

מדינת ישראל  
STATE OF ISRAEL  
MISSION TO THE UNITED STATES  
WASHINGTON, D. C.

~~PERSONAL AND CONFIDENTIAL~~

No. 1313

August 9, 1948

Dear Mr. Clifford:

You may be interested to read the attached  
opinion on de facto recognition of the State of Israel  
by the United States Government, which has been prepared  
by an outstanding authority on International Law.

Sincerely yours,



*E. Epstein*

Eliahu Epstein  
Special Representative

Mr. Clark Clifford  
Special Counsel to the President  
The White House  
Washington, D. C.

Enclosure

Whether a recognition is a de facto recognition of a de jure government, or the other way around is indeed a matter for legalistic quibble. But there is a test on which the real attitude of one government to another ( of the recognizing government to the recognized government) can easily be made, namely, the type of diplomatic and consular relations it is maintaining with the government which asks for recognition.

The real nature of the American recognition of the State of Israel is not expressed in the statement of the President but in the way the State Department deals with Israeli representative in Washington and with Israeli Consul-General in New-York. There has been a clear-cut tendency to try to reduce the level of this relationship to something very provisional and very temporary and very unsatisfactory from Israeli viewpoint. The thing to do is not so much the use of one or another magic formula, but the practical kind of status granted to Israeli representatives. If Israeli diplomatic representative is carried in the diplomatic list, if he is given a proper title, if he enjoys by right and not by sufferance his diplomatic immunities and privileges-- well, that will do. But if in all these respects he is treated as an inferior while some representatives of states extinguished long ago are still given full diplomatic recognition, this certainly is an appropriate interpretation of what the real meaning of the so-called *de facto* recognition was, at least in the eyes of a diplomat and in international law.

The provisional character of the government of Israel has nothing to do with the kind of recognition to be granted to Israel. This designation was used exclusively out of deference to the Resolution of the General Assembly. It is no reflection at all on the representative character of the government or on the very idea of this government as a democratic government enjoying popular consent. In fact, it emanated from the National Council elections in 1944 as corrected by the election of the Zionist Congress in 1946. Indeed, the American theory of recognition does not require a formal popular vote but only the assumption that the government is indeed a government by consent. This was the idea that prompted the U.S.A. to recognize a few days after the March Revolution the provisional government of Russia, Prince Lubov. What is more interesting is that this government remained so, that is remained *de jure* for 16 years from 1917 to 1933, with the representative of this government Mr. Bakametyeff, enjoying all the privileges and immunities of an ambassador of a fully recognized government. During these 16 years the government was in power only six months, and was overthrown by the Bolsheviks. Practically all of those in the government were dead much earlier than 1933. Still the recognition stood. This is certainly the best proof that neither the word "provisional" nor the fact that the government did not emanate directly from a parliament is in any way relevant in American practice for full recognition.

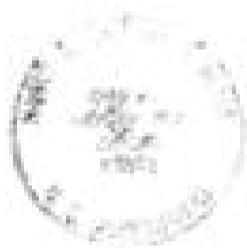
September 1, 1948

Dear Mr. Epstein:

I have read with interest  
the memorandum on the question of recognition  
which you enclosed in your letter of August  
9th. This is a helpful approach to this  
complex subject.

Very sincerely yours,

CLARK M. CLIFFORD  
Special Counsel to the President



Mr. Elishu Epstein  
Special Representative  
State of Israel  
Mission to the United States  
2210 Massachusetts Avenue, N.W.  
Washington, D. C.

*Mr. Elishu Epstein*