

THE WHITE HOUSE  
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Respectfully referred to

Hon. Matthew J. Connelly



DAVID K. NILES

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DE FACTO AND DE JURE RECOGNITION OF ISRAEL

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I. 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 I Hackworth 135-136.

(b) Poland after the recent war. The Potsdam 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 delimited.

(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 assent 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 Fahy, 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 Hackworth and Lauterpacht.