Respectfully referred to
Hon. Matthew J. Connely

DAVID K. NILES

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There are several instances in the last few decades in which the United States has recognized a provisional government without waiting upon elections or upon the establishment of a permanent government:

(a) Russia after the Revolution when we recognized the "Provisional Government" established by Kerensky. Full recognition was granted — despite the fact that the government itself was de facto in character, weak and later overthrown by the Soviet authorities. See J. Roseworth 135-136.

(b) Poland after the recent war. The Polish Declaration specifically indicates that recognition was granted by Great Britain, the U.S.S.R. and the United States to the "Polish Provisional Government of National Unity." The interesting thing here is that recognition was unqualified at a time when future elections were contemplated and Poland's borders remained to be defined.

(c) France after liberation. We unqualifiedly recognized the "Provisional Government of the French Republic" although it was understood that elections remained to be held and a new constitution framed and adopted.
2. There would seem to be no reason or warrant for making the nature of our recognition — de facto or de jure — turn on whether the particular government is provisional or final. What a new sovereignty chooses to call its government — whether it decides to regard it as provisional or otherwise — is irrelevant from the viewpoint of another country which must determine whether or not to recognize that government. The Provisional Government of Israel is the legal, de jure government of that country, and what procedure the Israelis choose to follow before drafting a constitution, establishing a permanent government, etc. has no bearing whatever on the issues before the United States.

3. The United States is properly concerned with matters such as these: Whether in fact the Israeli government is in possession of the machinery of the state; whether it governs with the consent of the people; whether it can fulfill its international obligations. But assuming these tests are met — and so far as I am aware no one has denied that Israel can meet these tests — to withhold full or so-called de jure recognition because the Israelis happen to have described their own government as provisional is an act of political expediency not law.

4. American history offers illustrations where appropriate use has been made of limited recognition. For example, in the case of various South American republics established by revolution; where power has been transferred from one to another group and where the authority of the government in power is under obvious challenge — de facto recognition may be appropriate. But
certainly no one in the State Department has yet suggested that
the "Provisional Government of Israel" does not fairly meet the
historical tests of recognition. What appears to have happened
is that those who were loath to recognize Israel seized on the
word "Provisional" in the title of the government and then
developed a legalistic thesis that since the government was
"provisional", American recognition would only be "de Facto".
From the viewpoint of reason and precedent this is an absurd
non sequitur.

5. Mr. Charles Paly, with whom I discussed this question
briefly, is largely responsible for the foregoing analysis.
It is fully supported, I think, by the discussion of the
problem both in Backworth and Lauterpacht.