specific object.

The Association had been recognized by the Government of Palestine as a public benefit undertaking.

4. The Association did not receive any rent for the lands acquired by it, except in the case of a small number of settlers who originally came to Palestine without means, and, having gained experience on the Association's farms and otherwise, had been enabled to earn a livelihood. In 1927 the total rentals so received by the Association amounted to 1433*l.*, or about 0.1 percent of the capital value of the land acquired by the Association. In no instance did the rent charged exceed 2 per cent of the capital value of the land.

5. The annual general meetings of the Association were held in different countries. It was last held in England in 1920. The head office was in Jerusalem, and the funds were banked partly in England and partly in Palestine. The Association's common seal and its books were kept in Palestine. The registered office was in England, and there was an administrative officer and a secretary permanently in England. The effect of the Association's Memorandum of Association sufficiently appears in the judgments.

6. Dr. Asher Feldman, ecclesiastical assessor to the Chief Rabbi, stated in evidence that in his view the objects of the Association were religious, and that it was part of the religious duty of every Jew to assist the repatriation of the Jews in the Holy Land. His view was based on Leviticus, chapter XXV., verses 23 and 24, and on a continuous line of authorities extending from Biblical times to the present day, including the oral or Rabbinic law, such as the Talmud and other books of authority, and he stated that it represented the universal religious sentiment of Jews throughout the ages and at the present day, forming part of their daily prayers.

7. On behalf of the Association it was contended that: (1.) It

being a part of the Jewish religion to acquire and hold land in Palestine, for the Jewish people assisting in such work was a religious act, and the furtherance of that object was correctly described as the advancement of religion. (2.) The funds of the Association having been subscribed or given on the understanding that they would be devoted for the benefit of impecunious Jewish settlers, the Jewish settlers for whose benefit those funds were employed being, in fact, all poor people, the objects and activities of the Association were for the relief of poverty. (3.) The purposes of the Association were purposes beneficial to the community. (4.) For some or all of the above reasons, and in view of the facts stated, the Association was a body established for charitable purposes only, and the interest formed part of its income, and was applied to charitable purpose only. (5.) Alternatively, for such reasons, and in view of such facts, the interest, according to the rules established by the Memorandum of Association was applicable to charitable purposes only, and was in fact so applied.

8. On behalf of the respondents it was contended that: (1.) The main object of the Association was the repatriation of the Jews in the Holy Land without regard to the means of the immigrants. (2.) The objects did not necessarily include the alleviation of poverty among the Jews or the relief of the destitute. (3.) The promotion of the objects was not a religious duty of members of the Jewish faith nor for the advancement of religion. (4.) The object of the Association was not a purpose beneficial to the community in the charitable sense. (5.) It had not been proved that the Association was established either for the advancement of religion, the relief of poverty, or a purpose beneficial to the community. (6.) The Association was not a body to which s. 37, sub-s. 1 *(b)*, of the Income Tax Act, 1918, applied, as it was controlled and resident abroad, and its activities were carried on abroad. (7.) It had been proved that the dividends from the consols did not form part of the income of any body of persons or trust established for charitable purposes only, and had not been applied to charitable purposes only.

The Commissioners held that the Association was not a charity, and that its funds were not applicable to nor applied to charitable purposes only. They therefore refused the claim.

On appeal Rowlatt J. said that the object of the Association was to populate Palestine and the surrounding country over a large area with Jews. The object was not to found a dwelling-place for Jews dissatisfied with their dwelling-place, but that Palestine should

be populated by Jews, and the dominant motion was towards the land and not towards the people. If the Jews in various countries were well treated and free from persecution or poverty, the desire to populate Palestine with Jews would still remain. In these circumstances the Association took very wide powers. It was clear that the rules of the Association eliminated the idea of private profit, and that the object of the Association was not a political one in the sense that it desired to create a Jewish State. It was said that the Association must be regarded as a charity either because it was for the promotion of religion or the relief of poverty, or that it came within the fourth head referred to in Lord Macnaghten's judgment in *Commissioners for Special Purposes of Income Tax v. Pemsel.*[1] On the first ground it is said that the restoration of the land in Palestine to Jewish occupation is a religious object among the Jews. That argument could not prevail. The promotion of religion meant the promotion of the spiritual teaching of the religious body concerned and the maintenance of the spirit of its doctrines and observances. If a religion imposed the pursuit of some ulterior secular aim that did not make it the promotion of religion. Nor could it be said that the Association had as its object the relief of poverty. Its object was to settle Jews in Palestine, but the dominant purpose was not the amelioration of the position of the individual but the repopulation of the Holy Land with Jews. For the same reason it could not be said that the object of the Association was charitable under the further head already mentioned.

The Association appealed.

Sir John Simon K. C., A. M. Latter K. C., H. Infield and *Dr. S. Daiches* for the appellant Association. Charity is defined by Lord Macnaghten in *Pemsel's* case[1], and this Association comes within three of the four heads. It exists for the promotion of religious purposes. It also exists for the relief of the poor, and it exists for purposes beneficial to the Jews who are a class of the community.

To take the third ground on which the Association can be said to be for charitable purposes only under s. 37 of the Income Tax Act, 1918, the Association clearly has as its object the settlement of the Jews in Palestine. Such an object is charitable, as is shown by *Verge v. Somerville*[2], where it was decided that a fund bequeathed for the benefit

1. [1891] A. C. 531, 583.
2. [1924] A. C. 496.

of New South Wales returned soldiers was a valid charitable trust. From this point of view it is immaterial that the fund should not be for the benefit of the poor only: *Goodman v. Mayor of Saltash*[3] and *Verge v. Somerville.*[2] *Attorney-General v. National Provincial and Union Bank of England*[4], on which Rowlatt J. relied, has no bearing on the present case. The question there was whether a gift for such patriotic purposes or objects and such charitable institutions or objects as the trustees should select was a good gift. It was held that "and" must be given a disjunctive meaning, as if it was "or", and that patriotic purposes are not necessarily charitable. That case has no bearing. The Jews are sufficiently a unity to be regarded as a class of the community, so that a trust for their benefit can be a charitable trust: see *In re Christchurch Inclosure Act*[5] and *Mitford v. Reynolds.*[6]

In *In re Macduff*[7] Lindley L.J. quotes from the judgment of Lord Eldon in *Morice v. Bishop of Durham*[8] to show that a trust must be such that its execution can be under the control of the Court, and it is there held that a trust for charitable and philanthropic purposes is too wide. There are however philanthropic purposes which are also charitable, and that is so in the present case.

Again the Association is a charity, because it exists for the promotion of religion. Rowlatt J. is wrong in deciding the contrary on the ground that the money for doing it may be subscribed for secular purposes. The evidence here shows that the Association is an institution with religious purposes and independent of the modern movement called Zionism. It is a religious purpose of the Jewish community to return to the Holy Land. Rowlatt J.'s definition of religious purposes is far too narrow. It cannot be limited to spiritual purposes. Rowlatt J. ought not to have looked to the motive of those contributing to the Association. Regard cannot be had to the source of a charitable fund: Tudor's Law of Charities and Mortmain, 4th ed., p. 58; and it follows that regard can still less be had to the motive underlying the creation of the source.

Lastly, the Association is a charity in that its purpose is to benefit the poor. It is immaterial that there is no express mention of the

3. (1882) 7 App. Cas. 633.
4. [1924] A. C. 262.
5. (1888) 38 Ch. D. 520, 530; on appeal sub nom. *Attorney-General v. Meyrick* [1893] A. C. 1.
6. (1842) 1 Ph. 185.
7. [1896] 2 Ch. 451, 463.
8. (1805) 10 Ves. 522, 539.

poor in the objects: *In re Lucas.*[9] Here the object is to "settle" Jews in Palestine.

[SLESSER L.J. The word "settle" is wide enough to apply to rich as well as poor.]

If a fund is created for settling Jews it is fair to infer that it is intended to help poor Jews to settle. Well-to-do Jews would need no help.

R. P. Hills (*Sir William Jowitt A.-G.* with him) for the respondents. The Association has sought to show that Rowlatt J.'s judgment cannot stand by contending that each of the various grounds of his decision taken by itself is not enough to support his decision; but the grounds stated must be considered together, and the decision is then seen to be sound. This Association really exists to promote a racial object of a political character, and its objects are therefore right outside those recognized as charitable under the Statute of Elizabeth (43 Eliz. c. 4) and the analogies thereto. Certainly no case has been cited where such an Association as this has been treated as existing for charitable purposes only within s. 35, sub-s. 1 *(b)*, of the Income Tax Act, 1918. The fact that this Association operates entirely abroad is a material consideration. It cannot be intended to give relief for income tax to an Association whose expenditure is entirely outside this country.

The question has to be decided on the construction of the Memorandum and Articles of Association, and evidence as to the way in which the Association in practice exercises its powers is really irrelevant; but in point of fact the Commissioners have decided that the character of its operations is not consistent with its being a charity. According to the finding of the Commissioners this is a Zionistic institution, and it is to be noted that no mention is made in the Memorandum of religion. The test here is not whether the Association has power to apply its property for charitable purposes, but whether the property could properly be applied for other purposes. That is clear from the wording of s. 37 itself. Further, Lord Macnaghten's division of charities under four heads does not mean that every purpose falling within one of the heads is necessarily charitable. Every religious purpose is not a charitable purpose, nor is every provision for poor persons charitable. A trust having a political object has never been held to be charitable. The whole arguments in support of the appeal have been directed to getting behind the definition of

9. [1896] 2 Ch. 451, 463, 468.

the objects of the Association in its Memorandum. The main object, as there stated, is to settle Jews in Palestine and Asia Minor. Objection has been taken to the discussion of motive by Rowlatt J., but he was really answering the argument on behalf of the Association, and pointing out that if regard was had to motive it would not help, for it would still appear that the object was racial colonization. That is not a religious purpose.

Further, the objects stated in the Memorandum show that a wide scheme of colonization was intended, and not the mere settlement of poor Jews. There is no ground for reading the world "settle" as applying only to poor persons.

[SLESSER L.J. Para. 3 of the objects contemplates the letting of premises to Jews.]

That is so, and it shows that the colonization intended was not limited to the indigent. There is therefore no ground for saying that the Association exists for the relief of poverty.

Similarly its object is not simply to benefit a class of the community. That may come in, but its real object is to colonize Asia Minor with Jews. It is not enough to say that an Association has a charitable purpose. The purposes must be exclusively charitable, and of such a nature that the Court could, if necessary, administer them: *In re Macduff*[9]; *Rex v. Special Commissioners of Income Tax*[10]; *In re Hummeltenberg*[11]; *Attorney-General v. National Provincial and Union Bank of England*[12]; *Bowman v. Secular Society, Ld.*[13]; and *Inland Revenue Commissioners v. Temperance Council of Christian Churches*[14]: See too *General Medical Council v. Inland Revenue Commissioners.*[15]

The nearest case to the present is *In re Sidney*[16], when it was held that emigration was not primarily for the benefit of the community; and in *Habershon v. Vardon*[17] it was held that a gift towards the restoration of the Jews to Jerusalem was not a good charitable gift. Reference has been made to *Verge v. Somerville*[18], but that case has

10. (1922) 8 Tax Cas. 286, 288.
11. [1923] 1 Ch. 237, 240.
12. [1924] A. C. 262, 267.
13. [1917] A. C. 406.
14. (1926) 10 Tax Cas. 748.
15. (1928) 13 Tax Cas. 819, 846, 850.
16. [1908] 1 Ch. 126, 129; on appeal [1908] 1 Ch. 488, 491.
17. (1851) 15 Jur. 961; 4 D. G. & Sm. 467.
18. [1924] A. C. 496.

little bearing on the present case, except on the particular point that a fund for the benefit of a class of the community need not be for the benefit of poor persons only. The actual object there came very close to one mentioned in the Statute of Elizabeth. The case cannot properly be relied on to show that assisting emigration is a public purpose.

Latter K.C. in reply. The governing object here is for charitable purposes, and that is all that is necessary: *Inland Revenue Commissioners v. Yorkshire Agricultural Society.*[19]

[LORD HANWORTH M.R. The observation to be made as to that is that the question is one of degree and therefore of fact. In the *Yorkshire Agricultural Society's* case[20] the Commissioners had found that the body had been established for charitable purposes only. Here their decision is the contrary.]

To "settle" Jews means to settle poor Jews, and that is the main object stated in the Memorandum, the letting of premises to Jews subsequently mentioned is an ancillary object with reference to the same class. The same applies to all the other subsequent powers in the Memorandum. Further, the Jews are sufficiently a class of the community for anything benefiting them to fall within the fourth head mentioned by Lord Macnaghten in *Pemsel's* case[21]: compare *In re Cohen.*[22]

Cur. adv. vult.

May 21. Their Lordships read the following judgments:—

LORD HANWORTH M.R. This appeal is from a decision of Rowlatt J., who on March 3, 1931, confirmed the decision of the Commissioners for the Special Purposes of the Income Tax Acts refusing relief to the appellants under s. 37 of the Income Tax Act, 1918, on the ground that the appellant Association was not a charity, and that its funds were not applicable to, nor applied to, charitable purposes only.

The Association is a company limited by guarantee forming part of what is known as the Zionist Organization, the objects of which are the restoration of Jews to, and their resettlement upon, the Holy Land.

19. (1927) 13 Tax Cas. 58.
20. 13 Tax Cas. 58.
21. [1891] A. C. 583.
22. (1919) 36 Times L. R. 16.

The case states that the primary object and function of the appellants is the acquisition in perpetuity of land in the Holy Land as the inalienable property of the Jewish people for the purpose of settling Jews on such land.

It should be made clear at the outset that "no part of the income or property of the Association is payable or transferable directly or indirectly by way of dividend, bonus or otherwise, howsoever, by way of profit to the members of the Association, nor , in the event of the winding-up of the Association, are the surplus assets distributable among them."

It is unnecessary to repeat the salient facts, which are succinctly set out in the case.

The immunity from income tax which is permitted in certain cases, and upon certain conditions being fulfilled, under s. 37 of the Income Tax Act of 1918, is claimed upon the ground that the appellants fall within the four principal divisions into which charity in its legal sense is stated by Lord Macnaghten in his well known judgment in *Pemsel's* case[23] to be divided.

I state the heads shortly. Trusts for the relief of poverty; for the advancement of education; or religion; and trusts for purposes beneficial to the community not falling under the previous heads.

The right to exemption under s. 37 must be established by those who seek it. The onus therefore lies upon the appellants.

They claim relief from income tax which would in the ordinary course, and unless the appellants bring themselves within the exception, be chargeable upon the interest of 32, 000*l.* consolidated stock owned by the appellants and representing donations given to them.

The terms of the section are specific. The relevant sub-s. 1 *(b)* runs "from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest .... forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations .... are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only."

It will be noticed that the words "charitable purposes only" are thrice repeated. The objects for which the Association is established set out in their Memorandum are very wide, "to purchase .... acquire lands, etc., in Palestine, Syria or other parts of Turkey in

23. (1877) 35 Ch. D. 147n.

Asia and the Peninsula of Sinai for the purpose of settling Jews on such lands." Then follow twenty-one specified objects and powers ending with a proviso that all these are to be "exercised only in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object."

Reliance is placed upon this proviso as cutting down the objects and powers of the Association so as to compress them, and force them all to converge to the acquisition of the lands and the purpose of settling Jews upon them. But the proviso is loose, for it leaves the test of what is conducive to the primary object of the Association to the opinion of the Association itself. No outside test is imposed. Hence it is not unfair to say that the Association is to be the interpreter of its objects and powers.

It can build, control and superintend railways, factories, workshops, markets; purchase, develop, deal with and turn to account mines, minerals and precious stones; purchase and acquire any personal property; purchase and carry on businesses suitable for the purposes of the Association; acquire concessions in the prescribed region, and practically do all things necessary to these undertakings and enterprises, or incidental or conducive to these objects—conducive, that is, in their own unfettered opinion and judgment.

The relevancy of considering the width of these terms becomes apparent at once when one turns to the words of Sir George Jessel M.R. in the case of *In re St. Bride's, Fleet, Church or Parish Estate.*[23] There he said that in deciding whether the test of charity is fulfilled or not "what the Court has to look to is, the purposes for which the property is held, and the way in which it ought to be applied."

It is unnecessary to trace the source, or determine the motives. The facts as to how it is being used may be laid aside. But the purposes for which the property is held, or ought to be applied, is crucial.

Turning now to the problem whether either of the four characteristics can be found in the Association, it is sufficient to say that as to "religion" I agree with the observations of Rowlatt J. on that head. The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances that serve to promote and manifest it—not merely a foundation or cause to which it can be related. Religion as such finds no place in the Memorandum of the Association.

Then as to "education" there are some items in the details exhibited

to the case, of expenditure on schools and schooling. But in my judgement the Association fails to establish that it fulfils the requirements of these heads. It was not established for religious or educational purposes only.

Similarly, relief of poverty does not fit the purpose of the Association. It is true that a scheme which deals with settling Jews on land in a new country away from present unhappy surroundings may be interpreted as mitigating poverty and being chiefly of service to persons in need and distress; but I agree with Rowlatt J. that it is not the improvement of poor Jews and their families that is the characteristic purpose of the Association. It is rather the repopulation of the Holy Land and other lands in a wide area round it, so that once more the population of that district may be Jewish. That is the aim, "the primary object," of the Association.

I turn therefore to the fourth; divisions of Lord Macraghten. "Trusts for other purposes beneficial to the community not falling under any of the preceding heads." These words have been held to be illustrative and not exhaustive. It is useful to bear in mind when considering this class that "charity" is to be interpreted according to the law of the country where the Commissioners sit: see *Pemsel's* case.[24]

Again, the fact that the activities of the charity are to be exercised abroad does not remove that characteristic from it if it satisfies the test otherwise: see per Lord Halsbury, *Pemsel's case*[25]; and the decision in the case itself; and compare *Verge v. Somerville*[24], where a scheme for the repatriation of New South Wales Soldiers was held good.

But there are certain important and broad considerations that must be kept in the foreground. It is not every philanthropic scheme that is charitable. "I am certain Lord Macnaghten did not mean to say that every object of public general utility must necessarily be a charity. Some may be, and some may not be." These are the words of Lindley L.J. in *In re Macduff*.[25] Lord Macnaghten's words as to the fourth class, said Rigby L. J., mean that this head is the one under which valid charities for the general benefit of the community may be ranged, but they do not mean the converse, that every purpose that can be ranged under this head is charitable.

In that case, *In re Macduff*[25], where a bequest had been made

24. [1924] A. C. 496.
25. [1896] 2 Ch. 451, 466.

"for charitable or philanthropic purposes," it was held that as there may be philanthropic purposes which are not charitable, the bequest failed.

It is necessary therefore to note that a distinction is required to take a benevolent purpose out of the category that is philanthropic and to put it into that which is charitable.

Next, one of the principles that guide the Court to its decision is laid down by Lord Eldon in *Morice v. Bishop of Durham.*[26] "As it is a maxim, that the execution of a trust shall be under the control of the Court, it must be of such a nature, that it can be under that control." This maxim is adhered to in the case just quoted by Lindley L.J.[27] There follows a valuable discussion as to what is charitable and what is philanthropic only. I confess that when I recall the wide objects and powers of the Association—that the Jews selected for being settled on the lands secured by the Association, not merely in the Holy Land but anywhere in Turkey in Asia, can be drawn—as, indeed, they are drawn—from all parts of the world—the inference seems to follow that no charitable purpose, as distinguished from a wide philanthropic purpose towards Jews, can be demonstrated. The land and its repopulation is the aim, and the keynote is derived from the passage in the Book of Leviticus to which our attention was drawn.

Indeed, I find it difficult to bring the ambit and purpose of the Association within any of the limits prescribed for a charitable purpose. If the purpose is emigration, that has been held to be indefinite and not necessarily a charitable purpose: see *In re Sidney.*[24]

That the purpose is to deal with , and it may be to benefit Jews is clear; and there is no difficulty or danger to its charitable nature in the term Jews. Like many other terms, it may not be easy to define, but there would not be any difficulty in deciding in actual cases between those within and those without the range of that term for the purpose of the Association.

There is, however, a danger to my mind in too close a consideration of the decided cases. No one case is a clear guide to another depending upon different facts and considerations. As Rigby L.J. said in *In re Macduff*[25], "the cases with regard to charities are innumerable; but in the case of charities, as in all other cases, precedents are only useful in so far as they enable us to deduce a

26. 10 Ves. 522, 539.
27. [1896] 2 Ch. 463.

principle." Then he states the principle referred to above that the trust must be sufficiently certain to enable the Court to superintend and give effect to the trust according to its terms, and he points out that if there is an alternative, the general rule comes in that this is a matter too indefinite for the Court to give effect to it.

The judgment of Lopes L.J. in that same case cites the words of Sir William Grant M.R. in *James v. Allen*[26]: "The whole property might....have been applied to purposes strictly charitable. But the question is, what authority would this Court have to say that the property must not be applied to purposes however so benevolent, unless they also come within the technical denomination of charitable purposes; If it might....be applied to other than strictly charitable purposes, the trust is too indefinite for the Court to execute."

These considerations apply here. Every sort of activity benevolent and philanthropic as well as charitable can be exercised by the Association. If the Court attempted to intervene in matters which appeared wide of and ouside a charitable purpose, the answer could be made by the Association object—the purpose of settling Jews on the lands of Turkey in Asia. That would meet any objection raised as to the powers of the Association, but would it answer Sir William Grant's point? A careful survey of the principles to be applied, and the illustrations found in the cases to which we have been referred, leads me to the conclusion that the decision of the Commissioners was right in law, and that the judgment of Rowlatt J. confirming that decision must be upheld. The yearly interest received by the Association on this fund cannot be held to form part of the income of a body of persons or trust established for charitable purposes only.

LAWRENCE L.J. In this case the Special Commissioners have held that the appellant company is not a body established for charitable purposes only and that its funds were not applicable nor applied to charitable purposes only and consequently that the Commissioners of Inland Revenue were right in refusing to grant exemption from income tax under s. 37 of the Income Tax Act, 1918, in respect of the interest on a sum of 32,000*l.* consolidated stock owned by the company. The decision of the Special Commissioners has been affirmed by Rowlatt J., and the company now appeals to this Court.

The present case involves the somewhat elusive and difficult inquiry not infrequently met with in these cases; whether or not a particular purpose described in an instrument in general terms is a

charitable purpose in the legal sense. The instrument with which this case is concerned consists of the Memorandum of Association of the company, and it is essential to bear in mind that in order to obtain exemption from income tax under the section it is not enough that the purposes described in the Memorandum should include charitable purposes, the Memorandum must be confined to those purposes, so that any application by the company of its funds to non-charitable purposes would be ultra vires.

Turning now to the Memorandum it will be seen that the object described in sub-clause I of clause 3 is to acquire lands, forests, rights of possession and other rights, easements and other immovable property in Palestine, Syria, and other parts of Turkey in Asia and the Peninsula of Sinai or any part thereof for the purpose of settling Jews on such lands. The Memorandum provides that this object is the primary object of the company and that the powers conferred by the succeeding sub-clauses shall be exercised only in such a way as shall in the opinion of the company be conducive to the attainment of the primary object. The succeeding sub-clauses (of which there are no less than twenty-one) confer very wide powers on the company. I will not attempt to give a complete summary of these powers, it is sufficient to state that they include powers to cultivate and improve any lands of the company and to erect thereon any buildings required for any purposes of the company (sub-clause 2), to let any of the land of the company to any Jews upon any terms (sub-clause 3), to acquire, construct and manage tramways, railways, harbours, docks, hydraulic works, telegraphs, telephones, factories and workshops (sub-clause 4), to purchase, sell, work and develop mines and mining rights and to carry on the business of mining and metallurgy (sub-clause 6), to purchase and sell personal property of all kinds (sub-clause 7), to acquire and undertake all or any part of the business property and liabilities of any person or company carrying on any business which the company is authorized to carry on (sub-clause 9), to make accept endorse and execute promissory notes, bills of exchange and other negotiable instruments (sub-clause 13), to promote any companies for any purpose which may seem likely to directly or indirectly benefit the company and to deal with the shares in any such company (sub-clause 14), to enter into any arrangement for sharing profits with any person or company carrying on or about to carry on any business which the company is authorized to carry on (sub-clause 15), to deal with any moneys of the company not immediately required for any purposes of the company in such manner as the

company may deem fit (sub-clause 17), and to make advances to any Jews in the prescribed region upon any security which may be thought fit (sub-clause 18).

The extensive powers conferred on the company by sub-clauses 2 to 22 (to some of which I have referred in order to indicate their character), although purporting to be secondary to the object mentioned in sub-clause 1, are nevertheless objects for which the company is established.

The company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary object, which from a practical point of view means that it can exercise them whenever it is minded to do so, and whether such exercise is in fact conducive to the attainment of that object or not, as neither the Court nor any one else can control the company's opinion or otherwise interfere with the manner in which it chooses to carry out its objects.

It would be difficult in any case to determine whether any particular enterprise undertaken by the company under its wide powers was or was not in fact conducive to the attainment of the primary object, but when the question of whether it is or is not so conducive is left to the decision of the company itself I cannot avoid the conclusion that the objects mentioned in sub-clauses 2 to 22 can be carried out by the company just as freely as the object mentioned in sub-clause 1, and that there is no substantial difference in degree between them.

Moreover the nature of the objects enumerated in sub-clauses 2 to 22 throw a strong light on the true scope and meaning of the object mentioned in sub-clause 1. We have been pressed to hold that this object is strictly confined to acquiring land in the prescribed area for the sole purpose of settling poor Jews upon it. One has merely to glance at the character of the objects mentioned in the succeeding sub-clauses to see how impossible it is to arrive at any such conclusion. For instance such powers as the power to establish construct and manage harbours, docks, hydraulic and electrical works, factories and workshops, and as the power to acquire mines and mining rights, and to carry on the business of mining, seem to me to negative the idea that the sole object of the company was as simple and restricted as is suggested.

Reading the Memorandum as a whole I am of opinion that the real object of the company is to carry out a wide scheme for the acquisition and the agricultural and commercial development of

land in the prescribed area, and for the colonization of that land by members of the Jewish race.

Such a scheme (whatever may have been the motive of its promoters for its establishment) is in my judgment altogether outside the purview of the preamble to the Statute of Elizabeth; the purpose which the scheme is designed to effect is not one of the purposes mentioned in the preamble, nor is it analogous to any of those purposes.

The first contention on behalf of the company was that the purpose for which the company was formed was the advancement of the Jewish religion.

Article 25 of the Articles of Association vests the supreme control of the affairs of the company in a committee constituted under the regulations of the Zionist Congress; it is evident therefore that the company's activities are closely connected with the Zionist movement, which I understand to be a movement for securing national privileges and territory for the Jews, especially in Palestine.

Dr. Feldman stated in evidence that in his view the objects of the company were religious, and that this view was mainly based upon Leviticus, chapter 25, verses 23 and 24. It would seem therefore that in his view the dominant purpose of the company was the restoration of the Holy Land to the Jews and the ultimate establishment there of a theocratic constitution. If that be the true view, political and racial considerations would enter largely into the scheme, and it could not be said that the only purpose for which the company was established was the advancement of religion. Moreover I doubt whether the Courts of this country would countenance or give effect to any scheme the carrying out of which might bring the company and its members into conflict with the ruling powers in Palestine: see *Habershon v. Vardon*.[28]

In view of the company's connection with Zionism and of Dr. Feldman's evidence, it looks as if the true motives of the founders were that the company, by the exercise of its powers, should try to procure the population of the prescribed area by a preponderating number of Jews as a step towards establishing a Jewish theocracy in Palestine.

However that may be, the answer to the company's contention on this part of the case is that the Court is not concerned with the motives or ultimate aims of the founders nor with the opinion ex-

28. 4 D. G. & Sm. 467.

pressed by Dr. Feldman or by any other expounder of the Rabbinic law as to the true character of the objects of the company, but is solely concerned with the meaning and effect of the language employed in the Memorandum.

Reading the Memorandum apart from any preconceived notions as to the aims and aspirations of the founders it will be observed that the primary object of the company is the settlement of Jews on land to be acquired in any part or parts of a large territory including not only Palestine but also the Peninsula of Sinai and the whole of Asiatic Turkey and the development of the land so acquired, and that there is no mention of the advancement of the Jewish religion or of any other religious object. In these circumstances it is impossible to avoid the conclusion that the company is not established for the advancement of religion.

The second contention on behalf of the company was that the company was established for the relief of poverty. This contention is based on the use of the expression "for the purpose of settling Jews on such lands" at the end of sub-clause 1 of clause 3 of the Memorandum. It was said that that word "settling" connotes poverty, and consequently that the primary object of the company is confined to assisting poor Jews to take up their abode in the prescribed area. I find it impossible to give any such restricted meaning to the word "settling" in the context in which it occurs. The relief of poverty is not mentioned, and it is plain from the other objects of the company that its so-called primary object is not confined to settling poor Jews on the lands to be acquired, though no doubt it would include the settlement of such Jews. The development of those lands evidently formed a prominent feature of the scheme as set forth in the Memorandum. For instance, it would clearly be intra vires for the company to build suitable dwelling-houses and home-steads on its land for Jewish doctors, lawyers, engineers and farmers and to induce Jews following those avocations to settle in such houses and and homesteads, leases of which could be granted to them at economic rents. The Memorandum contemplates (inter alia) the erection of factories and consequently the settlement of manufacturers, and many other examples might be given of settling Jews in the prescribed area under the scheme in which the relief of poverty would play no part. I am therefore driven to the conclusion that the purposes for which the company was established are not confined to the relief of poverty.

The third contention on behalf of the company was that even if

the company was not established for the advancement of religion or for the relief of poverty, yet it was established for a purpose beneficial to the Jewish community and consequently fell within the fourth division of the well known classification of charities enunciated by Lord Macnaghten in *Pemsel's* case.[29]

The difficult question whether or not a particular purpose not coming within the first three divisions of Lord Macnaghten's classification is a charitable purpose in the legal sense on the ground that it is beneficial to the community has been dealt with in numerous reported cases. It has been pointed out in several of these cases that Lord Macnaghten in describing the fourth class of charities did not mean that every purpose beneficial to the community was necessarily charitable, but that what he really meant was that besides the purposes mentioned in the first three there were other miscellaneous charitable purposes which could conveniently be classed under the head of "other purposes beneficial to the community not falling under any of the preceding heads"; see, for example, *In re Macduff*[29], in which case Lindley L.J. stated the rule applicable to this kind of case as follows[30]: "We must fall back upon the Statute of Elizabeth, not upon the strict or narrow words of it, but upon what has been called the spirit of it, or the intention of it. As Lord Eldon says, this Court has taken great liberties with charities; but the liberty is always restricted by falling back upon .... the Statute of Elizabeth."

Before *In re Macduff*[29] was decided the Statute of Elizabeth had been repealed by the Mortmain and Charitable Uses Act, 1888, but in view of the fact that s. 13, sub-s. 2, of this Act recites the preamble to the Statute of Elizabeth and recognizes it for certain purposes, the reference by Lindley L. J. to the Statute of Elizabeth in his statement of the rule was substantially accurate; at all events the rule has been acted upon by the Courts after as well as before the repeal of that Statute.

Further, it is well established that the fact that the members of the company are prohibited from receiving any profits is not sufficient of itself to stamp the company as a company established for charitable purposes only, although no doubt that fact has to be taken into consideration.

On the other hand the fact that the section of the community to be benefited includes both rich and poor persons does not necessarily

29. [1896] 2 Ch. 451.
30. [1896] 2 Ch. 467

prevent the purpose from being charitable in the legal sense: see *Goodman v. Mayor of Saltash*.[31]

I have already expressed my opinion that the object for which the company was established does not come within either the words or the spirit of the Statute of Elizabeth, and I have indicated the considerations which have led me to that conclusion; I will only add that I agree with the conclusion reached by Rowlatt J. that the dominant purpose of the company as described in the Memorandum is not so much to benefit the great number of Jews who are contentedly living and earning their livelihood in various parts of the world remote from the prescribed area as to secure that the land in Palestine and the neighbouring territories should be populated by members of the Jewish race and should be developed commercially and agriculturally. Such a purpose cannot in my judgment properly be said to be wholly charitable even in the wide sense in which that term has been interpreted by the Courts of this country.

In view of the general and sweeping terms in which the objects of the company are described in the Memorandum the company can, in the prescribed area, embark, without let or hindrance, upon all sorts of undertakings (both public and private) which are not charitable in the legal sense, although some or all of such undertakings might well be of material advantage to persons (of whatever race or religion) living in or travelling through that part of the prescribed area where the undertakings were set up. In those circumstances, although the company under its wide powers may no doubt embark upon strictly charitable enterprises, yet it cannot properly be said to be a company established for charitable purposes only within the meaning of s. 37 of the Income Tax Act, 1918.

For these reasons I agree with the conclusions reached by the Special Commissioners and by the learned judge, and am of opinion that this appeal should be dismissed.

SLESSER L.J. By s. 37, sub-s. 1 (*b*), of the Income Tax Act, 1918, exemption from tax is to be granted in respect of any yearly interest or other annual payment forming part of the income of any body of persons established for charitable purposes only, or which according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only.

31. 7 App. Cas. 633.

The appellants are an Association limited by guarantee, not having a capital divided into shares, incorporated under the Companies Acts; the certificate of incorporation is dated April 8, 1907.

We have been asked to consider the practice of this Association in disposing of its funds, but such a consideration cannot assist the Court to decide whether the Association is or is not established for charitable purposes only, though it may be relevant when the further question is asked how far the same are applied to charitable purposes only. To determine the first essential question it is necessary to confine the attention to the actual language of the instrument constituting the Association.

This Association, being a limited company incorporated under the Companies Acts, possesses a constitution which is contained in the Memorandum and Articles of Association. It is expressly provided at the end of clause 3 of the Memorandum, which sets out the objects of the Association, that "The primary object of the Association shall be and is hereby declared to be the object specified in sub-clause 1 of that clause, and the powers conferred by the succeeding sub-clauses are to be exercised only in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object."

This primary object is as follows: "To purchase, take on lease or in exchange, or otherwise acquire any lands, forests, rights of possession and other rights, easements and other immovable property in the prescribed region (which expression shall in this Memorandum mean Palestine, Syria, any parts of Turkey in Asia and the Peninsula of Sinai or any part thereof), for the purpose of settling Jews on such lands."

I have given much attention to the argument that whether the primary purpose is or is not not charitable, the many very general powers contained in the subsequent sub-clauses of the object clause make it impossible to say that in any event the objects of the Association as a whole are for charitable purposes only. A conclusion upon this point may be very important, because the objects other than the primary object are undoubtedly expressed in very wide terms. They include powers to deal in one way or another with railways, factories, workshops, mines and personal property, with power to purchase and carry on businesses suitable for the purposes of the Association; and with power to promote any companies for any purpose which may seem likely to directly or indirectly benefit the Association.

This last power speaks of purposes which seem likely to benefit the Association, and the language is not easy to reconcile with the proviso that the sub-clauses containing the powers shall be exercised only in such a way as shall be conducive to the attainment of the primary object: that of settling Jews—it points to any purpose which may benefit the Association rather than one to promote the primary object only. There are many other powers which have already been mentioned by the Master of the Rolls and Lawrence L.J. which I forbear to repeat.

Secondly, it must be noted that the Association itself is made by the Memorandum the judge whether the general powers are or are not exercised only in such a way as shall be conducive to the attainment of the primary object. Thus, if the Association were to be reasonably of opinion that the exercise of any of the powers taken was conducive to the attainment of the primary object, it would scarcely be possible to say that such an exercise was ultra vires. The company would not be abandoning the business for which it was established and undertaking another, according to the principles established in *Simpson v. Westminster Palace Hotel Co.*[32] and the many cases which have followed it. There may, indeed, be a general philanthropic purpose running through the constitution and objects of this Association, but such philanthropic purposes will not necessarily be charitable within the proper meaning of that word so as to constitute the purposes of the Association purposes which are charitable only: see *In re Macduff*[33] and the cases there cited.

Apart from the limitation to charitable purposes "only," the phrase "charitable purpose" in the section bears the same meaning as in the general law: *Commissioners for Special Purposes of Income Tax v. Pemsel.*[32] Sir John Simon has based a claim here on all the four well known definitions of charity contained in the judgment of Lord Macnaghten, following the argument in *Morice v. Bishop of Durham,*[33] in *Pemsel's* case.[34] I propose to deal with these in the order in which he argued them.

First, he argues, that the primary object above cited is an object for the advancement of religion, Lord Macnaghten's third class, but it is to be observed that no specific reference to religion is made in the Memorandum at all. We are asked to inform ourselves from

32. [1891] A. C. 531.
33. (1804) 9 Ves. 399.
34. [1891] A. C. 583.

sources other than the Memorandum itself that the object of acquiring land in the prescribed region for the purpose of settling Jews on such land is a religious object according to the Jewish faith. Without in any way disputing or assenting to this proposition, I feel a difficulty in applying it in the present case, for two reasons: in the first place, because, as I have indicated, there is nothing in the constitution of this Association, which alone we have to look at, to support this contention, and, further, because the description of the religious obligation which is set out in the case, more particularly in the affidavit of Solomon Kaplansky, that the land of Palestine is to be made the common property of the Jewish people, is not co-extensive with the definition of the prescribed region in clause 3, sub-clause 1, of the Memorandum, which expression is there said to mean Palestine, Syria, any parts of Turkey in Asia and the Peninsula of Sinai or any part thereof. It is necessary to satisfy the Statute that the purposes relied upon shall be charitable purposes only, and, although the Commissioners appear to have found that the Association (which is said by the Case stated to be part of the Zionist Organization) has for its objects and function the acquisition in perpetuity of land anywhere in the Holy Land, the Memorandum in terms includes among the territory on which Jews may be settled the whole of Turkey in Asia and Syria as part of the prescribed region. Thus, so far as the settlement of Jews in parts of the prescribed region other than the Holy Land is concerned, the purpose could not be religious, even on Dr. Feldman's evidence or on Mr. Kaplansky's view as contained in his affidavit annexed to the Case, and thus, in any event, at most only a part of the purposes of the Association would be charitable as being religious, and the purposes as a whole would not be charitable only.

Secondly, it was argued that there was here a charitable purpose for the relief of poverty, Lord Macnaghten's first class. It was said that the phrase in clause 3, sub-clause 1, of the Memorandum, "settling Jews on such lands," imports the relief of the indigent. This argument seems to me to some extent to conflict with the religious argument, for on the basis of religion it is clear that no distinction can be made regarding the economic status of Jews; from the religious aspect all Jews are said to be equally the subject of settlement in the Holy Land. But I think the argument as to the relief of poverty should be considered by itself unaffected by any apparent difficulties produced by the former argument which I have rejected. Some guidance as to the meaning of the word "settling" on which reliance

is to be placed is to be found in sub-clause 3 of clause 3 of the Memorandum. In that sub-clause one object for which the Association is established is said to be "to let any of the land or other immovable property of the Association to any Jews upon any terms." I think that while it may well be that the object of settling Jews may not necessarily involve the letting of land to them, yet I think that sub-clause 3 does indicate that the letting of land to any Jews upon any terms is one method of settling them, so that at any rate to some extent it is contemplated that the settlement may be achieved through the payment of rent by the settlee, and, in sub-clause 8 of the Memorandum there is express power given to collect rents. I am inclined to agree that the word "settlement" does include, on the face of it, in part, an assistance of the indigent, but the phrase is indefinite and may well cover the settlement of those who are not indigent. In *In re Sidney*,[35] where a bequest in trust was "for such charitable uses or for such emigration uses or partly for such charitable uses and partly for such emigration uses" as the trustees shall think fit, the bequest was held to be void for uncertainty, as emigration uses are indefinite, and are not necessarily charitable. It was there argued that though rich persons may emigrate they do not require assistance, nor are they called emigrants. Swinfen Eady J., as he then was, said:[36] "Emigration is not confined to the poor .... there are many modes of application that would come within the phrase 'emigration uses' but would not come within the assistance of poor persons." I think the like observation is appropriate to the word "settle." I find it therefore impossible to hold that the settling of Jews on lands in the prescribed region without qualification is a purpose for the relief of poverty only or is a charitable purpose only.

The second of Lord Macnaghten's definitions, the advancement of education, is not in terms mentioned in the Memorandum, though it does appear in fact that much money has been devoted to this object, and I pass, therefore, to the fourth definition—namely, "trusts for other purposes beneficial to the community not falling under the preceding heads" of poverty, education and religion.

Under this head it is not necessary to confine the charity to the poor to the exclusion of the rich: *see Goodman* v. *Mayor of Saltash*;[37] *Verge* v. *Somerville*.[38] It is pointed out by Rowlatt J. that the consti-

35. [1908] 1 Ch. 126.
36. Ibid. 129.
37. 7 App. Cas. 633.
38. [1924] A. C. 496.

tution of the Association eliminates any idea of private profit. He holds, and I agree with him, that the primary purpose of this Association is to populate the Holy Land with a particular class of inhabitant. My only qualification would be to substitute the words "prescribed region" for Holy Land, but in considering whether the purpose is for a charitable purpose as being "for purposes beneficial to the community," this amplification of object is not perhaps very material.

It may be said that there is a degree of uncertainty about the word "Jew" which makes it difficult to say that the Jews are sufficiently a community to be benefited as a charity and that the alleged charity is bad for uncertainty. In this view, it may be urged that it is not clear in the Articles of this company whether the power to settle is to be confined to persons practising the Jewish religion, which may include persons not of Jewish race (such, for example, as the late Lord George Gordon, who, after becoming notorious in leading anti-Catholic riots, became a Jew) or whether it extends to persons wholly or partly of Jewish race who are not members of that religious communion. But I have come to the conclusion that, giving a fair construction to the whole objects of the Association, the persons to be benefited are persons who are Jews in the religious sense. If this be so, I think that such persons may fairly be called a community. In the words of Lord Wrenbury in *Verge v. Somerville,* in giving the judgment of the Privy Council:[39] "To ascertain whether a gift constitutes a valid charitable trust .... a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot." After pointing out that poverty is of necessity an exclusive ingredient, he draws attention to the *Christchurch Inclosure Case,*[40] in which Lindley L.J. said:[41] "Although the occupiers of these cottages may have been, and perhaps were, poor people, the trust is not for the poor occupiers, but for all then and future occupiers, whether poor or not. .... The trust is for a comparatively small and tolerably well defined class of persons .... The class, however, though limited, is as to its members uncertain, and is liable to fluctuation, and the trust for the class is perpetual."

39. [1924] A. C. 499.
40. 38 Ch. D. 520.
41. 38 Ch. D. 530.

As regards uncertainty of the class to be benefited the word "Jew" in English law has almost always been confined to persons practising the Jewish religion; the disabilities of Jews have not attached to persons of Jewish race who have become baptized. Thus, they are generally described in Acts of Parliament and in legal documents as persons practising the Jewish religion (see the Toleration Act, 1846), and Jewish religious endowments and trusts are now recognized and executed by the Courts and regarded as charitable purposes: *In re Michel's Trust.*[42] The Ballot Act of 1872 speaks of voters of Jewish persuasion. In *In re Cohen*[43] Peterson J. appears to have treated a bequest for the benefit of deserving Jewish girls on their marriage as being for the benefit of Jewish religion, and thus gave to the word "Jewish" its religious denotation.

There is recent authority for saying that the fact that the persons to be benefited may be aliens and their benefit to take place abroad will not prevent such persons being a part of the community for charitable purposes. In *In re Robinson*[44] Maugham J. decided that a testamentary gift to the German Government for the time being for the benefit of its soldiers disabled in the war was a valid charitable gift. He said:[45] "There was no objection to the gift from the point of view that the persons who were the object of the charity were abroad," and he did not see "how it could be contrary to public policy to benefit persons who had been enemies and had ceased to be enemies."

For these reasons, were the purposes of this Association confined to the settlement of Jews in the prescribed region I should have hesitation in saying that the purposes were not the benefit of a class of the community only within the intent of the Elizabethan Statute, and thus charitable purposes within s. 37 of the Act of 1918. The ground on which I have come to the conclusion that the appellants fail in bringing themselves within this definition is because of the breadth of the powers contained in their Memorandum, which may all be philanthropic but are certainly not necessarily all charitable. As I have already said, the Memorandum consitutes the Association the judge of how far the exercise of these very general powers is or is

42. (1860) 28 Beav. 39.
43. 36 Times L R. 16.
44. (1931) 47 Times L. R. 264.
45. Ibid. 265.

not conducive to their primary object, so that even were it possible to say that some of the purposes of the Association were charitable, it is not possible to say that its income is applicable to charitable purposes only.

For this reason I think that this appeal must be dismissed.

Appeal dismissed.

Solicitors: *Herbert Baron & Co.; Solicitor of Inland Revenue.*

H. C. G.

PART 3

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

COUNT I

1. This action arises under the Constitution of the United States, Article I, Section 8, the Fifth Amendment to the Constitution of the United States; the Internal Revenue Code of 1954, Title VI of the Civil Rights Act of 1964, Section 601, 42 USC §2000d; and the Administrative Procedure Act, 5 USCA §§701–702. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00). The Court has jurisdiction over this action under 28 USC §§1331, 1340, 1346 and 1361.

2. This is a proceeding for a preliminary and permanent injunction restraining and enjoining Defendants from granting or continuing to grant Federal tax benefits to the Israeli/Zionist fundraising apparatus in the United States in contravention of the United States Constitution and Federal statutes.

3. Norman F. Dacey, Norton Mezvinsky, Hisham Sharabi, Edwin Wright, L. Humphrey Walz, and Michael Ross are citizens of the United States and residents of New Haven County, Connecticut; New York County, New York; Montgomery County, Maryland; Wayne County, Ohio; Rock County, Wisconsin; and King County, Washington, respectively, and Ibrahim Abu Lughod is a permanent resident of

the United States residing in Cook County, Illinois, and Rashid Hussien is a permanent resident of the United States residing in New York County, New York; Yousef Hamdan is a permanent resident of the United States residing in New York County, New York, and are all persons intended, along with all United States citizens, to be protected and benefitted by the programs, policies, and financial benefits bestowed by the Internal Revenue Code of 1954. Plaintiffs have all filed Federal personal income tax returns for 1971 and duly paid all Federal personal income taxes owed. Plaintiffs Ibrahim Abu Lughod and Hisham Sharabi were born in that portion of British mandated Palestine which now lies within the de facto borders of the State of Israel and are refugees therefrom. Plaintiffs Rashid Hussein and Yousef Hamdan are nationals of the State of Israel and political exiles therefrom.

4. Defendant George Shultz is Secretary of the Treasury and resides and has his principal place of business in Washington, D.C. Defendant Johnnie M. Walters is Commissioner of Internal Revenue and resides and has his principal place of business in Washington, D.C. Both Defendants have the responsibility and authority under applicable Acts of Congress and Executive Orders to administer and enforce the Constitution and Federal statutes, including the Internal Revenue Code of 1954. They are sued in their official capacities.

5. Plaintiffs Norman F. Dacey, Professor Ibrahim Abu Lughod, Professor Norton Mezvinsky, Professor Hisham Sharabi, Professor Edwin M. Wright, Rev. L. Humphrey Walz, Rep. Michael K. Ross, Rashid Hussein and Yousef Hamdan bring this action as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on the behalf of all other Federal taxpayers similarly situated. As to the class of persons on whose behalf this action is brought, (1) the class is so numerous that joinder of all members is impracticable; (2) there are common questions of law and fact; (3) the claims

of the Plaintiffs are typical; (4) the Plaintiffs will fairly and adequately protect the interest of others of the class; and (5) the criteria of Rule 23 (b), Federal Rules of Civil Procedure, are satisfied, thereby making appropriate final injunctive relief with respect to the class as a whole.

6. The United States Congress, under the taxing and spending clause of Article I, Section 8, of the United States Constitution has created various tax exemptions and benefits for charitable institutions in the Internal Revenue Code of 1954.

7. As early as 1936 the Department of Treasury and the Internal Revenue Service granted to the predecessor in interest of the United Israel Appeal and the United Jewish Appeal tax exempt status under Section 501 (c) (3) of the Internal Revenue Code of 1954. The United Israel Appeal and the United Jewish Appeal are Israeli-Zionist conduit organizations for the channeling of funds raised in the United States to finance the implementation of Israeli-Zionist programs, projects and policies in the State of Israel and elsewhere. As a result of this tax-exempt classification, such fundraising conduit organizations are exempted from payment of federal income taxes, and contributions to these conduit organizations are deductible from gross income on individual and corporate income tax returns under the Internal Revenue Code of 1954, Section 170(a) through (c). Upon information and belief, the amount of monies which otherwise would be taxable income to such conduit organizations or which otherwise could not be deducted from taxable income by donors to such conduit organizations amounts to Two Billion Four Hundred Million Dollars ($2,400,000,000.00) to date.

8. That said United Jewish Appeal is participated in by two (2) beneficiaries, the United Israel Appeal being the Israeli-Zionist beneficiary to a percentage of such funds as are collected by the United Jewish Appeal. The United Israel Appeal receives annually sixty-seven percent (67%) of the first Fifty-Five Million

Dollars ($55,000,000.00) raised by the United Jewish Appeal and eighty-seven per cent (87%) of all monies over the first Fifty-Five Million Dollars ($55,000,000.00). One Hundred per cent ($100%) of all monies raised by a special campaign conducted annually since 1967, the Israel Emergency Campaign, is designated for the United Israel Appeal. The sum received by the United Israel Appeal is then transmitted to the Jewish Agency in Israel, an agency of the State of Israel, for the financing of the programs, projects and policies of the Jewish Agency/State of Israel, both within and without the State of Israel. These projects, programs and policies include but are not limited to the following: instigation of, promoting and organizing immigration abroad and the transfer of immigrants and their property to Israel; resettlement of these immigrants; establishing settlements in territory occupied by Israel in the June 1967 war against Jordan, Syria and the United Arab Republic; encouraging private capital investments in Israel; subsidizing education, welfare programs, and Zionist political parties in Israel; initiating, owning and operating commercial enterprises in Israel; engaging in propaganda and political activities in the United States and elsewhere to increase support for Zionism and Israel (this function is performed in the United States through a registered foreign agent, the Jewish Agency-American Section); and raising the funds in the United States and elsewhere necessary for carrying out these tasks.

9. That since said tax exempt and tax deductible status was accorded to the Israeli-Zionist fundraising apparatus by Defendants under Section 501 (c) (3) and Section 170 (c) and such special status allowed to continue by the Defendants, the United Israel Appeal and its predecessors in interest have transferred to Israel several billions of dollars for the financing of the aforementioned programs of the Jewish Agency and the State of Israel.

10. That the Jewish Agency in Israel is an agent or an integral

part of the Government of the State of Israel by virtue of the Status Law enacted by the Israeli legislature in November 1952 (see Appendix A attached to this Complaint), wherein the Jewish Agency is charged with the fulfilling of a political and ideological noncharitable function, the promotion of immigration and settlement of Israel by persons of the Jewish faith and the financing of this policy. Said Status Law of 1952 refers to the "Ingathering of the Exiles" as being the "chief task of the State of Israel and the Jewish Agency". Further, a Covenant was entered into between the Government of the State of Israel and the Executive of the World Zionist Organization/Jewish Agency, more specifically delineating the nature of and responsibilities in the principal-agency relationship, which Covenant has been filed with the United States Department of Justice as part of the registration of the Jewish Agency-American Section, as a foreign agent operating in the United States. (See Appendix B attached to this Complaint). Pursuant to the political and ideological function of Zionism, said Jewish Agency actively promotes and solicits immigration by Jews to Israel and is not designed merely to assist persons seeking refuge in Israel as stated in the exemption application of the United Israel Appeal. Moreover, said Jewish Agency extends numerous material incentives and assistance to immigrants to Israel without consideration of need.

Under Section 1 of the Covenant, the functions of the World Zionist Organization/Jewish Agency are:

(1) the organizing of immigration abroad and the transfer of immigrants and their property to Israel;

(2) cooperation in the absorption of immigrants in Israel;

(3) youth immigration;

(4) agricultural settlement in Israel;

(5) the acquisition and amelioration of land in Israel by the institutions of the Zionist Organization, the Keren

Kayemet Leisrael and the Keren Hayesod [United Israel Appeal in the United States];

(6) participation in the establishment and the expansion of development enterprises in Israel;

(7) the encouragement of private capital investments in Israel;

(8) assistance to cultural enterprises and institutions of higher education in Israel;

(9) the mobilization of resources for financing these activities;

(10) the coordination of the activities in Israel of Jewish institutions and organizations acting within the limits of these functions by means of public funds.

Under the Israeli Law of Return, all persons of the Jewish faith are automatically accorded citizenship in the State of Israel pursuant to the terms of official Israeli legislation whereas persons who are not of the Jewish faith may not receive similar benefits.

11. That the government of Israel, the World Zionist Organization, and the Jewish Agency in Israel and their affiliates actively foster and encourage racial and ethnic discrimination through racially exclusive policies and discriminatory laws aimed at making Israel an exclusively Jewish state. The object of these laws is a single group of non-Jewish persons who are residing in, or refugees, deportees, and political exiles from the State of Israel—the Palestinian Arabs. Under one all-encompassing piece of legislation that has operated to deprive many Palestinian Arabs of their most fundamental human rights, an individual may be administratively detained for any reason for an unlimited period without trial and without charge; he may be subject to uncontrolled police supervision, which involves the severest restriction of his movements, contacts and employment; and he may be expelled from the country and

have his land confiscated by the government. The policy of the Jewish Agency and the World Zionist Organization (through the Jewish National Fund, which owns over ninety per cent (90%) of the land in Israel, and the Histadrut, the major labor organization in Israel) is to exclude non-Jews from land-ownership in Israel and prevent them from obtaining employment on Jewish-owned land. This policy is implemented by repressive and discriminatory land laws passed by the Israeli legislature which provide for the expropriation of land owned by non-Jews in Israel. The government also takes affirmative action to deprive Palestinian Arabs of their political rights and denies them the fundamental right of citizenship by birth in Israel.

12. The above named and aforementioned conduit fund-raising agencies are not organized and operated exclusively for any of the purposes enumerated in Section 501 (c) (3) of the Internal Revenue Code of 1954, but are mere conduit corporations organized to channel funds to a foreign entity, and thus Defendants and their predecessors, in granting Federal tax benefits to such agencies, have violated and continue to violate the Internal Revenue Code of 1954.

13. That the issue in this Complaint is grave and substantial and Plaintiffs are threatened with immediate continuing and irreparable injury by the continuing of this tax exempt and tax deductible status during the pendency of this action in that the United States Treasury is being deprived of substantial nonrecoupable revenue and Plaintiffs' tax burdens are thereby increased.

14. Plaintiffs Ibrahim Abu Lughod and Hisham Sharabi further allege that they, their families, friends, and neighbors and countrymen were driven out of their homes and native homeland in Palestine by Zionist forces by force of arms, terror, and violence, deprived of all material possessions, both personalty and realty, and a right of return thereto, and residence and freedom of movement therein after a cessation of all hostilities

and the conclusion of the Arab-Israeli Armistice Agreements in 1949 despite the express terms of Paragraph 13 of the Universal Declaration of Human Rights and the United States-sponsored and duly enacted Resolution 194 III of the General Assembly of the United Nations, which provides, in pertinent part, that all Palestinian Arab refugees which includes Plaintiffs Abu Lughod and Sharabi from the creation of the State of Israel and other members of their class be accorded a choice of either repatriation to their homes, lands, and possessions or compensation. Plaintiffs allege that said Resolution 194 constitutes an expression of a clear United States policy of which Plaintiffs Abu Lughod and Sharabi, along with over one and one half million persons of Palestinian origin, are the intended beneficiaries. That the actions, programs, and policies of the conduit United Jewish Appeal and United Israel Appeal and Jewish Agency in Israel are designed and have the natural and intended consequence of rendering United States policy expressed in Resolution 194 to be null, void, and of no consequence in terms of implementation on behalf of Plaintiffs by populating Plaintiffs' homes, farms, and businesses and movable and immovable possessions with persons of the Jewish faith who have been recruited by the Jewish Agency to immigrate from throughout the world to Israel, all of which is in deprivation of Plaintiffs' rights. Plaintiffs Abu Lughod and Sharabi reallege all allegations contained in Paragraphs 1 through 13 of this Complaint and further allege that, were they currently to be given the choice of repatriation to their native homeland, they would be subject, under laws and practices currently existing and practiced by the Government of the State of Israel and the Jewish Agency, to a system of confiscatory land laws and discrimination on the basis of race or ethnic origin, including being legally prohibited from purchasing or leasing ninety-four and one half per cent (94.5 %) of the land in the State of Israel because of racially restrictive covenants therein, including lands to which Plaintiffs

and their families held legal title. Further, Plaintiffs allege that said system of discrimination and racial oppression is maintained by the subsidy accorded the conduit United Jewish Appeal and United Israel Appeal by Defendants. Further, Plaintiffs Abu Lughod and Sharabi complain that they are being injured by Defendants' action herein in that the policies, programs, and actions of the beneficiaries to tax-exemption grant and/or cooperate in granting to foreign nationals rights to Plaintiffs' native homeland and houses, businesses, lands, and possessions while denying any rights thereto to Plaintiffs.

Plaintiff Yousef Hamdan alleges that he was an elementary school teacher in the Village of Daliat el-Carmel in the State of Israel from 1961 to 1965 and was subjected to numerous forms of official governmental harassment, racial discrimination and loss of employment therein and is fearful of being subjected to arbitrary arrest and detention without charge for an unlimited period should Plaintiff return.

Plaintiff Norton Mezvinsky alleges that he has been injured by Defendants' grant to tax-exempt and tax-deductible status to the above-named conduit fundraising agencies as an American national of the Jewish faith who has contributed to the conduit United Jewish Appeal/United Israel Appeal sums of money under the mistaken belief that said money was used for charitable, humanitarian, non-discriminatory and non-political purposes. This belief was based upon the tax-exempt and tax-deductible status accorded said conduit organizations and but for said belief, Plaintiff Mezvinsky would not have made contributions to said conduit organization. As an American adherent to the spiritual and ethical precepts of Judaism, Plaintiff Mezvinsky has been injured by Defendants' grant of tax-exempt and tax-deductible status to the United Jewish Appeal and United Israel Appeal since the latter have been, are currently, and will in the future engage in the suborning of a charity to the political aspirations of a foreign state in the

name of a Jewish people, all of which is damaging to the spiritual integrity and religious freedom of Plaintiff Mezvinsky as an adherent to and practitioner of the tenets of the Jewish religion.

Plaintiff Rashid Hussein alleges that as a citizen of the State of Israel and as a resident therein of Palestinian Arab origin, he was administratively arrested on four separate occasions and detained without charge and immediately before departing for the United States, Plaintiff, a poet who has published several volumes of poetry, was arrested and detained for reading his poetry in a neighboring village without authority from the Israeli police. Plaintiff was subjected to numerous forms of official harassment, preventing Plaintiff from enjoying equal rights and opportunities while in Israel and is fearful of arrest and detention without charge should he return.

All of the Plaintiffs herein allege that they are being injured by Defendants' action in that Plaintiffs are forced thereby to support and participate in a system of racial oppression.

COUNT II

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. The grant by Defendants and their predecessors of federal tax benefits to the above-named conduit fundraising agencies violates the terms and requirements for exemptibility and deductibility in the relevant sections of the Internal Revenue Code in that the above-named agencies are not organized and operated for charitable and educational purposes, but substantially for political and ideological ones.

COUNT III

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. The grant by Defendants and their predecessors of Federal tax benefits to the above-named conduit fundraising agencies violates the terms and requirements for exemptibility and deductibility in the relevant sections of

the Internal Revenue Code in that the domestically organized conduit United Jewish Appeal and the United Israel Appeal neither retain control over the funds collected nor are only a *portion* of the funds collected used in a foreign country since there is a unilateral transfer of *all* collected funds to Israel.

COUNT IV

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. Sections 501(c)(3) and 170(c) of the Internal Revenue Code and the grant by Defendants and their predecessors of Federal tax benefits to the above-named conduit fundraising agencies violates equal protection of the laws of the Fifth Amendment in that Plaintiffs may not deduct from their taxable income money given to non-charitable uses whereas persons giving money to the non-charitable purposes and functions of the Jewish Agency may deduct such monies given.

COUNT V

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. The grant by Defendants and their predecessors of Federal tax benefits to the above-named conduit fundraising agencies violates the equal protection guarantees of the Fifth Amendment in that such action by Defendants on behalf of the Federal government fosters racial and ethnic discrimination through the financial support of domestic and foreign organizations and a foreign political entity that discriminate on the basis of race.

COUNT VI

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. The grant by Defendants and their predecessors of Federal tax benefits to the above-named conduit fundraising agencies violates the Civil Rights

Act of 1964 by thus granting Federal financial assistance to foreign and domestic organizations and a foreign political entity that practice racial and ethnic discrimination.

COUNT VII

Plaintiffs reallege all allegations contained in Paragraphs 1 through 14 of this Complaint. The United Israel Appeal and United Jewish Appeal and their predecessors in interest have, in the original applications for exemption from Federal taxation under the terms of Sections 501 (c) (3) and 170 (c) of the Internal Revenue Code and in subsequent statements, audits, and tax returns, knowingly and wilfully misrepresented, concealed, failed to disclose, and otherwise defrauded Defendants as to the exact and correct nature of the operations of the Jewish Agency in Jerusalem, its relationship to the United Israel Appeal, United Jewish Appeal, Government of Israel, and the World Zionist Organization.

Notwithstanding this misrepresentation, concealment, and failure to disclose, Plaintiffs affirmatively allege that the Defendants have full knowledge of facts that the conduit United Jewish Appeal, United Israel Appeal, and Jewish Agency are substantially engaged in noncharitable activities which would disqualify the conduit United Israel Appeal and United Jewish Appeal from any exemption from the payment of Federal income taxes under the pertinent provisions of the Internal Revenue Code of 1954, as made and provided.

WHEREFORE, Plaintiffs respectfully pray that because this action involves, *inter alia,* a challenge to the constitutionality of provisions of the Internal Revenue Code, that a three-judge District Court be convened pursuant to 28 USC §§2282 and 2284, that this cause be advanced on the docket for an expeditious hearing, and that this Court enter judgment for Plaintiffs granting permanent injunctive relief as follows:

1. Issuing preliminary prohibitory and mandatory injunctions directed to Defendants George Shultz, as Secretary of the Treasury, and Johnnie M. Walters, as Commissioner of Internal Revenue, their agents, servants, employees, and attorneys and all persons in active concert and participation with them;

(a) Requiring Defendants forthwith to rescind, withdraw, and revoke the approval of applications for the United Jewish Appeal and United Israel Appeal and any and all similar conduit fundraising agencies for a foreign state, beginning 1972, for tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1954;

(b) Enjoining Defendants from approving the applications of conduit fundraising agencies of foreign states, the United Jewish Appeal and the United Israel Appeal, for tax-exempt status under Section501(c) (3) of the Internal Revenue Code of 1954, and allowing individual and corporate contributors to these conduit fundraising agencies to deduct their contributions from gross income on their income tax returns under Section 170(a) through (c) of the Internal Revenue Code of 1954;

(c) Direct Defendants to forthwith collect all sums now due and owing the Government of the United States by reason of the tax exemption under Section 501(c) (3) of the Internal Revenue Code of 1954, from the United Israel Appeal and United Jewish Appeal plus damages and interest since the first year said exemption was accorded by the predecessors in office of the Defendants;

2. Granting the Plaintiffs their costs herein, including reasonable attorneys' fees, to the extent permitted by law;

3. Granting the Plaintiffs and the class they seek to represent such further and additional relief as this Court may deem equitable, just and proper.

APPENDIX A

THE STATUS LAW

(Adopted by Israeli Knesset November 24, 1952)

1. The State of Israel considers itself as the creation of the entire Jewish people and in accordance with its laws its gates are open to every Jew who wishes to immigrate thereto.
2. The World Zionist Organization, since its foundation half a century ago, has stood at the head of the movement of the Jewish people and of its endeavors to fulfill the vision of generations to return to its homeland and with the assistance of other Jewish circles and bodies shouldered the main responsibility for the establishment of the State of Israel.
3. The World Zionist Organization, which is also the Jewish Agency for Palestine, applies itself, as in the past, to the promotion of immigration into Israel, and directs absorption and settlement enterprises in the State.
4. The State of Israel recognizes the World Zionist Organization as the authorized agency which shall continue to work in the State of Israel for the settlement and development of the country, for the absorption of immigrants from the Diaspora and for the co-ordination of the activities in Israel of Jewish institutions and associations operating in these spheres.
5. The mission of the Ingathering of the Exiles, being the central task both of the State of Israel and of the Zionist movement in our days, necessitates continued efforts of the Jewish people in the Diaspora; and therefore the State of Israel looks forward to the participation of all Jews and Jewish bodies in the upbuilding of the State and in assisting mass immigration thereto, and recognizes the need for uniting all Jewish communities to this end.
6. The State of Israel looks forward to endeavors on the part of the World Zionist Organization to achieve this unification; if, for this purpose, the Zionist Organization, with the approval of

the Government and the endorsement of the Knesset, shall decide to enlarge its framework, the enlarged body will enjoy the status which has been granted to the World Zionist Organization in the State of Israel.

7. The provisions of the status and the form of cooperation between the World Zionist Organization—which is represented by the Zionist Executive also called the Executive of the Jewish Agency for Palestine—and the Government will be laid down in a Convention to be concluded in Israel between the Government and the Zionist Executive.

8. The Convention will be based on the declaration of the Twenty-Third Zionist Congress in Jerusalem that the practical program undertaken by the World Zionist Organization and its agencies in the fulfilment of its historic tasks in Eretz Israel necessitates the fullest degree of cooperation and coordination on its part with the State and Government of Israel, in consonance with the laws of the State.

9. There will be established a Committee for the coordination of activities between the Government and the Executive in those spheres in which the Executive will operate, according to the Convention; the tasks of the Committee will be laid down in the Convention.

10. The Convention, and every change and amendment effected with the agreement of both parties, will be published in the Reshumot and will come into force on the date of their publication, unless they provide for a date earlier or later than the date of publication.

11. The Executive is a legal person and is entitled to enter into contracts, to acquire property, to retain it and to dispose of it, and to be a party to all legal and other transactions.

12. The Executive, its funds and its other institutions, shall be exempted from taxes and other obligatory Governmental levies according to the limitations and conditions to be laid down in the Convention; the exemption shall come into force with the coming into force of the Convention.

APPENDIX B

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 Law, 1952.

Functions of Executive

1. The functions of the Zionist Executive which are governed by this Covenant are: The organizing of immigration abroad and the transfer of immigrants and their property to Israel: participation in the absorption of immigrants in Israel; Youth Immigration; agricultural settlement in Israel; the acquisition and amelioration of land in Israel by institutions of the Zionist Organization, the Keren Kayemet Le Israel 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 functions; the coordination of the activities in Israel of Jewish institutions and organizations acting within the sphere of these functions with the aid of public funds.

Activities under the Law

2. Any function carried out in Israel by the Executive or on its behalf hereunder shall be executed in accordance with the laws of

Israel and such administrative regulations in force from time to time as govern activities of governmental authorities whose functions cover or are affected by the activity in question.

Immigration

3. In organizing immigration and in the handling of immigrants, the Executive shall act in pursuance of a programme agreed upon with the Government or authorized by the Coordinating Board (see Para. 8). Immigrants will require visas in accordance with the Law of Return 5711–1950.

Coordination Between Institutions

4. The Executive shall, with the consent of the Government, coordinate the activities in Israel of Jewish institutions and organizations which act within the sphere of the functions of the Executive.

Transfer of Functions

5. The Executive may carry out its functions alone, through its existing institutions, or such as it may establish in future, and it may also obtain the participation of other institutions in Israel, provided that it may not transfer any of its powers or rights under this Covenant without the consent of the Government; and the Executive shall not authorize any body or institution to carry out its functions, in whole or in part, except upon prior notice to the Government.

Mobilization of Resources

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 Le Israel and other funds.

Legislation

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

Coordination Board

8. For the purpose of coordinating activities between the Government and the Executive in all spheres to which this Covenant applies, there shall be established a Coordination Board (hereafter called the Board). The Board shall be composed of an even number of members, not less 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 from among their members.

Its Activities

9. The Board shall meet at least once a month. It may appoint subcommittees consisting of members of the Board or also non-members. The Board shall from time to time submit to the Government and the Executive reports of its deliberations and recommendations. Subject as aforesaid, the Board shall make its own rules of procedure.

Permits and Facilities

10. The Government will see to it that its duly authorized agencies shall issue to the Executive and its institutions all permits and facilities required by law for activities carried out in accordance with this Covenant so as to facilitate the Executive's functions.

Relief from Taxes

11. Gifts and legacies to the Executive or to 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 duties and other governmental levies 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 integral part thereof, and shall be effective as from the date of signature of this Covenant.

Alterations

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.

Notifications

13. Any notice to be sent to the Government shall be sent to the Prime Minister, and any notice to be sent to the Executive shall be sent to the Chairman of the Executive in Jerusalem.

Date of Coming into force

14. This Covenant shall come into force on the date of signature.

In Witness Whereof, etc.

Signed – Jerusalem
July 26, 1954

FOR THE GOVERNMENT

Prime Minister
MOSHE SHARITT

FOR THE ZIONIST EXECUTIVE

Chairmen
BERL LOCKER

DR. NAHUM GOLDMANN

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 coordination 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   July 26, 1954
Jerusalem

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

APPENDIX TO THE COVENANT BETWEEN THE GOVERNMENT AND THE EXECUTIVE OF THE JEWISH AGENCY[1]

In Accordance with section 11 of the Covenant between the Government of Israel (hereinafter "the Government") and between the Executive of the Jewish Agency for Israel (hereinafter "the Executive") made on 25 Tammuz 5714 (26 July, 1954), as amended, this Appendix was signed this day:

1. In this Appendix—"The Executive"—includes the Jewish National Fund and Keren Hayesod—United Israel Appeal.

2. The Executive shall be exempt from taxes and the other government mandatory payments that are specified hereafter subject to such limitations and conditions as follows:

(a) From municipal property tax under the Municipal Property Tax Ordinance 1940, and from agricultural property tax under the Agricultural Property Tax Ordinance, 1942, for all property that is not leased thereby and was not given to another party in any manner whatsoever.

(b) From fees under the Land Transfer (Fees) Regulation 5716–1956 and under the Cooperative Houses Regulations, 5713–1953.

(c) From land appreciation tax under the Land Appreciation Tax Law, 5709–1949.

(d) From the tax under the War Damage Compensation Tax Law, 5711–1951, with respect to those properties of the Executive that were not leased and not given to another party in any manner whatsoever, and in respect whereof the Executive requests the exemption thereof from the tax. If the Executive requests an exemption for any property as aforesaid, it will not be entitled to compensation in respect of such property from the fund under the War Damage

1. Yalkut Pirsumim 549, 5717 (1.8. 1957), p. 1204.
2. Amendment: Yalkut Pirsumim: 595, 5718 (17.4. 1958) p. 831.

Compensation Law, as is set out in the War Damage Compensation Tax (Payment of Damages) Regulations 5713–1953.

(e) From compulsory loans under the Compulsory Loan Law, 5713–1953.

(f) From registration fees and capital fees under section 1 (1), 1 (2), 1 (3), 1 (8), 1 (9) and 1 (10) of the Companies (Fees) Order 5713–1953, provided:

(i) that the exemption from the fee as aforesaid in respect of a company having a share capital shall apply only with respect to that portion of the fee which bears the same ratio to the total fee as is the ratio of the fraction of the share capital attributable to the Executive in respect whereof such fee is paid to the entire sum of the said share capital.

(ii) that the aforesaid exemption from the fee in respect of a company that does not have a share capital shall apply only to that portion of the fee the amount whereof is equal to the amount of the fee divided by the number of members for whom the fee is paid and multiplied by the number of members who are entitled to the exemption under this Appendix.

(g) (i) From purchase tax under the Purchase Tax Law, 5712–1952—in respect of merchandise to the Executive the tax rate wherefor exceeds 10%, and in respect of the importation of all merchandise, provided that the merchandise is designated for the execution of its duties;

(ii) From customs duties under the Custom Tariff and Exemptions Ordinance, 1937—in respect of all merchandise imported by the Executive for development purposes and in respect whereof the Executive has notified the Director of Customs at the time of application for a licence to import the said merchandise, or if the merchandise does not require an import licence—prior to the order, of the import of the merchandise.

(iii) With reference to merchandise in respect whereof an exemption has been given under this section and which the Executive has transferred to another party or which has been transferred for a different use or purpose other than that wherefor an exemption was granted, the Executive shall be liable for payment of the tax commencing from the time of the transfer.

(h) From income tax and company profits tax, under the Income Tax Ordinance, 1947, and from any other tax imposed on income—

with respect to all income of the Executive; provided that the exemption shall not apply to income from dividends or interest on debentures paid to the Executive by a company which deals in trade, works or any enterprise unless such company deals in trade, works or any enterprise designed for settling the land or absorption of immigrants.

(i) From stamp duty under the Stamp Duty Ordinance—with respect to the following documents:

(1) Debentures issued by the Executive in respect whereof stamp duty applies under item 26 of the Schedule to the Stamp Duty Ordinance, when a guarantee for their redemption is secured by guarantee of the State of Israel;

(2) The transfer of all stocks and shares in respect whereof stamp duty applies under item 37 (c) of the Schedule to the Stamp Duty Ordinance and in respect whereof the Executive is transferee;

(3) Receipts given by the Executive;

(4) Guarantees under item 27 of the said Schedule when the guaranteed party is the Executive or guarantees given by the Executive when the guaranteed party is a body supported by the Executive.

(j) From licence fees under the Transport Ordinance in respect of all vehicles of the Executive which are not private motor vehicles as defined in the Transport Ordinance.

3. (a) The exemptions granted to the Executive under sections 2(a), 2(b), 2(c), 2(d), 2(e) and 2(i) (1) shall also be granted to Himanutah Company Ltd.

(b) Himanutah Company Ltd. will be exempt from income tax, company profits tax, and from other taxes imposed upon income, with respect to income received by it from its real estate transactions.

4. The exemptions under this Appendix are supplementary to exemptions under any other law and do not detract therefrom.

IN WITNESS WHEREOF the parties have signed in Jerusalem on this day of 20 of Tammuz 5717 (19 July, 1957).

NAHUM GOLDMAN	DAVID BEN-GURION
The Zionist Executive	*The Government of Israel*

Price: 2 L.L.