Yossi Katz

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The Jewish National Fund and the History of State Ownership of Land in Israel

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This book is dedicated to the memory of my late mother, Chana Katz (1922-2015), born in Jerusalem, who managed the Archives of the Israel Land Administration for some decades.

Preface

The phrase "The land shall not be sold in perpetuity" (Leviticus 25, 23) appears in many verses dealing with the commandments related to the land in the Land of Israel. It expresses a ruling that the Land of Israel belongs only to God; He has given it to the People of Israel as a whole and not to private individuals, and therefore landowners are not allowed to sell and buy lands in perpetuity. In time this phrase has become the motto which governed since 1901 the activity of the land acquisition institution of the World Zionist Organization (which was established in 1897 and had a significant role in the establishment of the State of Israel in 1948) – the Jewish National Fund (hereafter: JNF). The JNF capital was based on donations by the Jewish People, and its statutes – which have remained unchanged to this day – state that the lands it purchases will remain forever the property of the Fund, being the agent of the Jewish People, and will not be sold. The State of Israel, since its establishment, has adopted this principle.

Indeed, today – at the middle of the second decade of the 21st century – the majority of Israel's lands (90%) are still owned by the State and by the JNF. Israel's sovereign territory (within the 1967 borders) is approximately 21,000 square kilometers, out of which 2,000 sq. km are privately-owned (by Jews and Arabs), 16,500 sq. km are owned by the State, and 2,500 sq. km are owned by the JNF. Moreover, according to a Basic Law – which has the status of a constitutional law – the State is allowed to sell only a very small portion of its land. Transfer of lands to the people holding them may be done by leasing only. While the State is allowed to sell some of its lands, the JNF regulations totally forbid any sale of its lands.

These facts are quite surprising, for three reasons: firstly, Israel is considered a Western state, governed by the free market rules; secondly, a process of accelerated privatization is taking place in various economic areas in Israel, as opposed to land privatization, which is only marginal; thirdly, until the State of Israel's establishment (except for periods of political restraints), the land policy that ruled was mainly a policy of private ownership of land.

The concept of national ownership of most of the State lands, which has ruled in the State of Israel since its establishment, has many implications. Apart from the planning and building laws, various restrictions apply to the landowner's power to lease the land. For example, the JNF is not allowed to lease its lands to non-Jews. Also, the rule of national land ownership dictates the uses that may be made on the land, as well as the maximal leasing period. Thus, many of the agricultural leasing contracts signed by the State of Israel are for a period of three years only, and the two parties have to renew them at the end of

the leasing period. Considering the short leasing period, banks refuse to grant mortgage loans for lands that are not to remain for sure in the lessee's possession after three years. The long-term leasing contracts in towns and villages are also limited to two periods of forty-nine years each. Because no such second leasing period has ended yet, it is not clear what the future status of the leased lands will be.

This book wishes to explore, first of all, the historical reasons for the national ownership of most of the lands in the State of Israel. As mentioned above, it shows that at the root lies the divine command which appears in Leviticus, chapter 25, stating that the Land of Israel belongs to God and therefore should not be traded in perpetuity. This principle was adopted by the JNF, which declared – for national reasons also – that the lands it purchased would not be sold, but leased only. It should be noted that in the period which preceded the establishment of the State, the JNF was the main Jewish body that purchased lands for the Jews in the Land of Israel.

The Labor Movement adopted this principle for ideological reasons at the beginning of the 20th century. After the establishment of the State of Israel, and even earlier, this movement was the largest political movement in the Knesset (the Israeli parliament), and its members endeavored to draw laws that would apply the principle of leasing only to lands that came into the ownership of the State. These were lands that the State of Israel inherited from the British Mandate, as well as lands that formerly belonged to Arabs who left Israel following the War of Independence in 1948 and that were nationalized by the State. These two kinds of lands, together with the JNF lands, constitute the majority of Israel's lands. In 1960, following a series of agreements between the State of Israel and the JNF, it was determined that the prohibition to sell the State's lands should be established in a Basic Law – one of the first Basic Laws of the State of Israel. The Basic Laws established by the State of Israel are chapters of the future constitution of the State and therefore have a higher status than regular laws. As part of the agreements between the State of Israel and the JNF that were signed in 1961 it was ruled that the State lands and the JNF lands will be managed together by a State body that was established for that purpose in the same year – the Israel Land Administration. In 2009, it was transformed into the Israel Land Authority.

Since the 1980s there have been many pressures in Israel to privatize at least part of the State's and JNF's lands, due to some reasons: The general privatization process of Israel's economy following the rise to power of the right-wing Likud Party in 1977; the deepening globalization process; and the transformation of Israel from a collectivist society to an individualistic society. Also, it turned out that in fact there was no substantial difference between long-term leasing and

sale of land, and the State wanted to avoid the vast bureaucracy concerning the connection with the lessees. Towards the end of the first decade of the 21st century the government of Israel made some dramatic endeavors to privatize the whole of the State's lands as well as the urban lands of the JNF. However, this attempt was met by objections and protests, including petitions to the Supreme Court of Israel by various bodies which opposed this process: ideological bodies that fight against privatization in general; ideological organizations that regard national land as a top Zionist value that should not be harmed; planning bodies and environmental bodies. As a result, the government retreated from its original plan and limited the extent of the lands that might be sold to 800,000 dunam (1 dunam=1,000 sq. m) of urban lands. This decision came into force in 2009. The State of Israel remained one of the few states in the Western world in which most of the land is owned by the State and by a public body adhering to its fundamental values.

The book is based wholly on primary sources, such as documents of the JNF, minutes of discussions in the government and in the plenum and committees of the Knesset, correspondence, position papers, etc. It describes and analyzes the history of the ideological, social and legal processes that took place and their development since the beginning of the 20th century until today – processes that brought about the unique phenomenon of the State of Israel as an advanced capitalistic state whose lands are mostly State-owned.

This book is divided into seven chapters. The first chapter discusses the sources of the principle of ownership of the nation's land in perpetuity in the doctrine of the JNF. The second chapter deals with the deviations from this principle which came about in the course of time. The third chapter illustrates the process of the legal registration of the JNF as an Israeli company after the establishment of the State of Israel. The fourth chapter describes the process of legislation of the Development Authority Law, 1950 – the first law which contained limitations imposed by the State on the sale of its land.[1] The fifth chapter deals with the legislative process of the State Property Law, 1951 – the second law that dealt, inter alia, with the legal limitations imposed by the State on the sale of its land. The subject of the sixth chapter is the legislative process of the Basic Law: Israel Lands, and the Israel Lands Law, 1960. These two laws, which are interconnected, are based on the limitation of land sales as defined in the two earlier laws, and establish the principle of the prohibition of land sales and the excep-

1 According to the law customarily applied until 1950, there was no prohibition on the sale of State lands defined as such under the Mandate, but every sale had to be approved by a special ministerial committee. See SIA, minutes of Israel government meetings, 29.11.1949.

tions to it. The seventh chapter reviews the attempt made by the State of Israel at the end of the first decade of the 21th century to privatize all of the urban lands held by it, and the public struggle against this attempt, resulting in an amendment to the law according to which the amount of urban lands permitted to be sold increased from 100,000 dunam (in 1960) to 800,000 dunam (in 2009).

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This book originates in my book *Vehaaretz Lo Timacher Lizmitut (The land shall not be sold in perpetuity): The Legacy and Principles of Keren Kayemeth LeIsrael (Jewish National Fund) in the Israeli Legislation*, which was published in Hebrew by the Jewish National Fund Institute for the Study of Zionism and Settlement and the Chair for the Study of the History and Activities of the Jewish National Fund at Bar-Ilan University. The book was published in 2002, in honor of the 100th anniversary of the JNF, and gained much praise. It soon became not only a significant book in the history of the State of Israel, but also a basic book for the Knesset members and for jurists, who cite from it in discussions held in the Knesset plenum and its committees, as well as in discussions of the district courts and the High Court of Justice. The High Court of Justice judges also use it while deciding on land issues.

Before the publication of the English edition I conducted wide research in order to update the developments that have occurred on the issues discussed in the book. I have also added two new chapters – Chapter Three and Chapter Seven.

The English edition of the book is published by De Gruyter Publishing House and Magnes Press. I would like to express my gratitude to all the people who did extensive work on the manuscript and gave it its final form. The late Professor Henry Nir provided the translation of most of the manuscript; Ms. Henia Columbus translated the remaining parts of the book; and Ms. Joan Hooper edited the manuscript. Special thanks are due to the staff of the Central Zionist Archives in Jerusalem who offered much help during the research that led to the writing of this book, to Mr. Hai Tsabar, Director of the Hebrew University Magnes Press and to Dr. Julia Brauch from De Gruyter Publishing House. Without their many efforts, this book could not have been published. Last, but not least, I am grateful to my wife Ruthie, who for the last 40 years has not spared any effort to assist me with my work and to enable me to invest as much time as I do in research. All that I have belongs to her.

Yossi Katz
Kfar Tavor, Israel
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Chapter 1
The Principle of the Prohibition of the Sale of Land in the Doctrine of the Jewish National Fund

At the First Zionist Congress, in 1897, Professor Zvi Herman Shapira suggested the foundation of a national fund whose assets would be collected from the whole of the Jewish people and devoted to the acquisition of land in the Land of Israel; and that this land should never be sold, but could be leased out for a period of forty-nine years.[1] In fact, Shapira had made this proposal already at the first conference of Hovevei Zion in Kattowitz in 1884, but it only attracted attention from the time of the First Zionist Congress.[2] In 1901, at the Fifth Zionist Congress, the foundation of the JNF in accordance with the principles suggested by Shapira, including that of permanent ownership by the Jewish people of any land purchased, was approved. This principle was to be applied by the JNF.[3] Six years later, in April 1907, the statutes of the JNF were approved. They gave legal backing to the principle of the JNF's permanent ownership of all land that it purchased.[4]

It would be a simplification to maintain that the principle laid down by Shapira and adopted by the leaders of the Zionist movement in various forums until its final approval in the statutes of the JNF in 1907 was prompted only by the fact that JNF land was purchased with the money of all the Jewish people, and that therefore the Jewish people was the owner of the land and it could not be sold. This was, indeed, one of the reasons – perhaps even the formal reason – and it may be that it was intended to increase donations to the JNF. In a memorandum of the Russian Zionist Organization entitled "What is the Hebrew National Fund, and What is its Purpose?" this principle is emphasized:

> The purpose of the National Fund is to work actively for the dignity and future of the people of Israel. Therefore it was decided in advance that it belongs to the people of Israel, that the lands which will be bought by the National Fund are to be considered the property of the Hebrew People for ever, that the people itself, just as it gives its money to the Fund, must always be the controller of the Fund and its resources.[5]

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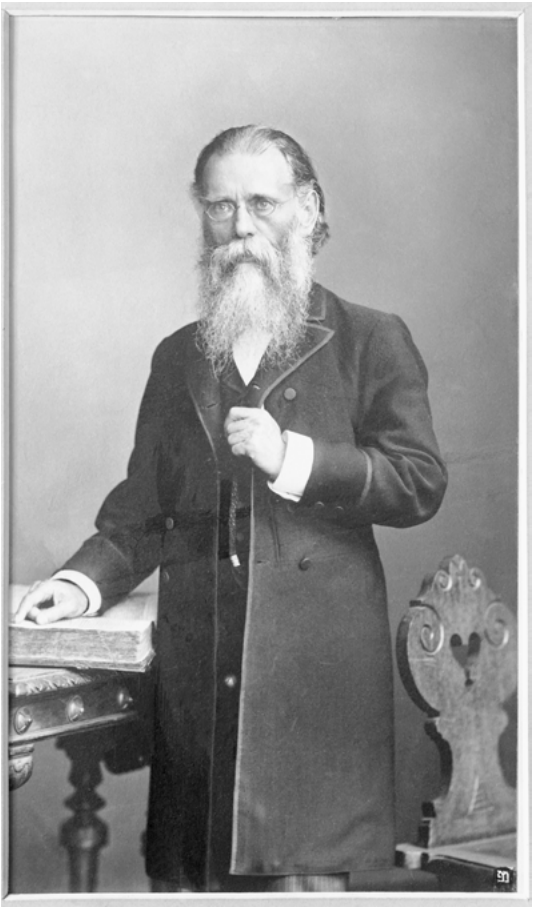
1 *The First Zionist Congress* 1978, p. 164.

2 Klausner 1966, p. 38.

3 Doukhan-Landau 1980, p. 66.

4 Shiloni 1990, pp. 28–29. And see the JNF Statutes, CZA, file KKL5/13892, and below, Appendix 1.

5 *What is the Hebrew National Fund* 1907, p. 3. And see Granovsky 1926, p. 6: "It is right that what has been purchased with the money of the people should remain the property of the people for ever."



Zvi Herman Shapira, 1901.
Photo: Yaacov Ben-Dov.
Source: JNF Photo Archive

But it seems that the principle of the JNF's permanent ownership of the land, and the prohibition on its sale, stemmed from more fundamental reasons. They are connected both with the attitude of the Jewish religion to the ownership of land in the Land of Israel as defined by a divine commandment and with socio-economic ideals according to which Shapira and those connected with the foundation of the JNF sought to promote the Zionist settlement enterprise. The nature of land tenure had clear implications for the possibility and type of settlement, particularly because Zionists considered that the creation of a class of agricultural workers in the Land of Israel was a condition for the fulfillment of their aspirations.[6]

6 See, e.g., the memorandum *What is the Hebrew National Fund* 1907; Penslar 1997, pp. 1–122.

The JNF Blue Box, 1936.
Photo: Avraham Malavsky.
Source: JNF Photo Archive

Max Bodenheimer, who worked closely together with Shapira, was connected with the JNF from the time of its foundation at the First Zionist Congress, and became its first chairman,[7] stated that "Shapira connected his program with the Mosaic precept: 'The land shall not be sold in perpetuity' to private ownership, because it is the everlasting building of the People of Israel."[8] Moreover, Avraham Granot (Granovsky), one of the first employees and directors of the JNF, who formulated its doctrine for many years and headed its board of directors from the 1940s onwards, says in one of his articles: "Shapira saw in the JNF a tool for realizing the traditional Jewish concept of national land, which had been accepted by the people in the past."[9] Shapira had been ordained as a rabbi by famous rabbis, and was a gifted Lithuanian rabbi well versed in the Talmud – though he was later won over to the Haskala, but in the 1890s "returned to his religious faith in divine revelation and providence... observed the positive *mitzvot* and defended

7 Bodenheimer 1952, p. 136.
8 Bistritzky 1951, pp. 35–50; *The First Zionist Congress*, pp. 163–166; Klausner 1966, esp. p. 49 ff.; Kotler 1925, p. 49.
9 Granot 1950, p. 14; Granot 1960.

them"[10] and considered Judaism to be a guide for living.[11] He presumably aspired to connect the redemption of Israel with the fundamental religious concept connected with the *mitzva* of the Jubilee which states that: "The land shall not be sold in perpetuity, for the land is mine" (Leviticus 25, 23).

Avraham Granot, 1950. Photo: Alex Stragmeister. Source: JNF Photo Archive

The *mitzva* of the Jubilee is one of those dependent on the Land: it must be practised only in the Land of Israel, and ordains that land may not be sold in perpetuity, but only for a period of forty-nine years at the most. In the fiftieth year, the Jubilee year, the property is returned to its former owner. In effect, the "buyer" takes a lease on the land for agricultural use for a number of years between two Jubilee years. The Bible also lays down that the rent on the land is fixed in accordance with the number of years until the next Jubilee: the greater the number of years, the higher the rent. In the words of the Bible: "According to the number of years after the Jubilee thou shalt buy of thy neighbor, and according to the number of years of the fruits he shall sell unto thee" (Leviticus 25, 15–16). The reason for the return of the land to its previous owner is given by the Bible as: "The land shall not be sold in perpetuity, for the land is mine" (ibid., 23). Since Shapira was both an orthodox Jew and a Zionist, he wanted to apply the biblical ordinance that the people of Israel had practised in its land before the exile, to the land that would again belong to the people of Israel when they returned to rebuild their motherland. It is, therefore, not by chance

10 Klausner 1966, p. 47; Wolfsberg and Gross 1946, pp. 146–147.
11 Klausner 1966, p. 26.

that in his plan Shapira defined the maximum leasing period as forty-nine years, for this was the maximum period of the "sale" between Jubilees; it was a complementary ordinance to that forbidding the sale of land in perpetuity. Moreover, if we look more closely at classical biblical exegesis, of which Shapira was certainly aware, we may note that – apart from the religious element, according to which God, and not man, is the supreme owner of the Land of Israel, and therefore it may not be sold – the *mitzva* of the Jubilee embodies the fundamental concepts of the prevention of trade and speculation, the prevention of the concentration of land and the creation of *latifundia* that would expel people from their land, and the guarantee of a plot of land in the Land of Israel for every citizen of Israel.[12]

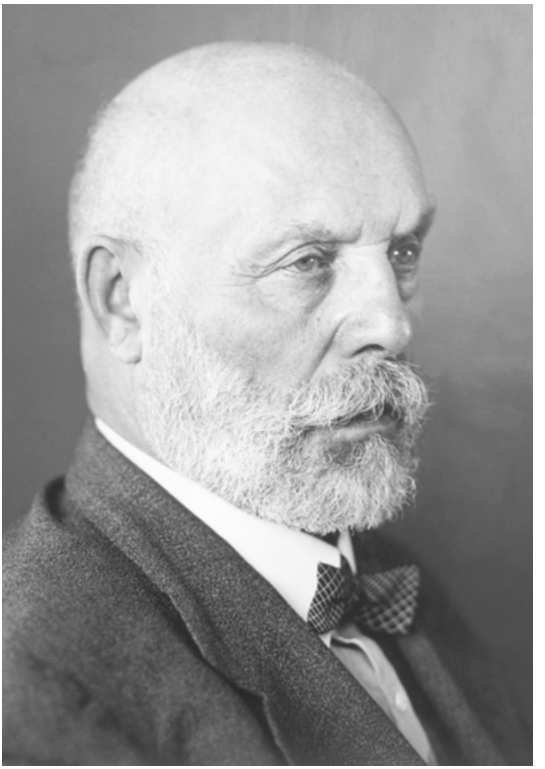
Some have sought express proof that Shapira had these ideas in mind when he formulated his plan, but the words of Menahem Ussishkin, whose name is connected above all others with the JNF, and who was the president of its directorate for many years, will suffice for our current project. In an article on "The Nature and Value of the JNF," published in 1903, he stated that the JNF's principle that land should be held permanently by the JNF and the people, was not a new idea. He wrote:

> This socio-ethical concept was embedded in our *Torah* by our earliest legislator, Moses, who foresaw the evil which could accrue to human society if private ownership of land were unlimited – and it is this evil which even today wastes away the body of mankind. The concept of "for the land is mine" was manifested in the jubilee year, in which the land was returned to its previous owners or their heirs. Thus, every jubilee rectified the inequality which had come about through a variety of reasons. Now, when we wish to return to our land, we have only to follow in the steps of our legislator, and to adopt with our very first actions all the means required to fend off from our land the evils of the agrarian problem... Therefore, let the territory of the Land of Israel belong to all the people and be rented out to whoever cultivates it.[13]

Franz Oppenheimer, whose name is also associated with the foundation of the JNF, also pointed out that

> What the JNF does in appropriating the land as its own eternal possession, permanently, and assigning it to individuals only for cultivating is done in the spirit of the *Torah*; it observes the *mitzvot* dependent on the Land according to the deepest intention of the land laws in the Law of Moses: "Let the fathers' deeds be a symbol for their sons."[14]

12 Wolfsberg and Gross 1946, pp. 133–147; Oppenheimer 1918, p. 6.
13 Quoted by Kressel 1951, p. 39.
14 Oppenheimer 1918, p. 15.



Menahem Ussishkin, 1939.
Photo: Joseph Schweig.
Source: JNF Photo Archive

In addition to the desire to realize a deep Jewish ideal, the principle of permanent ownership was influenced by the ideas of socio-economic and settlement "reformers" on the need to establish the principle of common ownership of land that were professed, and some of which put into practice, in Europe in the second half of the 19th century. There are those who claim, though this has never been proved, that Shapira himself was influenced by such ideas, which were in accordance with the concept of the Jubilee, and were expounded, among others, by Theodor Hertzka and Michael Flürscheim.[15] These "reformers" believed public ownership of the land and its cultivation only under lease to be desirable mainly

15 This is Klausner's opinion: see Klausner 1966, p. 63. On Hertzka's program see Johnston 1971, pp. 361–362; Cole 1958, III, pp. 359–366. And see also *Judische Rundschau* 5 (1906), where it is claimed that through the JNF "Zionism, that is to say the people of Israel returning to the Land of Israel, links the modern social movement for land reform to the ancient land law, the Jubilee." See, too, Wolfsberg and Gross 1946, p. 147. See, too, Damaschke 1922, p. 241, and cf. Granot 1954, pp. 42–43; Granot 1960. Granot maintains that Shapira derived his ideas not from contemporary

for the following reasons: a. It would guarantee the farmers freedom from the danger of falling into debt as a result of purchasing the land at a high price and subsequently having to sell their holdings; this would lead to the concentration of land in the hands of a few, and the dispossession and impoverishment of others. As a result, classes differentiated by extreme social and economic inequality would be created. b. Public ownership prevents the proletarization of the village and the migration of villagers to the towns, and thus prevents the creation of densely populated urban centers with all their attendant evils, and preserves the balance between town and country, which is a condition of healthy economic development. c. Private ownership of land may lead to speculation, change of use, and the farmers' concentration on their hopes of selling at high prices. This process prevents the establishment of a peasant class with a long-term connection to the soil, a class which is essential for the State as a whole. d. As a result of public ownership of the land, the whole community profits from its rise in value. e. Public ownership makes it possible to impose on the tenant conditions suited to the public good, and prevents him/her from taking steps which may harm the public. Thus, for example, the individual will be unable to sell his land to persons who are unsuited to the community, and are likely to lead to its disintegration. f. Public ownership makes possible settlement on the land that will strengthen its national character, a character which may be impaired if the individual is permitted to sell his land for economic reasons, or to allow national elements opposed to the public interest to use the land.

Oppenheimer, whose contribution to the definition of the idea of the JNF as part of a universal framework of concepts of social and economic settlement was considerable, claimed that only the permanent ownership of the land subject to Zionist settlement could preserve the national character of the Zionist project, since this was the only way to prevent the sale of land to Arabs or the employment of Arabs to work the land. He emphasized that the early moshavot had undergone a decline from the national point of view, and that were it not for the Yemenite workers "all these moshavot, which were created with our money and with much labor, would have become Arab moshavot; and even now, most of them are likely to be lost from the national point of view." In order to prevent this, only one remedy can preserve our national property well for future generations:

> The establishment of the public's supreme right to own property. If the individual has the right only to use the land, whether this right be permanent, or the right to a long-term

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theories of agrarian reform, but from the concept of the Jubilee. Penslar 1997, p. 55, is also of this opinion.

> heritable lease, in either case it is possible to impose all the conditions which the public good requires. He may be specifically forbidden by the terms of the lease to hire non-Jewish laborers, or to sell his holding to a non-Jew.[16]

It should be pointed out that the establishment of the principle that the JNF should be forbidden to sell its land was not connected with the process of the growth of the Labor Movement in the Land of Israel in the years from 1904 onwards. Those who conceived the idea of the JNF and originated its principles did not belong to the Labor Movement. That movement adopted the idea of the JNF, and saw in it one of the means of realizing its Socialist-Zionist ideal, and a tool for creating workers' settlement. Hence it was a small step for the leaders and ideological spokesmen of the Labor Movement to become advocates of the idea of national land and strive for its realization in principle and in practice. As is well known, workers' settlement in its two forms – the kibbutz and the moshav – still rests today on the territorial basis of the principle of national land, and it is synonymous with the concepts of "national land" and "leasing."[17]

As has been remarked, from the legal point of view the principle that JNF land could not be sold, but only leased, was built into the statutes of the JNF from 1907. None the less, the board of directors of the JNF was permitted to exchange land for land which it wished to acquire. This statute is still valid.

From the time of its foundation at the beginning of the century until the establishment of the State of Israel, the JNF acquired about a million dunam of land – most of it agricultural. This was more than half of the land possessed by Jews on the eve of the establishment of the State.[18] Shortly afterwards the State sold to the JNF a million dunam of the areas that had been abandoned by their Arab owners during the War of Independence and passed into the ownership of the State. This land, too, served to increase the holdings of workers' settlement after the establishment of the State. Today the JNF owns about 13% of the land of the State of Israel within the 1967 borders (about 2.64 million dunam of a total of 20.4), and is considered to be the biggest land-owner in Israel apart from the State.[19]

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16 Kressel 1951, *Charter of the Land*, pp. 46–48; Doukhan-Landau 1980, pp. 68–69; Oppenheimer 1918, pp. 3–16 (the quotation is from p. 12); Oppenheimer 1945, pp. 184–185; *Redemption and Settlement* 1947, pp. 1–11; Granot 1951, pp. 45–47, 54–57; Granot 1954, pp. 38–58.

17 Granot 1954, pp. 43–44.

18 *Jewish National Fund, Actions and Achievements* 1947, p. 44; *Actions of the Jewish National Fund* 1949, p. 36; Katz 2005, Appendix 5.

19 Granot 1954, pp. 107–111; Arieh Friedman, oral interview based on the JNF balance sheet for 1993, Jerusalem, 3.8.1999.

Chapter 2
The Foundation of the Holding Companies Meheiman and Himanuta, Which Were Permitted to Sell Land

Until the 1930s the directors of the JNF adhered strictly to the prohibition on the sale of land, even though from time to time they were subjected to various types of pressure to modify this principle. In the second half of the thirties, however, the heads of the JNF reached the conclusion that it must deviate from this principle and sell land. Its statutes forbade it to do this, so the JNF directorate decided to create "holding companies" owned entirely by the JNF, which would not be subject to this prohibition. First the Meheiman Company was formed, but shortly afterwards the Himanuta Company – which was also owned entirely by the JNF – took its place, and is still active today.

The background to the establishment of the Meheiman Company was the opportunity which fell to the JNF in the second half of 1936 of buying land in the German Colony in Haifa from the Templars, who wished to return to Germany, in exchange for funds accumulated by the JNF in Germany which could not be taken out of that country through the normal channels. Thus, by buying land in Haifa the JNF would be able to transfer its property in Germany conveniently. The JNF had no interest in purchasing this land in itself, but intended to buy agricultural land in exchange for it. Therefore, since the JNF was forbidden to sell land, it created the Meheiman Company, and registered this land in its name. At a later stage the JNF did sell the Templars' land through Meheiman, and paid for the purchase of the extensive agricultural lands on which it decided in the late 1930s.[1] It should be emphasized that the JNF did not intend to use Meheiman as a regular means of selling urban land which it had acquired in the customary fashion in the past. Thus, in response to a suggestion to sell all its urban land in Haifa and buy agricultural land in its stead, the directors of the JNF replied:

> We may state that similar suggestions have been made from time to time... but the JNF's attitude up to now has been negative... This negative attitude was based on considerations

1 Alexander 1988, pp. 164–184; CZA, file L51/597, Avraham Granovsky to the Commissioner of Income Tax, 16.1.1942; ibid., file KKL10, minutes of the meeting of the JNF directorate, 6.12.1937 and 18.10.1939; ibid., file L51/596, the JNF to Dr. Aharon Barth, 9.4.1940; ibid., Avraham Granovsky to Aharon Barth, 5.6.1940.

> of principle – that the land was purchased for the nation, and its sale, even if it may be the source of considerable profit which could increase the amount of land owned by the JNF, contradicts the intentions of its founders and the aims of the institution... that, in accordance with the major concept on which the JNF is based, its land must remain in the permanent possession of the people of Israel.[2]

The fact that Meheiman was founded to purchase land only in Haifa, and that this was included in its statutes, made it necessary to found a company with similar aims, but with no connection to a particular location. This was the immediate reason for the creation of the Himanuta Company, through which the JNF intended in 1938 to acquire German land in Beit She'an with the money which it held in Germany. But Himanuta, which was entirely owned by the JNF and dealt with the purchase and sale of land, was also intended to be a wide-ranging legal instrument for circumventing the JNF's regulation forbidding the sale of its land, and thereby assisting the JNF to amass capital, whether in partnership with private capital or by the sale of real estate. Partnership with private capital also involved the sale of land which it had acquired to private owners – which the JNF was also forbidden to do. Therefore, every purchase connected with private capital was registered in advance in the name of Himanuta, until it was transferred to its real owners.[3] Real estate which was donated to the JNF or bought on the understanding that the JNF was not interested in keeping it, but would sell it at a suitable opportunity in order to use the proceeds as "a means of financing the salvation of the Land," was also registered in the name of Himanuta.

In July 1938 a detailed contract between the JNF and Himanuta regularizing the relationships between them was signed. It was similar to the connection between the JNF and Meheiman.[4] The phrasing of the contract shows to what extent Himanuta was an integral part of the JNF – and not only because the JNF held its shares. Here is an extract from the contract:

> Himanuta accepts transfers of property in its name from any body regarding whom the JNF gives a written order that it must do so... The Fund undertakes to cover all expenses

2 CZA, file KKL5/10468, Frederick Hermann Kisch to Avraham Granovsky, 30.12.1937; ibid., Frederick Hermann Kisch to the JNF, 9.1.1938; ibid., quotation from letter from Avraham Granovsky to Frederick Hermann Kisch, 16.1.1938; ibid., Frederick Hermann Kisch to the JNF, 25.1.1938.

3 On the cooperation between the JNF and private capital, in matters of land purchase, see the extended account in Katz 2005.

4 Alexander 1993, pp. 80–97, and the sources which he adduces; CZA, file KKL10, minutes of the meeting of the JNF directorate, 6.12.1937 and 18.12.1939; ibid., file L51/597, report of the Himanuta Company, 11.5.1941; ibid., minutes of general meeting of the Himanuta Company, 30.12.1941.

> connected with the acceptance of these transfers, and to absolve Himanuta from all these expenses... Himanuta agrees and undertakes to deal with this property in the way demanded by the Fund, as if the Fund were the owner of the property, and Himanuta only an agent and representative... Himanuta pledges to the JNF that it will undertake no obligation to a third party without receiving written permission from the Fund... Himanuta agrees and undertakes to transfer to the Fund, or to a person nominated by the Fund, all and/or part of the above-mentioned property without delay, and the Fund undertakes to ensure that Himanuta will have no expenses as a result of these transfers.[5]

In view of the fact that Himanuta (and Meheiman) was, in fact, part of the JNF, one of the senior officials of the JNF raised the legal and moral question, "Whether the difference between the property of the holding companies and the rest of the JNF's property is purely technical, and whether the sale of this property, too (which is registered in the name of the holding companies) should not be forbidden, like the rest of the JNF's property (whose sale is opposed to our intentions and practices)?"[6] But it seems that this matter was of no particular concern either to the management or to the directorate of the JNF.

5 See the contract in CZA, file L51/597. A similar contract was signed between the JNF and Meheiman; it is in the same file.

6 Alexander 1993, p. 29. The letter from the JNF official, Arieh Mohilever, to Shmuel Ussishkin, 18.8.1941, is quoted there.

Chapter 3
The Legal Registration of the JNF as an Israeli Company after the Establishment of the State of Israel

Doubts and decisions concerning the need to establish a new company in Israel without liquidating the existing company

As mentioned before, in 1907 the JNF was registered in London as an English company (Keren Kayemeth LeIsrael, Limited). Immediately before the end of the British Mandate in Palestine in May 1948, initial thoughts arose in the organization regarding the need to turn JNF Ltd. from an English company into an Israeli company. Six years later, in 1954, the Israeli JNF was established, but the English one was not liquidated. The establishment of the new JNF is a landmark in the history of the organization, stemming from the need to adjust itself to the changing reality following the establishment of the State of Israel. The JNF was not the only organization that became aware of this need; other institutions of the Zionist Organization that were active at the time of the Mandate, as well as the Zionist Organization itself, realized it too. The establishment of the State placed before the JNF a series of challenges with which it had to cope if it wished to remain an active organization. Inter alia, it had to find a way to apply the principle of national land to all of the lands belonging to the just-established State.

In May 1949, a limited committee appointed by the JNF directorate decided to establish an Israeli company that would receive most of the English company's lands and functions, but without liquidating it. The committee recommended that the English JNF should retain some of its functions and lands.[1] About a year later, in April 1950, the directorate adopted the committee's recommendation and decided to establish a new company named Keren Kayemeth LeIsrael, incorporated in Israel and located in Jerusalem, without shutting down the existing company registered in England, Keren Kayemeth LeIsrael, Limited. The old company was to transfer to the new company all its property in the State of Israel. The institutions of the Zionist Organization confirmed the

1 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of Keren Kayemeth," 5.5.1949; ibid., Aharon Ben-Shemesh to the JNF, 6.5.1949.

decision.[2] Naturally, the people who led the discussions that brought about these decisions were the legal adviser of the JNF in Israel – Shmuel Ussishkin – as well as the legal advisers of the JNF in England, who were also two of its leaders – Aaron Wright and A. Saville Cohen.

A series of arguments were raised regarding the need to establish a new JNF company incorporated according to Israeli law. Some of them dealt with the apprehension over the subordination to English law in case a new Israeli company was not established. First of all, a fear was expressed that the British might severely harm the JNF if it remained an English company.[3] Others in the JNF even held that Britain would be hostile to the State of Israel, as it was during the last days of the Mandate, and this might affect its attitude towards the JNF.[4] Regarding the subordination to English law and the Court in London, it was also claimed that the changes in the Companies Act as of July 1948, and especially in the accompanying regulations, would place many difficulties in the way of the JNF. Much apprehension was expressed regarding the restrictions under English law on some of the JNF's most important revenue sources – private legacies in favor of the JNF – and the taxation on this sort of income in England.[5] Another category of arguments in support of establishing a new company in Israel dealt with the issue of nationalism. It did not seem right that the JNF, as a Zionist-national organization, would remain subjugated to British law after the establishment of the State of Israel.[6] Likewise, it was not reasonable that the national land in Israel would be under the ownership of a non-Israeli corporation. Thus, for example, the lawyers Aaron Wright and A. Saville Cohen wrote in July 1948 as follows: "It is considered inappropriate that K.K.L. as the national instrument for the acquisition of land in Israel and the largest

2 CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950; ibid., file KKL5/17293, Avraham Aricha to Avraham Granot, 24.5.1950; ibid., Shmuel Ussishkin to the Government Legal Adviser, 18.8.1950; ibid., file KKL5/17259, statement by the JNF Head Office, 4.6.1950; ibid., file KKL5/19029, Shmuel Ussishkin to A. Levin, 15.4.1952; ibid., file KKL5/19028, the memorandum "The organization of the JNF as an Israeli company – the regulations of the new company," 26.2.1952.

3 CZA, file KKL5/15909, Aharon Ben-Shemesh to the JNF, 5.3.1949.

4 CZA, file KKL5/15911, the memorandum by A.M. Epstein, "The legal status of JNF Ltd.," 2.6.1948; SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

5 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948; CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

6 Above, note 4.

owner of land in the country should be a foreign corporation incorporated outside Israel."[7]

The fact that the bank of the Zionist Organization, the Anglo-Palestine Bank, was then in the midst of proceedings to become an Israeli company surely urged the JNF to enter a similar procedure. The legal advisers also assumed that the donors to the JNF, most of whom lived outside the British Commonwealth, would not wish to continue and donate to a body incorporated outside the State of Israel. Some maintained that even the donors in England would express a similar position.[8] From the same reason, the JNF branches worldwide would not want to send their donations to a non-Israeli corporation. Generally, it was held in the JNF that it should be assumed that people and organizations that were tied to the JNF through various financial connections – in Israel as well as outside Israel – would prefer, after the establishment of the State of Israel, to deal with an Israeli corporation rather than with a company incorporated outside Israel.[9]

Another argument dealt with the legal subordination of the English JNF lands, almost all of which were in the State of Israel, and the problems that may arise in case they were not transferred to a new company incorporated in Israel. It turned out that the English law, like the law in other European states and in the United States, determined that the local law is the ruling law in all questions relating to real estate. Thus, the English Court has no authority to rule in questions relating to rights in real estate property in foreign states, including Israel, even if the concerned parties are English citizens or live in England. Therefore, in all land issues, which are the main concern and business of the JNF, the Israeli courts will have to follow the State of Israel's laws rather than the provisions of the Memorandum and Articles of Association of the English JNF, which is a foreign company. On the other hand,

> if in the national interest of the State of Israel its Legislature were to pass an Ordinance providing that the national lands of K.K.L. shall be deemed to be owned by the new Keren Kayemeth incorporated under Israeli law; if such Ordinance were made with the concurrence of the Directors and the members of K.K.L.; and if the interests of the creditors of K.K.L. and others who have entered into contractual arrangement with K.K.L. were fully

7 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

8 CZA, file KKL5/15909, Shmuel Ussishkin to the Government Legal Adviser, 11.3.1949. See also ibid., file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

9 CZA, file KKL5/15909, Shmuel Ussishkin to the Government Legal Adviser, 11.3.1949; SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

> protected, as suggested above, then it is difficult to see on what legal or moral grounds such an Ordinance of the Israeli Legislature could be validly attacked.[10]

Considering all of the above, it was clear that the establishment of a new company was a present need. Now, another question was up for discussion – whether the establishment of the company in Israel would be accompanied by the shutting down and liquidation of the English JNF, or should it continue to exist alongside the new company. Indeed, in principle the English law as well as the JNF Memorandum allowed the shutting down of the JNF and the transfer of its property to a new company.[11] However, a thorough review of the issue revealed that the liquidation of the English JNF is not advisable and may result in heavy losses to the JNF. First of all, the Arab State that was to be established alongside the State of Israel according to the United Nations Partition Plan of 1947 would place obstacles in the way of transferring JNF lands in its territory to the new JNF company, and might even totally refuse to allow it. At least, it might impose heavy penalties on the JNF, or claim that the neighboring Arab farmers have priority for purchasing the lands from the dissolving company.[12] "Therefore, the question arises whether it is not more advisable to keep in the meantime the JNF property in the Arab State under the former ownership, and not legally annul the old company."[13] However, such a solution aroused legal questions, because the JNF Memorandum allowed the transfer of the company's property to a new company only on the condition that the property is transferred as a whole and not in part.[14]

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10 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948. See also CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

11 CZA, file KKL5/15911, the memorandum by Shmuel Ussishkin on the status of the JNF in the State of Israel, 11.6.1948; ibid., file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

12 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of the JNF in the new circumstances," 30.5.1948; SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

13 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of the JNF in the new circumstances," 30.5.1948. See also ibid., file KKL5/15911, the memorandum by Shmuel Ussishkin on the status of the JNF in the State of Israel, 11.6.1948.

14 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of the JNF in the new circumstances," 30.5.1948. A.M. Epstein also thought so – see CZA, file KKL5/15911, the memorandum by A.M. Epstein, "The legal status of JNF Ltd.," 2.6.1948; ibid., the memorandum by Shmuel Ussishkin on the status of the JNF in the State of Israel, 11.6.1948. Eventually, the legal solution was found: to amend the Memorandum of the existing company in a way that would allow it to transfer to the new company also part of its property. On this see CZA, file KKL5/19029, Shmuel Ussishkin to Avraham Granot, 15.2.1953.

In 1949, when it became clear that the United Nations Partition Plan was no longer on the agenda, and the State of Israel became surrounded by hostile neighboring states, it was evident that if the English company were to be dissolved, the JNF property in the Arab States would be lost. The only chance to preserve this land property in the hands of the JNF would be by maintaining the existence of the English JNF and keep the lands that were outside the borders of the State of Israel under its ownership.[15]

The shutting down of the existing company was problematic as far as the English law was concerned, too. Although the law enabled in principle the liquidation, certain clauses in the new Companies Act, 1948, insisted on some conditions for the shutting down of companies. One of them was the Directors' statutory declaration that the company would be able to pay its debts within a year from the commencement of the liquidation. The problem was that the JNF Balance Sheets of that period showed that it had substantial debts, and the question arose whether the company would be able to pay them within the period fixed by law. Making a false declaration might make the Directors liable to imprisonment and fines. "In these circumstances we doubt whether the Directors of K.K.L. would be willing to make the required statutory declaration."[16] Furthermore, the JNF Memorandum allowed the shutting down of the existing company and the transfer of its property to another Jewish institution having objectives similar to those of the JNF, only after repaying all its present and future debts and liabilities. However, in view of the above, it was very doubtful whether it would be possible.

> Moreover, if after the commencement of the winding up it appears that the liquidator was not likely to be able to pay or provide for the debts of K.K.L. in full within the maximum period of twelve months, it is quite possible that some of the creditors of K.K.L. might apply to the Court in England to have K.K.L. wound up by the Court. Obviously, it would be an intolerable state of affairs if the voluntary winding up of K.K.L. were superseded by a compulsory liquidation.[17]

The danger arising from a compulsory liquidation was also connected to the debentures that the JNF had issued in the 1930s as an additional source of income. They were redeemable during the 1950s, and the shutting down of the company called for the redemption date to be called forward, that is, the payment of a substantial sum of money prior to the liquidation of the company.

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15 CZA, file KKL5/19028, the memorandum "The organization of the JNF as an Israeli company – the regulations of the new company," 26.2.1952.

16 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

17 Ibid.

There was a fear that the debenture holders might appeal to the court, asking for the appointment of a liquidator who would preserve their rights.[18]

Generally, the JNF legal advisers assumed that the process of shutting down the existing company would be extremely complex:

> K.K.L. has entered into innumerable contractual arrangements, including loans, living legacies, Joint Land Purchase contracts, options to grant leases under the Farm City Scheme,[19] various agreements in regard to the administration of Trust Funds, and many other arrangements. There are large future and contingent liabilities, which it may not be possible to meet or provide for within twelve months of the commencement of the winding up. Even if the "Declaration of Solvency" could properly be made, it would probably be highly inconvenient to provide the resources to meet all liabilities within a period of twelve months from the commencement of the winding up. We foresee also that in the course of the winding up many points of difficulty may arise and the liquidator would be likely to make frequent applications to the Court in England for directions rather than take any risks. Apart from the expense and delay, the Directors of K.K.L. may not welcome the prospect of such points being settled by a Court in England.[20]

In light of all these arguments, the legal advisers were in complete agreement that one should set up a new Keren Kayemeth LeIsrael incorporated in Israel, while not shutting down the English JNF – Keren Kayemeth LeIsrael, Limited.[21] According to the suggested outline, the JNF property in Israel would be transferred from the English company to the new JNF, while amending the existing JNF Memorandum in a way that would make this action possible, without the need to shut down the English JNF. All leasing contracts would be signed from now on with the new company, revenues from all JNF branches throughout the world would be transferred to the new company, and all business connections of the JNF would be made by the new JNF. "K.K.L. could, if considered desirable, until finality was arrived at between the State of Israel and the authorities in the Arab State area, remain the owner of lands of K.K.L. situated in the Arab State area. The innumerable difficulties and complexities which would be involved in a winding up of K.K.L. would be avoided."[22]

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18 Ibid.

19 Katz 2005, pp. 247–253.

20 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948. See also CZA, file KKL5/15909, Shmuel Ussishkin to the Government Legal Adviser, 11.3.1949.

21 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

22 Ibid. See also CZA, file KKL10, minutes of the meeting of the JNF directorate, 16.8.1948; ibid., file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of the JNF in the new circumstances," 30.5.1948.

The future of the JNF, as well as the difficulties involved with the establishment of a new company, started to be discussed a few days before the termination of the Mandate. At that time, the United Nations Partition Plan was on the agenda, calling for the establishment of independent Arab and Jewish States and a Special International Regime for the City of Jerusalem. Therefore, the question arose as to where the new company would be registered: in the State of Israel or in the City of Jerusalem. Shmuel Ussishkin, the JNF lawyer, held that while "for various reasons the Zionist institutions should do everything to strengthen the Jewish character of Jerusalem, it is preferable to register the new company in the State of Israel and not to make it dependent on a regime whose degree of friendship is not to be known."[23] Later, the company could be registered also in the City of Jerusalem as a foreign Israeli company.[24] Other people at the JNF thought, too, that the new company should be registered in the State of Israel and not in the City of Jerusalem, but their argument was that it was unreasonable that a national body such as the JNF would not be a subject of the State of Israel.[25]

Difficulties and decisions regarding the Memorandum of Association of the new company

While holding discussions and writing memoranda with regard to the establishment of the new company, alongside the existing one or in place of it, the opinion holders paid attention to the wording of the Memorandum and Articles of Association of the company incorporated in Israel. They wondered whether they should be identical to those of the English company or should be altered, especially following the establishment of the State of Israel, with all its implications. Three main issues were considered: one, the geographical space in which the new company would act; two, whether the new company would continue the path of the existing one, according to which JNF lands were leased to Jews only; and three, whether the new company would allow the work of non-Jews on its lands. As is well known, the English company prohibited this, and this prohibition was also set into the leasing contract signed between the JNF and

23 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of the JNF in the new circumstances," 30.5.1948.

24 Ibid.

25 CZA, file KKL5/15911, the memorandum by A.M. Epstein, "The legal status of JNF Ltd.," 2.6.1948.

the settlers in towns and agricultural settlements alike. On one issue there was no disagreement and it was not discussed at all: JNF lands would never be sold.

The geographic space in which the Israeli JNF would work

The JNF Memorandum of 1907 defined the area in which the JNF may operate as "Palestine, Syria, any other parts of Turkey in Asia and the Peninsula of Sinai."[26] Now, with the establishment of the State of Israel, it became clear that this spatial definition was not applicable for the new company, especially because extensive parts of the area were under hostile sovereignty. Obscurity regarding the borders of Israel, the political issue of the Zionist rights on the Land of Israel outside the borders of the State of Israel, and the wish to remain loyal to the intentions of the JNF founders – all these played a significant role in determining the geographical space in which the JNF will work after the establishment of the State of Israel. In March 1949, Shmuel Ussishkin described the conflict regarding this issue to the government legal adviser:

> The question we are facing is whether to continue this restriction [set in the Memorandum of 1907]... or replace it with another restriction, or cancel it altogether. It is possible to restrict explicitly the new company's actions to within the borders of the State of Israel. It is also possible to cancel any restriction and allow the new company to purchase lands without specifying any area. However, there are arguments against these two possibilities. As to the first, there is a concern that restricting the work of the company to within the borders of the State of Israel might be interpreted as waiving the other parts of the land [such as the areas east of the Jordan River]. Also, it is still unknown what the legal borders of the State of Israel are, and therefore, to what extent the company's actions for purchasing lands in the Galilee or in Jerusalem are not exceeding the roles allotted it by its regulations. On the other hand, removing any restriction regarding the area of action may be interpreted as the annulment of the clear wish of the JNF founders to put a limit to the rights of its Directors, and therefore those wishing to abolish these clear restrictions have no moral right to do so.

Therefore, an intermediate proposal was suggested – to write in the new company's Memorandum that since the new company continues the work of Keren Kayemeth LeIsrael, Limited (the English company), it, too, may purchase land only in the prescribed region whose definition would be the same as the definition in the Memorandum of JNF Ltd.[27]

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26 See Appendix 1.

27 CZA, file KKL5/15909, Shmuel Ussishkin to the Government Legal Adviser, 11.3.1949. See also ibid., draft of the decision proposal of the directorate regarding the legal form of the JNF, January 1949; ibid., the memorandum by Shmuel Ussishkin, "The legal form of Keren Kayemeth," 5.5.1949.

A year later, in April 1950, the dilemma had not yet been solved. Now Ussishkin proposed that the new company should be permitted to purchase lands in any region, on the assumption that the JNF management would ensure that the company would act only within the borders of the State of Israel.[28] Member of the directorate Daniel Oster held that it should be written in the Memorandum "in the State of Israel and outside it." Another member of the directorate, Avraham Harzfeld, disagreed and argued that if this were written in the Memorandum, "it would arouse suspicions among non-Jews and Jews alike." Avraham Granot (Granovsky), Chairman of the Board of Directors, agreed with Harzfeld and proposed to write in the Memorandum "within the areas of the State of Israel – considering the fact that these areas are not fixed yet and may broaden."[29]

Two years later, a definition was set that was very close to that of Granot: "any region that would be under the legal authority of the State of Israel."[30] It seems that this wording was decided due to the supposition that the ceasefire borders of Israel with its neighbors (following the War of Independence) would not necessarily be the final borders of the State, and the wish to enable the JNF to expand its actions also to the areas that might be in the future under the State of Israel's sovereignty. In January 1952, when advanced drafts of the Memorandum of Association of the new company were already formulated, it was decided that the territory in which the company would operate is "the State of Israel and any region that will be under the legal authority of the Government of Israel."[31] Thus, the JNF work was assured not only within the State of Israel's borders at present but also in any region that would be under Israel's sovereignty in the future. At the end of that month, the JNF confirmed the final version of the Memorandum with regard to this issue, according to which the new company would act "in the region determined (and it includes, according to its meaning in this Memorandum, the State of Israel in any region under the

28 CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

29 Ibid., and see also CZA, file KKL5/17293, decisions of the JNF directorate with regard to the legal form of the JNF, 9.4.1950; ibid., file KKL5/17289, Avraham Aricha to Shmuel Ussishkin, 8.5.1950. See also ibid., file KKL5/17293, the version proposed by Shmuel Ussishkin, 10.5.1950; ibid., the letter by Shmuel Ussishkin, 18.6.1950, regarding the version of the JNF Law he proposed, which stated, on the basis of the directorate decision, that "the company would be allowed to lease and hold lands and immovable property within the borders of the State of Israel."

30 CZA, file KKL5/19028, the memorandum "The organization of KKL as an Israeli company – the regulations of the new company," 26.2.1952.

31 CZA, file KKL5/17293, the Memorandum of Association of KKL, 24.1.1952.

jurisdiction of the Government of Israel) [parentheses in the original] or in any part of it."[32]

This definition left the JNF areas that were at that time under Jordanian and Egyptian sovereignty in the hands of JNF Ltd. These were lands that the JNF had purchased during the British Mandate – about 16,666 dunam near Salt in Transjordan, 8,044 dunam near Jerusalem, 3,304 dunam near Hebron, and 1,237 dunam near Gaza – and they are registered, to this day, under the name of the English company.[33]

The option of leasing to non-Jews and employment of non-Jews on JNF lands

As mentioned above, besides the issue of the geographical region in which the new company would work, the heads of the JNF and its legal advisers also dealt, surprisingly, with the question whether to include in the new Memorandum the limitation of leasing to Jews only, as set in the JNF Memorandum of 1907. Following that Memorandum, the JNF leasing contracts also prohibited the employment of non-Jewish workers on JNF lands. Shmuel Ussishkin first raised the question of the exclusive Jewish settlement on JNF lands, in a memorandum that he wrote two weeks after the establishment of the State of Israel. He hinted that even prior to the establishment of the State, there were people who regarded this limitation as a political mistake, "and it should be considered that

32 CZA, file KKL5/19029, the Memorandum of Association of KKL – the source of the citation. See also ibid., file KKL5/19028, the Memorandum of Association; ibid., file KKL10, minutes of the meeting of the JNF directorate, 30.1.1952; ibid., file KKL5/19029, Avraham Aricha to the members of the JNF directorate regarding the regulations of the new company; ibid., Shmuel Ussishkin to Asaf Goldberg, 29.1.1952; ibid., decision of the JNF directorate, 30.1.1952; ibid., Asaf Goldberg to Shmuel Ussishkin, 7.3.1952; ibid., Avraham Aricha to the members of the JNF directorate, 24.1.1952; ibid., Shmuel Ussishkin to Asaf Goldberg, 25.3.1952; ibid., Avraham Granot to Asaf Goldberg, 17.4.1952; ibid., file KKL5/20730, Memorandum of Association of KKL; ibid., file KKL10, minutes of the meeting of the JNF directorate, 29.4.1952; ibid., file KKL5/19029, Shmuel Ussishkin to Avraham Granot with regard to the association of the JNF as an Israeli company, 7.5.1952; ibid., file KKL10, minutes of the meeting of the JNF directorate, 11.8.1954.

33 CZA, file KKL5/24030, balance sheets of JNF Ltd., including details of the lands registered under the name of JNF Ltd., 30.9.1957; Archives of the District Court in the Central District, file TA 9106-02/08, S. Agronov and others vs. the State of Israel and others, fixed for 8.7.2012, appendix B: Keren Kayemeth Le-Israel, Limited Accounts, 31.3.1994, p. 3; CZA, file KKL5/20730, D. Broshi to Yosef Weitz, 20.6.1954.

these arguments will have much more weight when it comes to the establishment of a new company that would work in the State of Israel."[34]

Indeed, already by the mid-1930 and during the 1940s, the "Jewish clauses" were challenged because of new circumstances that the JNF faced. As a result, the JNF was required to consider whether these clauses should continue to be included in the Memorandum. It first had to deal with the issue in 1936, when it became clear to the JNF that the Jewish clauses were an obstacle in its way of obtaining a large loan in London, a loan much needed at that time. The potential lenders stipulated that the loan would be granted only if these clauses were deleted from the JNF Memorandum and the leasing contract.

The JNF directorate refused this demand entirely. Granovsky surprised everyone by saying that retroactively, maybe these clauses should not have been inserted into the JNF Memorandum and the leasing contract. However, he emphasized that "to raise today the issue of deleting these clauses may arouse understandable resentment on the part of the Zionist public," and therefore, "the position of the directorate regarding this proposal... should be totally negative, and the response to it can be only one: No, this is impossible." Member of the directorate Rabbi Meir Berlin added that "in case these clauses are deleted, the JNF would not be Keren Kayemeth but a mere land fund, and not to Israel but to the whole world." Hermann Struck protested against holding the discussion at all: "One should not even discuss such a proposal and argue about it; it should be denied with both hands." Salman Z. Schocken rejected the alterations outright from another point of view: "The JNF collects money under the motto 'buying land for the national eternal possession of the Jewish people,' and therefore, from the legal aspect alone, and not only in principle, the JNF may not and cannot delete from its regulations the Jewish clauses." Thus, the Chairman of the Board of Directors at that time, Menahem Ussishkin, had to conclude that "the JNF's response to the proposal to delete from its regulations the clause according to which the JNF may lease its land to Jews only, and from the leasing contract the clause regarding the obligation of the lessee to work the land by employing Jews only – the response to this proposal is totally negative."[35]

During the 1940s, the Jewish clauses were again put to the test following the expansion of leasing lands to industrial companies in Haifa bay. In the JNF apprehension began to emerge that while at that time the lands were leased to companies that were under Jewish control and were managed by Jews, in the

34 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of KKL in the new circumstances," 30.5.1948.

35 Katz 2012, pp. 210–217 – the source of the citations.

future, however, because the companies' shares were transferred from hand to hand, the control might be passed on to non-Jews. In that case, the JNF would find its lands held by non-Jews. Indeed, the JNF wished to solve this problem by conditioning the leasing to companies on including in their regulations a clause permitting them to have only Jewish shareholders – and this was done – but it was clear that it was not a satisfactory solution, for two reasons. First, the shareholders could change the company's regulations, and second, the Law of Associations ruling at that time prohibited the establishment of companies based on principles of religion and faith. Therefore, it was proposed in the JNF to include in the leasing contracts signed with companies a clause clarifying that the land was leased only on the assumption that the company was under Jewish control, and if this reality changed, the JNF had the option to cancel the contract. Shmuel Ussishkin did not support the proposed solution. Apart from the solution not being applicable to large companies, he also maintained that the addition of a Jewish clause to the two existing ones would harm the JNF "in the political sense to a large extent," not to mention the harm already caused by the two existing clauses. Thus, the industrial leasing contract was not changed.[36]

Loyal to his outlook since the 1940s, Shmuel Ussishkin was worried about leaving the Jewish clauses in the Memorandum of the new company. Although these clauses expressed the uniqueness of the JNF, the establishment of a company that was based on national discrimination was quite problematic in the new State, which the whole world was watching attentively to see its first steps. The lawyers Wright and Cohen from London, in their memorandum of July 1948, also believed that leaving the Jewish clauses in the Memorandum of the new company was problematic, to say the least, and they detailed their arguments.

First of all, "This would undoubtedly be considered by many to constitute a serious discrimination against the non-Jewish citizen of the State." Secondly, in case the JNF took part in various development plans that would include taking over land from non-Jewish land owners, "in such an event, it would be desirable, and in many cases for all practical purposes obligatory, for the new Keren Kayemeth to lease part of the areas taken over to the previous non-Jewish owners, but this would be rendered impossible if the existing provisions prohibiting letting to non-Jews were followed in drawing up the objects of the new Keren Kayemeth." Thirdly, the policy of leasing land to Jews only already drew much criticism in the past, both from within and from without. The international community expressed its negative view regarding legislature discriminating against Jews or Arabs. Hence, not only was it not possible that Jews, who were

36 Ibid.

discriminated against in the Diaspora, would discriminate against others in their own State, but that they should be aware of the international position on that issue. Fourthly,

> it will also be borne in mind that some of the lands of K.K.L. are situated outside the boundaries of the Jewish State as laid down under the United Nations' decision of November 1947. Some of these lands are in the area allotted to the Arab State under this decision. The authorities in this Arab State area might take steps to penalise K.K.L. on the ground that it was discriminating against Arabs. If the said prohibition in the Memorandum against letting land to non-Jews came to be construed by the Courts in this Arab State area, they might hold that such prohibition was void as being against public policy. We are of the opinion that greater elasticity in the Memorandum is required to enable K.K.L. to make satisfactory arrangements with the Arab State authorities (when constituted) [parentheses in the original] in regard to the land of K.K.L. in this Arab State area.

Fifthly, the Jewish clauses in the Memorandum of the existing company are less necessary today, for they were considered in the past "an essential safeguard of the Jewish position in Palestine at the time of the incorporation of K.K.L. over forty years ago. But with the setting up of the State of Israel the case of this safeguard has lost much of its force. It would appear therefore to be desirable that this prohibition against letting land to non-Jews should not be included in the constitution of the new Keren Kayemeth."[37]

As lawyers, Wright and Cohen could not limit themselves to expressing their outlook on the matter and even not to providing a comprehensive overview about the political and legal difficulties connected to the inclusion of the Jewish clauses in the Memorandum of the new company. Therefore, they shed light on a cardinal legal problem that may have arisen if the Jewish clauses were deleted. Wright and Cohen clarified that if this indeed were done, a substantial difference would be created between the existing JNF and the new one being established. The principal function of the JNF – purchasing land for settling Jews via leasing, and assisting them in other ways – that is mentioned a few times in the Memorandum of the existing company would have been denied in the new company. As a result, it would be impossible to transfer the property of the existing company to the new one, since the Memorandum allowed the transfer of property – in case of the liquidation of the company – only to a Jewish body that has objectives similar to those of the existing company. Therefore, although the two lawyers' tendency as expressed in their memorandum leaned towards recommending the deletion of the Jewish clauses, the legal reality did

37 SIA, file C/15/3132, the memorandum by Aaron Wright and A. Saville Cohen, "The future status of Keren Kayemeth LeIsrael, Ltd.," 28.7.1948.

not enable them to do so. The bottom line was that their memorandum remained without any recommendation with regard to the Jewish clauses.[38]

The impasse that Wright and Cohen reached apparently led to the composition of the decision proposal in January 1949 (probably by Ussishkin) to be submitted to the directorate, in an attempt to eat their cake and have it too. It proposed that in the new memorandum, "except for one clause declaring that the principal aim of the company is to purchase land for settling Jews on it, all other restrictions limiting the company's actions so that it would act for the benefit of Jews and Jewish companies only – would be cancelled."[39]

Ussishkin, who was directly in charge of preparing the memorandum of the new company, held on to his view that it would be quite problematic to keep maintaining the discriminatory Jewish clauses in the State of Israel. Therefore, in his application to the Legal Adviser to the Government in March 1949, he proposed – as he had done in his decision proposal to the directorate – not to mention in the new memorandum the discriminatory Jewish references, except for the one noting that the object of the JNF is to purchase land for the settlement of Jews. The Legal Adviser more than reinforced Ussishkin's view by expressing "the strong objection of the Government to including such restricting clauses in the Articles of Association."[40] In May 1949, Ussishkin took one step further and expressed his view to the members of the directorate in straightforward and clear words, as opposed to the hesitant way in which he approached them in the previous two months:

> The Memorandum of Association of the [English] JNF explicitly restricts the actions of the company to benefit a known group of people, and the company is allowed to grant known rights to them only. Clause 3(1) defines the object of the company in purchasing lands in the prescribed region for settling Jews on these lands. Clause 3(3) allows the company to lease its lands only to Jews or to a company under Jewish control whose objective is to assist Jewish settlement. Clause 3(5) allows the company to make donations for the promotion of interests of Jews in the prescribed region. Clause 3(18) allows the company to grant loans to Jews in the prescribed region. Even in earlier days [before the establishment of the State], there was harsh criticism of these Clauses in the Memorandum, which emphasize discrimination against various groups of people based on race. Practically, too, the JNF faced many difficulties regarding the prohibition to lease its lands to non-Jewish compa-

38 Ibid.

39 CZA, file KKL5/15909, draft of the decision proposal of the directorate regarding the legal form of the JNF, January 1949.

40 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of Keren Kayemeth," 5.5.1949; ibid., Aharon Ben-Shemesh to the JNF Head Office regarding the legal form of the JNF in the future, 6.5.1949.

> nies and institutions. Sometimes, it had to hold a position that did not seem to benefit or honor the Yishuv; thus, for example, it was not allowed to sublease a small plot of the University's lands to the Government of France for erecting on it a building for the French Cultural Institute of the University, or when the JNF was not allowed to agree that Barclays Bank would rent an apartment for its Hadar HaCarmel branch in a house that stands on JNF land. However, if until now explicit restrictions of this kind could be justified, when the JNF operated in Palestine under foreign rule, no such justification may be accepted in an institution established in the State of Israel… Indeed, it should not be agreed that JNF regulations would not include a clause stating that its objective is to assist Jewish settlement, but is seems sufficient for this purpose to leave the restriction in Clause 3(1), maybe with some change of wording, and not to renew the rest of the restrictions included in other clauses.[41]

In the directorate meeting that was held about a year later, at the beginning of April 1950, Ussishkin said similar things. He repeated the arguments he had made in the past, such as the criticism of the abovementioned clauses during the Yishuv period, and the need to avoid discrimination in the State of Israel, where all citizens are entitled to equal rights by law. He stated again that the new company's memorandum should include, with regard to the Jewish issue, one clause only, "that emphasizes that its objective is to assist Jewish settlement."[42] Ussishkin wished therefore to cancel the provision regarding the leasing to Jews only, which was until then the basic principle of the JNF and its practical work. He probably assumed that maintaining the abovementioned Clause 3(1), even with some changes, would still make it possible to view the new JNF as an organization similar to the old JNF, and would enable the transfer of land property from the old company to the new one. The difficulty that Wright and Cohen pointed to in their memorandum could be solved. In any event, Ussishkin also referred to the need to reexamine the clause requiring the employment of Jewish workers only on JNF lands, a clause that was, as may be recalled, a central clause in the leasing contract of the JNF, but "according to the laws of the State of Israel would be considered as discrimination between citizens in the State."[43]

The members of the directorate who participated in the discussion had differences of opinion regarding Ussishkin's view. Daniel Oster opined that the objective of the new company should indeed remain equal to that of the old

41 CZA, file KKL5/15909, the memorandum by Shmuel Ussishkin, "The legal form of Keren Kayemeth," 5.5.1949 – the source of the citation. See also ibid., Aharon Ben-Shemesh to the JNF, 6.5.1949.

42 CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

43 Ibid.

company – settling Jews on the lands – "but a formula should be found according to which it would be possible to lease JNF land to non-Jews in special cases."[44] Avraham Harzfeld refused to enable non-Jewish settlement on JNF lands, but apparently was aware of all the difficulties presented by Ussishkin, Wright and Cohen. Therefore, he proposed that "if the State should desire to settle Arabs, it will be able to do so by land exchanges [with the JNF]." In other words, since JNF regulations allowed it generally to exchange lands, in case a need arises to settle Arabs on JNF lands, the JNF will receive lands from the State in exchange for its lands. Berl Locker said that the matter required further consideration. He raised the question, "how could one fit the JNF regulation, that it leases land only to Jews, to the State constitution according to which equal rights will be granted to all citizens, regardless of differences in religious faith or race" – but proposed no solution. Yosef Weitz shared Ussishkin's view, and emphasized that the Jewish work clause in the JNF leasing contract became lately "in principle only. There is non-Jewish work on JNF land in settlements belonging to various ideological movements and run by diverse modes of organization, both through hired workers and through land cultivation together with Arabs. Today, it is impossible to implement the clause with regard to 'Jewish work requirement' in the spirit and letter of the law." In other words, he said that the Jewish clauses are in any case irrelevant, and one should be satisfied with setting in the new memorandum "the main objective of the JNF: settlement of Jews on the land."[45]

Granot, the Chairman of the Board of Directors, unlike his colleagues wished to maintain the Jewish clauses as well as loyalty to the principles of the JNF and its obligation to its donors. He said that the JNF "collects money from all groups of the Jewish People in Israel and abroad for a certain objective: to purchase lands in the Land of Israel for settling Jews on them. It is obliged, therefore, to fulfill the objective for which the money was collected." The problem of discrimination and other difficulties he proposed to solve by way of adding a clause to the memorandum of the new company "that would grant a legal option to make an exception in special cases."[46] Granot's view was a continuation of what he had said six months earlier at the directorate, while analyzing the future roles of JNF in the State of Israel following the War of Independence, the establishment of the State, the release of many lands from Arab ownership and the argument prevalent then that the organization's role was over. He held that the State is obligated to full equality to all citizens regardless of ethnic group, status and

44 Ibid.
45 Ibid. – the source of the citations.
46 Ibid.

nationality, and therefore, "it may not issue a law according to which the ownership of lands in the State would be a national asset of Jews only. Likewise, it could not set a regulation by which the lessee would be required to employ only Jewish workers, as an important factor in absorbing new immigrants." Hence, only the JNF could act inequitably, realize the idea of national ownership of land in the Land of Israel and direct a large portion of the immigrants to agricultural work.[47]

At the end of the discussion, a decision was made unanimously, according to which "except for the clause declaring that the main objective of the new company is to purchase lands in the country and town for the purpose of settling Jews on them; all other restrictions limiting the right of the company's actions for Jews and Jewish companies only, would be cancelled."[48] In practice, not all of the Jewish clauses were cancelled in the memorandum of the new company; only two out of three were annulled.

During the latter half of 1950 and throughout 1951, the JNF endeavored to formulate the memorandum while acting vigorously to approve the new company in the framework of a special law to be legislated in the Knesset.[49] In the first half of 1952, the JNF directorate and the institutes of the Zionist Organization confirmed the clauses of the memorandum.[50] The aim was to maintain as much as possible the identity between the memorandum of the new company and that of the existing company, in order to "protect the wish of the founders and to ensure continuousness."[51] In other words, to keep the path and goals of the

47 CZA, file KKL10, minutes of the meeting of the JNF directorate, 27.9.1949.

48 CZA, file KKL10, minutes of the meeting of the JNF directorate, 9.4.1950.

49 See Holzman-Gazit 2002.

50 CZA, file KKL10, minutes of the meeting of the JNF directorate, 30.1.1952, 29.4.1952; ibid., file KKL5/19029, Avraham Granot to the chairmanship of the Zionist General Council, 17.4.1952; ibid., file KKL/19029, Asaf Goldberg to Shmuel Ussishkin, 7.5.1952; ibid., Avraham Aricha to the members of the JNF directorate, 24.1.1952; ibid., file KKL5/17293, Memorandum of Association of KKL, 24.1.1952; ibid., file KKL5/19029, Memorandum of Association of KKL; ibid., file KKL5/19028, Memorandum of Association; ibid., file KKL5/20730, Memorandum of Association; ibid., file KKL5/19029, resolutions of the Zionist General Council received during its session in Jerusalem, May 7–15, 1952; ibid., minutes of the meeting of the Jewish Agency management, 16.6.1952; ibid., file KKL5/20730, minutes of the meeting of the chairmanship of the Zionist General Council, 22.7.1952; ibid., memorandum by Paul J. Jacobi, "The control of the Zionist Organization over Keren Kayemeth LeIsrael"; ibid., the Hebrew version of the special resolution of JNF Ltd., 3.6.1954; ibid., file KKL10, minutes of the meeting of the JNF directorate, 11.8.1954.

51 CZA, file KKL5/19029, Shmuel Ussishkin to Avraham Granot, 7.5.1952. See also ibid., file KKL5/19028, the memorandum "The organization of the JNF as an Israeli company – the regulations of the new company," 26.2.1952.

organization, and first and foremost to supply land for Jewish settlement while keeping the land in the eternal ownership of the JNF – the Jewish people.

Regarding the Jewish clauses in the memorandum of the Israeli company, Ussishkin clarified that although the objective of the JNF in the future, too, would be to assist Jewish settlers only (by supplying lands for their settlement), sometimes the JNF would have to lease lands to non-Jews or to international companies. An explicit prohibition to do so would create an undesired impression of supposedly racial restrictions, which also the Jews worldwide oppose. Hence, it is proposed to keep the existing clause, according to which the objective of the JNF is to purchase lands for settling Jews on them, but the other clauses should be amended by cancelling the prohibition to lease lands to non-Jews. "It can be assumed that even without these explicit prohibitions, the JNF directorate will know how to manage the work of the institution according to the manifest objective included in that same clause that remained unchanged."[52] This clarification by Ussishkin was meant to assure the members of the Zionist General Council, who were also the members of the General Meeting of the new JNF, that in practice there was no change in the basic principle of the JNF – leasing lands to Jews only.

The memorandum of the new company, confirmed by the institutions of the JNF and the Zionist Organization in the first half of 1952, and later by the Minister of Justice in the middle of 1954,[53] retained the first clause describing the objectives of the JNF – to purchase lands for settling Jews on them.[54] It also retained the clause setting another objective of the JNF – to make donations for the promotion of interests of Jews in the region where the JNF works.[55] On the other hand, the clause that restricted the leasing of land to Jews only was deleted from the memorandum of the new company.[56]

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52 CZA, file KKL5/19028, the memorandum "The organization of KKL as an Israeli company – the regulations of the new company," 26.2.1952.

53 CZA, file KKL5/20730, the authorized memorandum, Portfolio of Notifications, 10.6.1954, GL 354/11, pp. 1196–1199.

54 Cf. Clause 3(1) in the Memorandum of Association of JNF Ltd. from 1907 in Katz 2002, p. 98, Clause 3(a) in the Memorandum of Association of the Israeli company in CZA, file KKL5/20730, and Clause 3(a) in the authorized Memorandum and Articles of Association (above, note 53).

55 Cf. Clause 3(5) in the Memorandum of Association of JNF Ltd. from 1907 in Katz 2002, p. 98, Clause 3(f) in the Memorandum of Association of the Israeli company in CZA, file KKL5/20730, and Clause 3(e) in the authorized Memorandum and Articles of Association (above, note 53).

56 Cf. Clause 3(3) in the Memorandum of Association of JNF Ltd. from 1907 in Katz 2002, p. 98, Clause 3(d) in the Memorandum of Association of the Israeli company in CZA, file KKL5/20730, and Clause 3(e) in the authorized Memorandum and Articles of Association (above, note 53).

The transfer of JNF lands in Israel from the English company to the Israeli company

As described above, it was decided in the JNF to transfer its land property within the borders of the State of Israel from the English company – Keren Kayemeth LeIsrael, Limited – to the Israeli company – Keren Kayemeth LeIsrael. The incorporation of the new JNF was finally completed upon the confirmation of its memorandum in May 1954, in accordance with the Keren Kayemeth LeIsrael Law, which was approved by the Knesset towards the end of 1953.[57]

Transferring the JNF Ltd. land property to the new JNF was not a simple process. Two main issues had to be resolved. Firstly, a change had to be inserted into the Memorandum of JNF Ltd. that would allow it to transfer part (in fact, almost all) of its property to the JNF, because the existing Memorandum of JNF Ltd. enabled it to transfer only its property as a whole (and not part of it) to a company having similar objectives. Even this could be done only in the framework of the shutting down of the existing company. The Memorandum did not allow for maintaining JNF Ltd. as it was and transferring part of its property to the JNF.[58] Secondly, it was necessary to formulate, together with the Land Registry authorities of the State of Israel, a mechanism for changing the registration of the vast amount of plots that were registered at the Land Registry under the name of JNF Ltd. to the name of the JNF. The transfer of registration at the Land Registry is the binding formal step in transferring rights in land property from one owner to the other and in determining the ownership of the receiver.

The change in the Memorandum of Association of JNF Ltd.

At the beginning of June 1954, about six months after the legislation of the JNF Law and the incorporation of the JNF, an unscheduled meeting of the General Meeting of JNF Ltd. – the only body authorized to approve changes in the Memorandum – was called.[59]

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57 Keren Kayemeth LeIsrael, Memorandum and Articles of Association, authorized by the Minister of Justice, 20.5.1954; CZA, file KKL5/20730, resolutions of the Zionist General Council received during its session in Jerusalem, May 7–15, 1952; Holzman-Gazit 2002.

58 CZA, file KKL5/20729, Shmuel Ussishkin to Avraham Granot, 31.5.1954.

59 Katz 2005, pp. 28–31, 144–145, 254.

In the summons for the unscheduled meeting, Shmuel Ussishkin wrote:

> In 1952, the Zionist General Council decided to confirm the establishment of an Israeli company that will replace JNF Ltd... However, it was decided not to shut down the existing company, which owns land property in the Arab region of the land that would be lost if the company were finally liquidated, but to establish alongside the existing company another company, the JNF, which will do in the future all the work of the JNF and will also transfer under its name the property of the English company in Israel. The problem is that the present Memorandum of the English company does not allow the transfer of land property; this may be done only in the manner of one-time transfer of all the property in case the company is liquidated. Therefore, there is a need to amend the Memorandum of Association of the company, to transfer only the property in Israel and without linking this transfer to the formal liquidation of the English company.[60]

The amendment to the Memorandum was composed by the lawyers Wright and Cohen from London, and it consisted mainly of the addition of the following to Clause 3(11) of the Memorandum of JNF Ltd.[61]: "...save that the company may, from time to time, transfer the paramount ownership of these lands, at its discretion, to a company in Israel that has objects similar to those of the main objects of the Association."[62] This amendment allowed for the actual transfer of lands from JNF Ltd. to the JNF.

The process and mechanism of transferring lands from JNF Ltd. to the JNF

The transfer of lands in Israel from JNF Ltd. to the JNF was in fact a sale of lands from the first to the other, with all it implies. It was the first and only time in which sale of lands was approved in JNF Ltd. The legal mechanism of the transfer was complicated, and a legal solution had to be found for a comprehensive transfer of registration of all the transferred lands, without the need for a detailed transfer of registration of each plot at the books of the Government Land Registry. Eventually this step, too, would be done, over a long period (and it might not have been completed until the present), but legally there was no obligation. The legal solution of the comprehensive registration was sufficient, as far as property law was concerned, for the transfer of the full ownership of lands from JNF Ltd. to the JNF. Thus, all JNF Ltd. lands were transferred to the

60 CZA, file KKL5/20729, Shmuel Ussishkin to Avraham Granot, 31.5.1954.

61 Katz 2002, p. 99.

62 CZA, file KKL5/20729, Arieh Mohilever to Avraham Granot, 10.5.1954; ibid., file KKL5/20730, the Hebrew version of the special resolution received at the extraordinary meeting of JNF Ltd., 3.6.1954.

ownership of the JNF, even without the completion of a detailed transfer of registration in the Land Registry books.

On August 11, 1954, the two companies signed a deed of transfer. The deed noted, inter alia, that considering the resemblance between the objectives of the two companies and the fulfillment of all formal requirements, JNF Ltd. transfers to the JNF "all its property in real estate and moveable property in Israel, in any region that is under the jurisdiction of the Government of Israel." In exchange, the JNF assumes all the liabilities of JNF Ltd.[63] About a month later, on September 19, 1954, a statement was published in the *Reshumot* (*Official Government Gazette*) regarding the contract for property transfer.[64] This paved the way for preparing a comprehensive deed of sale between the two companies, which was signed at the Government Land Registry on January 14, 1955.

The deed of sale stated that in exchange for the liabilities assumed by the JNF in the deed of transfer, JNF Ltd. transfers to the JNF "all its property in real estate and moveable property in Israel, in any region that is under the jurisdiction of the Government of Israel." The deed stated also that for facilitation of the registration the JNF would from time to time submit to the head of the Land Registry and Settlement of Rights Department and/or to the Regional Land Registrars lists describing the details of the abovementioned property.[65] However, this did not hinder the new legal reality, according to which once the deed of sale was signed, all JNF Ltd. lands "in Israel, in any region that is under the jurisdiction of the Government of Israel" were considered JNF lands. JNF officers in its regional offices were directed to register from now on each purchased land under the name of the JNF and not under the name of JNF Ltd.[66] It is obvious that if a plot within the borders of the State of Israel were to be found today (or would be found in the future) to be registered in the Land Registry under the name of JNF Ltd., then it is to be considered as registered under the name of the JNF.

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63 CZA, file KKL10, appendix to the minutes of the meeting of the JNF directorate, 11.8.1949; ibid., file KKL9/229, an unsigned copy of the deed of transfer.

64 CZA, file KKL5/20730, Paul J. Jacobi to M. Shatz, 28.8.1954; ibid., a notice about the agreement of land transfer from JNF Ltd. to the JNF, 15.8.1954; ibid., report of the JNF, 28.6.1959; ibid., file KKL9/229, head of the Land Registry and Settlement of Rights Department to the Land Registrars, 19.1.1955.

65 CZA, file KKL5/20731, copy of the deed of sale, 14.1.1955.

66 CZA, file KKL9/229, Haim Danin to the JNF regional offices, 2.1.1955, 16.1.1955, 21.1.1955; ibid., telegram to Yosef Nachmani, 14.1.1955; ibid., file KKL5/20731, letter by Haim Danin, 17.1.1955.

JNF Ltd. has been for years an insignificant company that is located in London. The extent of its activity since the transfer of most of its lands to the JNF is negligible. In public view, the JNF and JNF Ltd. are considered one and the same. Practically, the only significance of JNF Ltd. lies in the land property outside the State of Israel that is registered under its name.

Chapter 4
The Legislative Process of the Development Authority Law, 1950

Objectives of the law, and the discussion in the government of the question of the sale of land

The first law embodying the tradition of the JNF with respect to the principle of the prohibition on the sale of land was the Development Authority (Transfer of Property) Law, 1950,[1] which was ratified by the Knesset at the end of July 1950.[2] At the beginning of December 1949, a proposal for a law entitled Law of the Transfer of Property to the Development Authority, 1949, was submitted to the Knesset by the government at the initiation of the Prime Minister and the Finance Minister.[3] Its proponents' main intention was to allow the government unlimited use of the abandoned Arab property that the refugees had left behind them as a result of the War of Independence in 1948. This was an enormous amount of territory – about 4.1 million dunam out of the 20.4 million dunam within the borders of the State at the end of the War of Independence. Thus, the absentees' property constituted about 20% of the area of the State of Israel, including the Negev, and about 50% of the area of the State apart from the Negev.[4] This property was seized and controlled by the Custodian of Absentee Property, but according to the Absentees' Property Law, 1950, the Custodian was forbidden to sell the land, or even to lease it for more than six years.[5]

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1 Katz 2002, Appendix 3, pp. 117–118.

2 Knesset Protocols, 6a, 31.7.1950, pp. 2370–2388.

3 Knesset Protocols, 3, 5.12.1949, 14.12.1949, pp. 226–228, 293, 295–310.

4 SIA, minutes of the Knesset Economic Affairs Committee meeting, 13/2, 14.2.1950, pp. 3–9; Knesset Protocols, 7a, 7.11.1950, pp. 189–190; SIA, minutes of the Knesset Finance Committee meeting, 7.10.1959, pp. 11–13; Knesset Protocols, 29, 19.7.1960, pp. 1916–1917, 1924; Granot 1954, pp. 87–88; Zisling 1950, pp. 111–112. At the end of the War of Independence ownership of the land of the State of Israel was divided in the following manner: about 13.6 million dunam – State land, designated thus during the Mandatory period, out of which about 12.6 million dunam were in the Negev; about 1 million dunam belonged to the JNF; about 1.7 million dunam were privately owned (of these, about 0.8 million by Jews and 0.9 million by Arabs); about 4.1 million dunam of land were abandoned in the War of Independence. At a later date the State transferred about 1.35 million dunam of abandoned land to the JNF. On this, see Arieh Friedman, oral interview based on the JNF balance sheet for 1993, Jerusalem, 3.8.1999.

5 Gideon 1953–1957, Absentees' Property Law, 1950, Clause 19, p. 2787; Knesset Protocols, 3, 5.12.1949, p. 228; Granot 1950, p. 10 f.

None the less, the State was very interested in using these lands, primarily for extensive development projects which were needed for the absorption of immigrants in town and village, as well as for the extension of existing settlement. It was also interested in selling land in order to generate badly needed income.[6] The then Finance Minister, Eliezer Kaplan, described this law as "a very important link in the set of tools which we are creating for the development of the country and the absorption of immigration."[7] It was true that the government had made use of some of these lands during the year and a half that had transpired since the Declaration of Independence, but this had been done "without sufficient legal backing."[8] The Development Authority Law was, therefore, intended to establish the legal foundations for the government's use of these lands.[9] One of the government's original intentions was to use the Development Authority in order to transfer some of the abandoned lands legally to the JNF, and in this way to create villages for the resettlement of Arab refugees.[10]

According to the proposed law, the Development Authority was the only institution to which any body was permitted to sell land. This included various official agencies and the local authorities, which according to the laws valid at that time were not entitled to sell land, or were severely limited in this respect. Thus, the Custodian of Absentee Property would be able to sell land to the Development Authority, which could dispose of it at its will.[11] In November 1949, when the Cabinet discussed and approved the proposed law, the Finance Minister explained:

> We wanted to create an instrument which could acquire property – and especially property which we want to develop – from the Absentees' Property Authority. We intended to create an intermediate body between the Custodian and the body which would undertake the practical task of dealing with this property, since, officially, it is hard for the Custodian himself to sell this property or even to lease it for a long

6 See, inter alia, Granot 1954, pp. 95–102; Knesset Protocols, 3, 5.12.1949, pp. 226–228, and 14.12.1949, pp. 295–310; SIA, minutes of the Knesset Economic Affairs Committee meeting, 4.1.1950.

7 Knesset Protocols, 3, 14.12.1949, p. 310.

8 Ibid., 5.12.1949, pp. 227–228, whence the quotation. See, too, the Finance Minister's words in the Economic Affairs Committee of the Knesset (above, note 6, p. 3). He said, inter alia, "I want us all to understand that abandoned property is not the property of the State: not *de jure*, and I don't know to what extent it will be *de facto*... This led to our changing the law in a way which permits leasing and sale..."

9 Ibid.

10 SIA, minutes of government sessions, 29.11.1949.

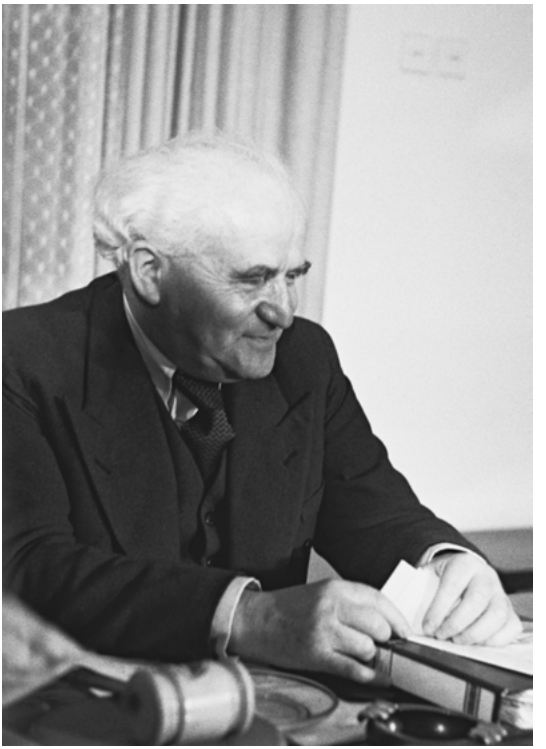
11 Katz 2002, Appendix 2, pp. 115–116.

period... Therefore we wanted to create a special body to which the Custodian would grant all the property suitable for development; this body would decide whether to lease it or sell it.[12]

Eliezer Kaplan, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

The then Prime Minister, David Ben-Gurion, added: "The motivation for this law was the creation of the possibility of buying land from the Custodian."[13] Some people also thought that the Development Authority "may well be the motivating element for the purchase of land from Arabs in the country. Arabs who want to sell their property will be able to do so through it, rather than through speculators."[14]

12 SIA, minutes of government sessions, 29.11.1949, p. 34.
13 Ibid., p. 43.
14 Ibid., p. 39, from the words of Minister Shitrit.



David Ben-Gurion, 1949.
Photo: David Eldan.
Source: National Photo Collection

For understandable political reasons, in the text of the proposed law the Development Authority was differentiated from the government, but it was clear to those dealing with the matter that this institution would be entirely controlled by the government. For similar reasons, the main purpose of the law in the proposed version was disguised: nobody (and not only the Custodian of Absentee Property) was forbidden to sell land to the Development Authority. Thus, the amount of property which could potentially be acquired by the Development Authority was huge, and included abandoned land, State land, the land of the local authorities, the land of the General Custodian, the land of the Custodian of Enemy Property, privately-owned land, and more.[15] And, indeed, at a later date Abba Hushi, chairman of the Knesset Economic Affairs Committee, emphasized the point: "The Development Authority may well become the largest institution in the country, with wide-ranging powers

15 Above, notes 10–11; above, note 6, SIA, p. 3; ibid., 10.1.1950, p. 13, and 17.1.1950, p. 10; Granot 1954, pp. 99–101.

and vast possibilities, and may own an amount of property second to none in the country."[16] On the assumption that the JNF would not alter the statute forbidding it to sell land, these bodies might, potentially, own 90–95% of the land in the State.[17]

In order to permit broad and unlimited use of land acquired by the Development Authority, a central clause in the draft of the proposed Development Authority Law which was discussed in the cabinet stated that the Development Authority was permitted "to sell property, to transfer it in any other way, or to lease, let, or mortgage it."[18] In other words, the right of the Development Authority – in effect, the government – to sell urban or agricultural land would be unlimited. Since, as will be recalled, the Development Authority could acquire both State land and other lands which the State held by virtue of various arrangements, the government would be able to sell without limit all the land that it controlled in one way or another – and not only the abandoned land controlled by the Custodian – by means of the Development Authority.

As has been hinted above, the basic reasoning behind the government's request for unlimited freedom of action in the sale of land through the Development Authority, as expressed in this clause, was not only to expedite development projects, but also to attract entrepreneurs who would not be satisfied with a lease, but would demand complete ownership of the land in return for their investment.[19] It also became clear that the Finance Ministry was also very interested in the sale of land as a source of income, especially in order to acquire foreign currency, of which the young State was in urgent need; so it looked for any way of acquiring the currency that would enable it to accomplish its plans.[20]

However, as was to be expected, the clause in the proposed law permitting unlimited sale of land met no little opposition. It led to a lively and trenchant discussion both in the government and in the plenum of the Knesset, as well as in the parties and in the Knesset Economic Affairs Committee, which prepared the law for its second and third reading.[21] The extent of the discussions and arguments on this clause was incomparably greater than the time devoted to

16 SIA, ibid., 10.1.1950, p. 2.

17 Ibid., pp. 1–2; ibid., 14.2.1950, pp. 3–4; and see above, note 4.

18 Above, note 10, pp. 40–41.

19 See, e.g., above, note 10, pp. 32–33.

20 See, e.g., SIA, minutes of the Knesset Economic Affairs Committee meeting, 4.1.1950, pp. 4, 6, and 27.2.1950, p. 17.

21 Knesset Protocols, 6a, 31.7.1950, p. 2370.

other clauses in the proposed law. Eventually, as we shall see, this law, which was ratified by the Knesset at its second and third reading, was entirely different both from the draft version that the government had discussed and from the proposed law that the government had submitted to the Knesset for its first reading.

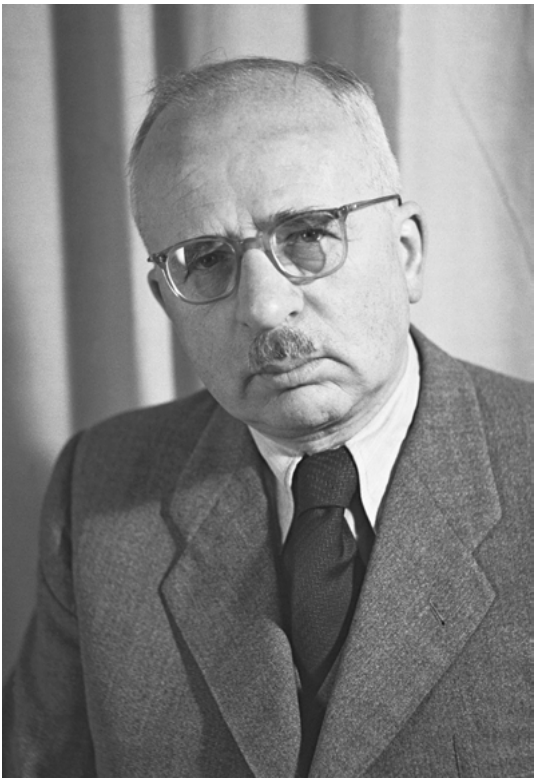
At the end of November 1949, ten days before the proposed law was submitted to the Knesset plenum for its first reading, the plenum of the government discussed the draft law. Most of the discussion was concerned with the "sales clause," and the government was already aware that this clause would arouse much opposition in the Knesset. In the discussion in the government it was suggested, for the first time, to act according to the "JNF model": to permit only leasing of land, and to forbid its sale. The suggestion was also made that this model should apply to the actions of the Development Authority. Pinhas Rosen, the Minister of Justice who presented the draft of the proposed law to the plenary session of the government (and whose office had prepared the proposed law, as was usual), explained that he was far from satisfied with the "sales clause," and suggested that the JNF model should be adopted in its place. He said:

> I advocate extreme caution in this matter [the sale of land]. I do not know why we have to grant the Development Authority the right to sell State lands which it is given. What was good for the JNF can also be good for the Development Authority.[22]

The minister Golda Meirson (later Meir) held a similar opinion. She suggested applying the principles of the JNF to State-owned lands, and emphasized the concern that allowing their sale would encourage speculation in land controlled by the government. Among other things, she said:

> Why did the JNF not sell land?... We made an important decision: before the State existed, there was land which belonged to the people, which was not for sale... I suggest that the right to sell be nullified, and I shall explain why. If the right to lease land for forty-nine or ninety-nine years exists, this can satisfy industrialists or other proprietors of businesses. It limits the concern in one respect only: speculation in land. I am in favor of this limitation, since a man who wants to create a factory can be secure for a period of ninety-nine years, for the whole of his life, and his successors will also be secure. He is limited in only one respect: he cannot sell the land, and engage in speculation on land which was owned by the State. Therefore, I suggest that he be given the right to lease but not to sell.[23]

22 Above, note 10, pp. 32–33.
23 Ibid., p. 37.



Pinhas Rosen, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

The minister David Remez expressed himself less firmly than his predecessors, but he, too, was opposed in principle to permitting the sale of land. He gave two reasons: one of them, which the State archivist censored in the minutes, was apparently connected with the fear that if sale to private persons were permitted the land would eventually fall into the hands of Arabs – a concern which was voiced in the discussion in the government by the minister Rabbi Yehuda Leib Maimon. The second reason was based on the educational and conceptual aspect of the JNF. Remez said:

> When we were young, and established the JNF, we said to ourselves (at any rate, I said to myself) that this would be a law in the State of Israel, that "the land shall not be sold in perpetuity, for the land is mine." From the educational point of view, the whole of the Labor Movement, all the youth, is educated to this idea. It is a great ideal, and I still do not see anything that prevents us from realizing it. If such an event should transpire, the parliament of the State will permit its sale. Until then, there is no need to permit sale – only leasing.

None the less, Remez was prepared to permit sales if they were essential for purposes of development, if an entrepreneur was prepared to make a substantial

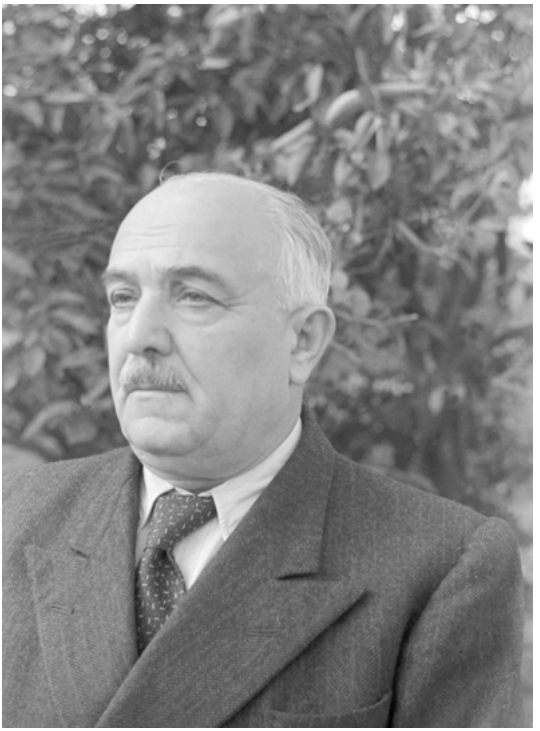
investment on condition that he be allowed to buy land – and even this subject to the permission of the Knesset.[24]

Golda Meir, 1949. Photo: Hans Pinn. Source: National Photo Collection

The Prime Minister and the Finance Minister presented viewpoints opposed to those of Meirson, Remez and Rosen. They were well aware of the principles of the JNF, and its achievements in the acquisition of land and the development of the country. Not only did they have constant dealings with the JNF as a result of their eminent positions in the institutions of the Yishuv during the Mandatory period (Ben-Gurion as chairman of the Jewish Agency, and Kaplan as its treasurer); they had also been members of the JNF's directorate at one time or another.[25] However, they were opposed to the application of the JNF model to the land of the Development Authority – in effect, land which belonged to the State. The fact that the law was put before the government in its original form, including the "sales clause," expressed their fundamental

24 Ibid., pp. 38–39.
25 Katz 2005.

belief that the concept on which the activities of the JNF were based should not be applied to State lands. Why?



David Remez, 1948.
Photo: unknown.
Source: National Photo Collection

Ben-Gurion, who believed that with the establishment of the State there was no need for the existence of the JNF, claimed that the very existence of the State and its needs had altered the conditions existing before the foundation of the State, which had made the principles of the JNF necessary. For

> All that there is in the State belongs to it. The JNF had power because of its legal ownership; but the State has [absolute] power… I cannot understand why the State's development activity should be limited in any way. The JNF is a private company, and if it were not for this concept there would be very little point in creating it, since it cannot control the land. It was possible to ensure that the land which it buys would serve for Jewish settlement simply by legal guarantees that it could not sell the land. Now we are dealing with the State, which has hundreds of thousands of needs… the State will always make its own decisions about what it can and what it cannot do. The State creates the law, and why should it create an authority with a limited mandate? Do we know in advance all sorts of possibilities of development which exist in the country? We are only at the beginning of a huge project, with great difficulties, and why must

> this authority's hands be tied? If we find that we need not sell land – we will not sell it. If we find that it is for the benefit of development to sell land – what does it matter if its legal ownership is in private hands, provided that the real ownership is in the hands of the State, which can levy taxes? We should impose no limitations on our development plans: the State should do anything it considers to be desirable for development.

As for the fear that land would be sold to Arabs, Ben-Gurion hints (and perhaps does more than hint) that the State will prevent this: "As for the Arabs: all they have is the right to enter the country; only the Jews, and not the Arabs, have rights over it."

As has been said above, Kaplan opposed the prohibition of sale of land by the Development Authority, but his view was less comprehensive than Ben-Gurion's. He supported a certain limitation on the sale of land and opposed the sale of agricultural land, apart from agricultural land which was needed for purposes of development. It may be that these "moderate" views stemmed from the opposition to the "sales clause" which was clearly going to be voiced in the Knesset ("There will be a stormy discussion of this matter in the Knesset"), and that Kaplan was already presenting a compromise; or perhaps he believed that the principal requirements for development would be in an urban environment, and that the potential income from the sale of land would also be in the urban sector. At any rate, he was uncompromising on the question of the sale of both urban and rural land which was needed for development. He reminded his colleagues in the government of the Himanuta Company, which the JNF had used in certain cases to circumvent the statute forbidding the sale of land. One of the points he emphasized was:

> If the owner of a factory comes and says that he doesn't want to build a factory on leasehold land, what can we say to him?... The JNF also had to create a company by the name of Himanuta in order to sell land. And I think that a total prohibition on the sale of land is a mistake. I am against the sale of agricultural land, but I think that often there is no benefit from or need to keep urban land... There are still people in the world who are accustomed to build factories on their own land, and the question is whether we are interested in attracting them to the country, or whether we want to create difficulties for them. How will the sovereignty of the State be diminished if in the cities and residential and industrial areas privately-owned land exists for a long period, until the social system of the world, including our country, is changed?

Kaplan was also not troubled by the possibility that some of the State lands sold to private owners would eventually be bought by Arabs. Unlike Ben-Gurion, he did not think that Arabs should be prevented from buying State lands. He said:

> As for the Arabs, I believe that we should stop using this argument. Either we really believe that the Arabs living in this country have equal rights, or we are being hypocri-

> tical, and all the time crying out "Watch out for the Arabs, Israel." Let an Arab buy another ten houses in Ramleh or Lydda, and I don't think many of them will do so. In any case, we can't decide on prohibitions on the ground that there are Arabs in the country.[26]

In a tied vote of four against four, the government decided to reject the proposal to forbid the Development Authority to sell land, but also rejected by five votes to one (Ben-Gurion) the original proposal to permit it to sell land unconditionally. In additional votes the government decided to accept Kaplan's proposal that the government's agreement be required for each individual sale.[27] Thus, in Clause 3(4) of the proposed Development Authority Law, which was submitted to the Knesset plenum on December 8, 1949, only one restriction on the sale of land, of any type or to any extent, was added to the "sales clause": "Except that any sale or transfer of ownership in any other way be subject to a decision of the government in each individual case."[28] Since the Development Authority was actually a branch of the government, and many government offices were represented in it, it appears that this was not a real restriction, and Golda Meirson requested permission to vote against the "sales clause" in the Knesset vote. But Ben-Gurion, who was also opposed to the final version of the "sales clause" as approved by the government, since he rejected any restriction on the Development Authority, considered that it was not desirable for the government to be seen by the Knesset to be divided on a proposal with clear political aspects. Therefore, the government decided to permit the opponents to abstain in the vote, but no more.[29]

The debate on the first reading of the proposed law in the Knesset plenum

The Knesset debate on the Development Authority Law took place in the first two weeks of December 1949. As has been noted, the "sales clause" stimulated a fierce debate in the plenum and, later, in the Economic Affairs Committee, and the divisions of opinion did not coincide with party lines.[30] It was

26 Above, note 10, especially pp. 37–38, and pp. 40, 44–45. And see Weitz 1965, pp. 53, 88, 134. See, too, ibid., p. 53, Ben-Gurion's jeering remark on the nationalization of the land, for it already belongs to the State.

27 Above, note 10, pp. 41–46.

28 Katz 2002, Appendix 2, pp. 115–116.

29 Above, note 10, p. 42.

30 Above, note 21.

Aharon Zisling of Mapam who spoke vehemently against the "sales clause" in the proposed law (though also against other clauses), and demanded categorically that the Development Authority be denied the right to sell land to private owners. He even saw no other recourse than to return the whole law to the government: "We cannot accept this law as a basis for discussion... It is not balanced, not thought out..."[31] Zisling had been the first Minister of Agriculture of the State of Israel in the provisional government, until March 1949, and was knowledgeable about questions of land. He calculated that 18–19 million dunam (out of about 20.4 million within the boundaries of the State) could fall into the hands of the Development Authority, as permitted by the "latitude" of the law,[32] "And the law says that it may all be sold." Zisling was not only apprehensive of speculation if the land was in private hands; as a convinced socialist, his socio-economic outlook (which was also held by a considerable proportion of those living in workers' settlements and their sympathizers) was opposed to private ownership of resources of land and water. According to this viewpoint, only ownership of these resources by the State or the people (i.e., the JNF) could ensure the planning which they required, their efficient exploitation for the goals of the State – primarily development and immigrant absorption – and the benefit of the settlers. In the plenum, he said:

> We know that in the past the reality of the Land of Israel has proved that nationalization of the land and the preclusion of private ownership have served as the healthiest foundation of the construction and health of the economy as a whole. And we know from experience that private ownership of land and water leads to neglect – and in the Jewish sector as well as in the Arab... Is it not justified that at this time, when the State controls resources of water, of land, and of nature, we should ensure... that these resources should not be transferred from public to private ownership, and that the transfer of territorial assets from national to private ownership be prevented? Let us not abandon the realization of the vision of the JNF which we envisaged when we have it in our hands... Why should the proposed law not contain foundations of a program for nationalization and development?[33]

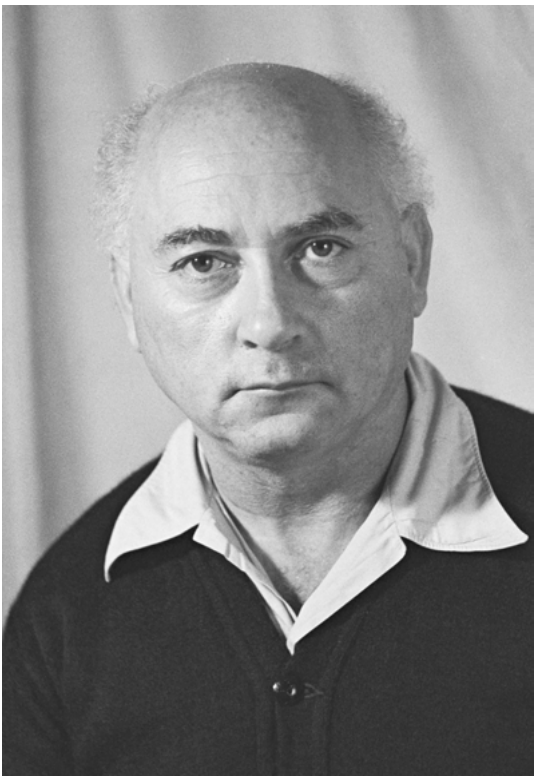
In the Knesset plenum Zisling was the most extreme opponent of the "sales clause," and his colleagues in Mapam agreed with him. In Mapai, on the other hand, opinions were divided. The view of Avraham Harzfeld (one of the leading figures in the creation of workers' settlement, chairman of the Histadrut's Agricultural Center, and a member of the Board of Directors of the JNF) was close to that of Zisling. Other Knesset members from Mapai were divided between those

31 Knesset Protocols, 3, 14.12.1949, p. 299.

32 See details above, note 4.

33 Above, note 31, pp. 297–298.

who expressed a viewpoint close to that which Ben-Gurion had espoused in the government – to permit unlimited sales – and those whose attitude was close to that of Kaplan, who would limit the freedom to sell.



Aharon Zisling, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

Harzfeld claimed that, as in the guiding ideal of the JNF, the State could not divest itself of its lands. The least it should do was to transfer its urban and rural land to the JNF, which was willing to buy the land of the State and take it over. Harzfeld also denied the contention that private capital would be invested in development projects only if it was assured of ownership of the land, rather than a long-term leasehold. The opposite was the case: "Free leasehold land encourages private capital, and creates extra possibilities for construction and industry. Why should a capitalist invest money in land?"[34]

34 Ibid., p. 302.

Avraham Harzfeld, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

Shlomo Lavi, a member of Harzfeld's party, expressed an opposite viewpoint, similar to Ben-Gurion's. He emphasized that he was "no less a socialist than anyone else, who acclaims socialism a hundred and one times a day." He even believed that "socialism may be established in the whole world in our own time." None the less, it is now imperative to do anything possible to attract as much Jewish capital as possible to the country, since without it it will be impossible to carry out the huge development projects that the State has undertaken. Moreover, there is a danger that in the future limits will be imposed on the export of Jewish capital from the places where it is currently to be found. And this is what he said:

> So Jewish capital is vital for this great creation, and if it does not come here of its own volition we shall tempt it, we shall promise it profit and security [i.e., ownership of land]. Perhaps it will wake up and come to us with the vast resources which it possesses and which we need. And then, when it is within our borders, when the time comes we can nationalize it.

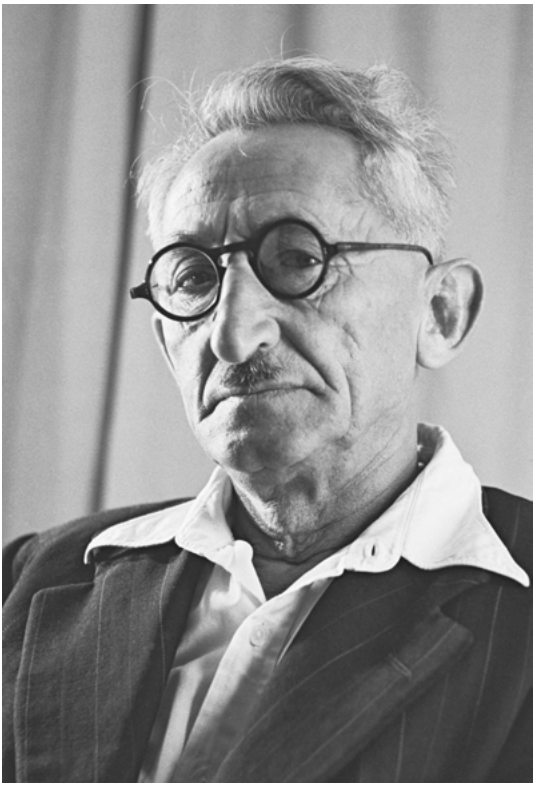
A government housing project for new immigrants at Nahalat Yitzhak in Tel Aviv, 1949.
Photo: Zoltan Kluger.
Source: National Photo Collection

From Lavi's words later in this speech it appears that he meant *de facto* rather than *de jure* nationalization. He considered that the objective of the "sales clause" in the Development Authority Law was the same as that of another law which the government was asking to ratify at the same time: the Law for the Encouragement of Capital Investment: "These two laws have the same purpose: to bring Jewish capital to the country."[35]

Lavi emphasized that he was not at all apprehensive of speculation in urban or agricultural land if the sale of land to private owners were permitted:

> We must determine here that there is no danger of speculation with agricultural land in Israel for the simple reason that capitalists are not at all eager to buy these lands. And if they were once eager to buy land suitable for citrus groves, that period is over... And there's nothing wrong with the transfer of some urban land to private hands, to build businesses, accommodation, or factories. The laws of the State will prevent the possibility of speculation, and meanwhile Jewish capital will come into the country and we shall turn it from Jewish capital in America or some other country to Jewish capital in the State of Israel.[36]

35 Ibid., p. 306. All the quotations are from there.
36 Ibid.



Shlomo Lavi, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

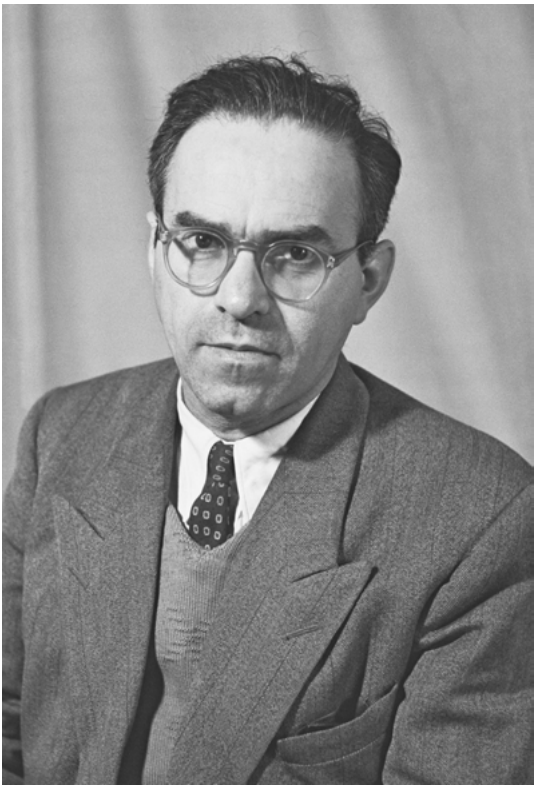
Akiva Globman, of Mapai, expressed a viewpoint similar to Kaplan's, but did not consider that the requirement of the "sales clause" that the government decide on each individual case was adequate:

> This is a very serious restriction, but I admit that I am not satisfied with it. I demand another restriction, with regard to land for agricultural settlement: that the sale of this land be beyond the competence of the government. This land should not be sold in perpetuity. This is not the case with regard to urban building land. In this case I am satisfied with the government's decision in each particular case.[37]

It may be added that Peretz Naftali, of Mapai, demanded that the Knesset supervise sales, since "governments may change, and it is impossible to forecast what

37 Ibid., p. 299.

use other governments may make in the future of the broad freedom of action which the proposed law grants them."[38]



Zerah Warhaftig, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

Zerah Warhaftig, of the United Religious Front, also supported the distinction between urban land, whose sale for housing and industry he agreed to allow, and agricultural land, whose sale should, in his view, be forbidden. In the first instance he based this distinction on the Law of Moses, which directs that agricultural land be returned to its owner at the Jubilee, whereas sales of urban land are final (*halutot*), and the land is not returned to its owner at the Jubilee. He suggested following the practice of the JNF, and claimed that

> We also have recent experience, the experience of the JNF, which does not sell, but leases for long terms, and I think that this method will satisfy private enterprise; for, as far as

38 Ibid., p. 308.

> they are concerned, what is the difference between permanent ownership and long-term leasehold? It is a matter of education and custom.[39]

The parties with a liberal-capitalist orientation – the General Zionists and Herut – barely discussed the "sales clause," since it did not contradict their socio-economic outlook on the question of the right to private property. Their principal demand, apart from parliamentary controversy and gratuitous attacks on the government, was to make the Development Authority and its activities, including permission to sell land, subject to the Knesset.[40]

The Finance Minister summed up the debate in the Knesset plenum before the proposed law was passed on to the Economic Affairs Committee. Although he did not discuss changes in the text of the "sales clause" (perhaps because he thought that in any case this would be done in the committee) he declared before the Knesset that the government had no intention of selling agricultural land to private individuals, but only to the JNF and public institutions, including the local authorities (in response to cries of "It is not written in the law," he said: "You can decide whether to believe it or not"). On the other hand, as far as urban land was concerned, he found it necessary to speak at length in order to persuade the Knesset to permit its unlimited sale to private owners. His arguments were similar to those he had used in the government. He promised that steps would be taken to prevent speculation in land sold to private individuals, and summed up by saying: "We must resist any action in which we see danger, whether of speculation or of anything else. We must support any constructive action..."[41] It appears that the debate in the plenum of the Knesset served to strengthen Kaplan's views, which had already been presented to the government, even though they were opposed to those of Ben-Gurion.

The discussion of the proposed law in the Knesset Economic Affairs Committee and the crystallization of the final version of the "sales clause"

The debate on the Development Authority Law, preparatory to its second and third readings, took place in the Knesset Economic Affairs Committee under the chairmanship of Abba Hushi of Mapai. The discussion lasted for seven months.

39 Ibid., p. 303.
40 Ibid., pp. 299–308.
41 Ibid., p. 309.

In mid-July 1950 it was concluded, and the final version of the law was presented to the Knesset plenum for its second and third readings. It is not clear why the law was discussed in the Economic Affairs Committee rather than in the Finance Committee; in any case, virtually none of the Knesset members who had expressed clear opinions on either side of the debate on the "sales clause" were members of the committee. The committee did, however, accede to Zisling's request to take part in its deliberations and to express his opposition to the "sales clause."[42]

Abba Hushi, 1956.
Photo: Fritz Cohen.
Source: National Photo Collection

In the first session of the Economic Affairs Committee, in January 1950, the issue of the sale of land by the Development Authority was raised, when Yeshayahu

42 SIA, minutes of the Knesset Economic Affairs Committee meeting, 24.1.1950.

Forder, MK, of the Progressive Party, demanded an undertaking that "agricultural land would not be sold." As an example he mentioned Kfar Shmaryahu, "whose environs are developing, and land belonging to the village itself is being sold."[43] But a serious discussion of the issue in the committee took place only in mid-February 1950, when Hushi proposed that a distinction be made in the "sales clause" between agricultural land, whose sale would be permitted only to the JNF, to the local authorities or to a recognized institution for settling landless Arabs, and urban land, which could be sold to anybody, provided that each sale be authorized by the government. However, areas which the Prime Minister had designated as intended for immigrants' and low-cost housing would be treated in the same way as agricultural land.[44] It is quite clear that Hushi's initiative in making this suggestion (which now represented the policy of Mapai) was coordinated with the Finance Minister; it will be recalled that this was his basic attitude. In the debate in the plenum, too, most of the speakers tended to accept the distinction between urban and agricultural land.

Hushi again emphasized the main reason for the authorization of the sale of urban land – the State's urgent need of capital and of entrepreneurs' investment in development, rather than relaxation of the principle that State land should stay in the State's hands; what is more, the area of land that would be sold was minimal, and in any case it was hard to avoid speculation in urban land, even that belonging to the JNF. His principal arguments were:

> What led us to make this proposal? Simply, that we need money, and primarily foreign currency. I do not need to explain to you what we need this money for. The members of the Finance Committee doubtless know how much money we need for various purposes such as defence, immigration, development, building up the desert and employment. Anybody who says A must also say B: in other words, if anybody argues in favor of unlimited immigration – and we all want that – he must also ensure that the immigrants be absorbed and given work. We also need money now to pay compensation to the Arabs. I don't know how much we shall have to pay, but we shall undoubtedly have to pay, and where will the government get the money from? At this moment it has no other means but the sale of this land. By my reckoning only 0.1% of government-owned land will be sold. We must obtain this money, and at the moment we have no funds or sources from which we can get the sums we need. Since we need this money, and we have no alternative but to get it in this way, we must take into account not only what we want; we must know what private capital is seeking in Israel, and what it demands... I, too, meet capitalists. I have met one of the richest Jewish capitalists... who has invested three quarters of a million dollars in

43 Ibid., 4.1.1950, p. 8.

44 Ibid., 14.2.1950, pp. 2, 11. On the recommendation of the government's legal adviser, the State was added to the bodies to which the Development Authority could sell agricultural land. On this, see the above minutes, p. 20.

> the country. [He] is one of the richest Jews in the world. When I spoke to him I tried to convince him to build his factory on JNF land. He believes in the development of Israel, although he declares that he is not a Zionist, and he told me explicitly that he would not build on JNF land, but only on land which he himself owns. And a young man from America who was once a student at the Technion and a member of Mapam and the Histadrut came here to build a factory for manufacturing tools – a very important project for the country. When I tried to persuade him to build on JNF land, he replied, "Business is business," and said explicitly that he would only build on land which belonged to him. Every investor makes his own calculations and has his own interests. It may be that the government will be able to lease out land on favorable terms, and many owners of capital will agree to build their factories on leasehold land, but we must provide opportunities for those capitalists who want privately-owned land. Incidentally, as an inhabitant of Haifa I know how much people speculated with JNF land in various streets in the center of Haifa. Ownership of land by an official body does not obviate speculation by various elements. The small additional proportion which private landowners will acquire (0.1%, by my estimate) cannot influence the picture as a whole. I may point out that even in the Soviet Union there is a small proportion of land which is not owned by the government. This applies also to Czechoslovakia, Poland, and the other people's democracies.
>
> If we want to absorb Jews, to pay the cost of expenditure on defence, etc., we have no alternative but to mortgage the property which we own, and in return to acquire the money we need. I believe that the majority of the Knesset will be prepared to mortgage 0.1% of this property in order to acquire the money we need.[45]

Most of the members of the committee agreed with Hushi's approach and believed that the authorization of the sale of urban land – whose area would in any case be very small – was an unblameworthy necessity which did not infringe the principle of the State's permanent ownership of its lands. Shraga Goren, of Mapai, for instance, emphasized the point: "The question of the sale of such a proportion to private owners does not infringe the fundamental principle of the nationalization of land. On the contrary, all the statistics of which we have been told prove that there is no danger if a certain proportion is sold to private landowners." Haim Landau, of Herut, also considered that, considering the State's need of capital, particularly for the defence budget, the sale of urban land should be permitted. He added that the sale of urban land would undoubtedly lead to the development of suburban residential areas, and this would be to the benefit of the poor, while rents and building costs within the towns would be reduced.[46] On the other hand, Shlomo Lavi of Mapai repeated the view he had expressed in the plenum, that because of the need to attract Jewish capital to the country there should be no restrictions on the sale of land to private landowners. However, means

45 Abba Hushi's speech, and below those of Goren and Landau, ibid., pp. 12–13, 17, 19.
46 Ibid., 27.2.1950, p. 17.

should be created for ensuring that the individual would not sell his land at speculative prices:

> On the one hand, we must enable those Jews who want to buy private land to do so; but, on the other hand, the terms of their lease must prevent them from speculating in the land, if they want to sell it. Transfer of land from one owner to another must also be controlled. It [the State] can levy high taxes in cases of transfer of land, in order to avoid speculation.[47]

Zisling explained at length the reasons for his total opposition to any sale, and to any surrender by the State of the tremendous advantage which, in his opinion, was afforded by the fact that most of the land of the State was now in its hands. In contrast to his speech in the plenum, he now expanded his explanations, and added statistical data and new reasoning which he had been unable to present to the plenum. First, he maintained that the State's control of its land would enable those lands that were under extensive cultivation to be put under intensive cultivation, which would increase the absorptive capacity of both Jewish and Arab villages. Second, only permanent State ownership could prevent the price of land from rising, and this would prevent a general escalation of prices in the economy. Further, if land were sold to private landowners prices would go up, and the reparations to the Arabs for their lands in the framework of the general settlement would be high. Third, the sale of land would lead to individual affluence, "and I am not at all interested in making individuals affluent." Fourth, only State ownership would enable the State to carry out overall planning of its lands, and private ownership would prevent this.

Zisling did not believe that the sale of urban land would prevent the creation of large densely populated towns. It might be that it would have the opposite effect:

> And I am first of all interested in dispersing the population, rather than concentrating it in one place... The interests of the landowners are opposed to the interests of the State. They are interested in concentrating people [on their lands], whereas the State should be interested in dispersing them... This is necessary for reasons of security, and for the economic development of the country.

Despite the Finance Minister's declaration and the belief of most of the committee that the law should not permit the sale of agricultural land, Zisling did not believe that sales would end at the town borders, since

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47 Quotation from Lavi, and below from Zisling and Aram, ibid., 14.2.1950, p. 2–9, 10, 27.

> the very fact that urban land will be sold also constitutes a loophole with respect to agricultural land, for it means that land in the Ein Harod block will be sold, it means that land close to Beit She'an will be sold, it means that land in the Negev will also be sold – land can be sold anywhere where somebody wants to build a town, and I don't know what this development may lead to.

In addition to all these arguments, Zisling disagreed with the assumption that capitalists from abroad are prepared to invest only in projects built on privately-owned land: "I have investigated this matter in the Department of Industry, and was told that private individuals were prepared to build on nationally-owned urban land provided that they were given a long-term lease." Moshe Aram, a member of Zisling's party, added, with reference to the high compensation which the State would have to pay to the Arabs as a result of the high value of land if it were sold to individual landowners: "And I am sure that if the Arabs even go to the High Court in the Hague and prove that we are selling land at high prices, we shall not succeed in paying as low a sum as we hope. Prohibiting the sale of land will nullify this possibility and close this loophole for the Arabs." Apart from this, Aram believed that "the capitalist would rather lease land than buy it."

At this point, when the majority of the committee was prepared to accept Hushi's compromise, the question of the definition of urban and agricultural land was raised. The issue of agricultural land was less difficult, since it was proposed to define it as land which is not urban. Three definitions of urban land were proposed: the territory of existing municipalities; urban building land; and areas on which municipal property tax was levied. Each proposal, of course, referred to a different area, and to a different amount of land. The smallest amount was that defined as municipal property; and the amount of land on which municipal property tax was levied was greater than that of urban building land. Another issue which arose was the procedure to be followed in the case of agricultural land allocated for the future construction of new towns. Considering these dilemmas, Zisling and Zvi Yehuda of Mapai asked the government to lay before the Knesset accurate maps defining the "urban areas" to which the "sales clause" would apply.[48]

Apparently, the majority of the committee did not think that maps would solve the problem, since they saw no possibility of foreseeing needs that would arise in the distant future. Accordingly, the legal counsel of the Ministry of the Interior was asked to suggest a number of alternative definitions of "urban land." But these definitions were also problematic: the legal definitions were

48 For a detailed account, see ibid., 27.2.1950, p. 18 f., and 8.5.1950, pp. 3, 5–6.

complicated; they were based on British regulations ("We must avoid, as far as possible, relying on Mandatory regulations")[49]; and, especially, "the government is free to declare that any area is of the type which will be defined as saleable, and, therefore, can enlarge this network until it covers the whole of the country." Zisling made this claim, and the committee members could not but agree with it. But since all the committee members agreed that in any case a restrictive definition of sales of urban land should also be found, Hushi proposed the simple definition: "Land situated within an urban building zone as defined by the planning department of the Prime Minister's Office," and to restrict the sale of such land to 0.5% of all the land in the State (about 20 million dunam) – i.e., 100,000 dunam indicated on the map (or without the map, if the Finance Minister asked to dispense with it – as he eventually did). This proposal was accepted by the majority of the committee.[50]

In the course of the discussion on the definition of urban land and the limits on its sale, MK Yeshayahu Forder suggested that the government and the Development Authority be required to grant priority (for a limited period) to the JNF in the matter of sales of urban land by the Development Authority. In effect, this proposal was intended to enhance the possibility that the urban land which would be sold might continue to be the permanent property of the nation, with all the advantages of this arrangement. Forder said: "I do not see why we have to give up in advance the possibility of increasing the property of the nation in this sphere. Moreover, we must consider that the government may be interested in selling more extensive areas than has been decided here, and in that case this regulation will be even more important."[51] Zisling added that "True, the intention is to get money, but if the JNF is prepared to buy the land and thereby to increase the property of the nation, it would be strange if we were not interested in this arrangement." And the proposal was accepted by four votes to three. It should be emphasized that its opponents, who included Hushi, opposed the proposal on the grounds that imposing this extra restriction on the sale of urban land would nullify the objective of the sale of land almost completely; it would be harder to sell land and obtain the necessary capital,[52] and "the way in which the JNF uses the land or the buildings on it will not always be of more benefit to the State than that contributed by some Jew who is interested in the same

49 Ibid., 8.5.1950, p. 7. The quotation is from Hushi's speech.

50 Ibid., pp. 1–11. At a later date the planning section was incorporated in the Ministry of the Interior.

51 Speeches by Forder, Zisling and Aram below, ibid., pp. 12–15.

52 Ibid., p. 14.

property." Aram supported priority to the JNF in town, but was concerned that it might impair the plan to settle the Arab refugees.

Shortly before the end of the discussion on the "sales clause" Zisling, whose detailed suggestions as well as his fundamental beliefs were almost all rejected by the committee, finally succeeded in persuading all of the committee to impose another restriction on sales. He suggested that institutions (the government, local authorities, the JNF and the institution for resettling the Arabs) to which the Development Authority was permitted to sell agricultural and urban land allocated for immigrants' housing, housing for the poor or development, should be forbidden to sell the land they had bought from the Development Authority. This, he claimed, would prevent the government, for instance, from circumventing the law by buying agricultural land from the Development Authority and selling it to private landowners.

At the beginning of May 1950 the Economic Affairs Committee completed its discussions on the Development Authority Law, in preparation for its second and third reading. As has been pointed out, a considerable proportion of the discussion had been devoted to the "sales clause." Now, this Clause (3[4]), which in the original version proposed by the government gave unlimited permission to sell agricultural and urban land subject to the government's authorization, was reformulated. The committee's proposal now read:

> The Development Authority may sell property, transfer it by another method, lease or let it and mortgage it. However: (a) The Development Authority is not authorized to sell land available to the public ["land available to the public" means land which is not urban (i.e., land which is situated within the building zone of a town) and urban land which the government has declared, for the purpose of this law, that it is a tract of land intended for immigrants' housing, housing for the poor or allocated for development] or to transfer ownership of it in any other way, except to the State, to the JNF, to a body authorized by the government, for the purpose of this clause, to resettle landless Arabs, or to a local authority; the ownership of land which is purchased in this way is not transferable. (b) The Development Authority may not sell land which is not available to the public [i.e., urban land] if it has not first been offered to the JNF and the JNF has not agreed to buy it during the period fixed by the Development Authority. (c) The total area of land which is not land available to the public [i.e., urban land] which the Development Authority may sell or transfer its ownership in some other way shall be no more that 100,000 dunam. (d) Any sale of land, whether land available to the public or any other land, or transfer of ownership in any other way, shall be authorized by the government in each individual case.[53]

53 Katz 2002, Appendices 2-3, pp. 115–118. And see SIA, minutes of the Knesset Economic Affairs Committee meeting, 10.7.1950, pp. 7–9.

However, the government was not at all satisfied with the committee's amendments to the law, and, in particular, to the "sales clause." But it appreciated that any revision of the committee's amendments had to be very limited and essential for the government, and likely to be acceptable to the committee. Concerning the "sales clause," in July 1950 the government asked the committee to reconsider two amendments. One concerned the priority afforded to the JNF in the sale of urban land. The Finance Minister said: "I think that this is a mistake. It is not convenient to debate it in the Knesset, which will lead to the mistake's becoming graver... Unfortunately, in most cases the JNF will be unable to do this. I think that this proposal is a mistake in relation to both Jews and Arabs."[54] In other words, it appears that the main cause of the minister's dissatisfaction was the delay of urban sales if the JNF (which, in his view, would in any case be unable to make the purchase) were given priority, and the impairment of the government's prime intention to acquire large sums in a short time (which was the rationale of the "sales clause") that this would cause; or, alternatively, the need to reach a compromise with the JNF at a lower price. Kaplan was also concerned about the possibility of discrimination against Arabs in an urban zone in which permission to sell had been granted in principle.

The other amendment concerned the prohibition on the sale of land which the committee proposed to impose on bodies which were permitted to buy "land available to the public" from the Development Authority. "That is to say, the JNF cannot transfer land to the Tel Aviv municipality, and the Tel Aviv municipality cannot transfer land to the JNF. This is impossible and illogical. Therefore, we suggest the following amendment: The ownership of land which has been bought can only be transferred to one of the bodies mentioned above."[55] The committee accepted this amendment, and the additional clause in the final version of the law which has been quoted above (Clause 3[4][a]) read: "Ownership of land which has been acquired in this way may only be transferred with the agreement of the Development Authority to one of the bodies mentioned in this subordinate clause."[56] It seems that in reply to the government's request relating to the amendment establishing the JNF's priority, the committee (some of whose members were in any case not wholly in agreement with the grant of this right to the JNF) added to Clause 3(4)(c) a sentence

54 SIA, ibid., p. 7; the quotation is from there. And see ibid., minutes of government sessions, 17.5.1950, p. 69.

55 Above, note 53, SIA, p. 9.

56 Katz 2002, Appendix 3, pp. 117–118.

entailing that private landowners could always buy land to a maximum of 100,000 dunam. This was the final version of Clause (c): "The total area of land which is not available to the public [i.e., urban land] which the Development Authority may sell or transfer its ownership in any other way shall be no more than 100,000 dunam; but, as far as this clause is concerned, land acquired by one of the bodies mentioned in sub-clause (a) shall not be taken into account [In other words, as has been said, private landowners could always acquire land up to a maximum of 100,000 dunam]."[57]

Approval of the Development Authority Law at its second and third reading

The Development Authority Law was finally approved by the Knesset at its second and third reading on July 31, 1950 – more than a year and a half after the government had discussed the proposed law. The reason for the long period that elapsed until its final approval was not the complexity of its legal clauses: it was the result of differences of opinion, dilemmas, divided views also within the party factions, and the government's dissatisfaction with the amendments suggested by the Economic Affairs Committee. However, the phrasing of the "sales clause" and of other parts of the law which were approved in the second and third reading accorded with the version produced by the Economic Affairs Committee. But on this occasion, too, the second and third readings were not accomplished without a trenchant debate on the "sales clause."

In this debate, in which many of the arguments had already been put forward elsewhere, three definite and clearly formulated points of view on the question of the sale of State lands were put forward. One was Zisling's, who was opposed in principle to any authorization of the sale of land, since any such authorization would seriously violate the ideal of nationally-owned land, which was one of the basic principles of Zionism, as expressed in the work of the JNF. The majority of the Economic Affairs Committee held a view diametrically opposed to Zisling's. It defined his opinion as a misleading distortion, and claimed that it was the limitations included by the committee in the "sales clause" which applied the JNF concept to all the land controlled by the State. Aryeh Bahir of Mapai summed up for the committee[58]:

57 Above, note 53.

58 The words of Zisling, Bahir and Landau below – Knesset Protocols, 6a, 31.7.1950, pp. 2372, 2373–2374, 2378.

> In Clause 4, which deals with the sale of property, the law limits the sale of property in four paragraphs... The law authorizes the Finance Minister or the Development Authority, or, more accurately, the government as a whole, to sell no more than 100,000 dunam to private individuals for businesses, factories, housing projects which Jews from abroad may wish to build, or for other purposes. This land may only be sold if the whole of the government gives its approval. These 100,000 dunam form part of a total of 18 million dunam held by the State, if I am not mistaken... and that is only urban land... But this is not enough. We determined in the law that the Development Authority will only be authorized to sell land which is not available to the public [urban land] if it is offered first to the JNF and the JNF does not agree to buy it within a period fixed by the Development Authority. In other words, we afford the JNF in advance the right to acquire any land which the government offers for sale... Although we are not proposing a law for the nationalization of land, in effect the major portion of Israeli land will be in public hands, the hands of the government. Practically, though not in so many words, one of the great ideals of the Zionist movement and the Labor Zionist movement will be realized: most of the country's land will be held by the nation, and will be in the hands of the authorized territorial authority.

The third viewpoint was presented by Landau of Herut, in the name of economic liberalism and the rights of private property. He maintained that neither the extent nor the type of the sale of land should be limited other than by the need for the government and the agreement in advance of the Economic Affairs Committee.

The version of the "sales clause" proposed by the committee was ratified, and the reservations of left and right rejected.

Chapter 5
The Legislative Process of the State Property Law, 1951

The purpose of the law, and the debate on the first reading of the proposed law in the Knesset plenum

The second law in which the heritage of the JNF relating to the principle of the prohibition of the sale of land was expressed was the State Property Law, 1951. A draft of the proposed law was submitted to the government on the initiative of the Ministry of Justice at the end of August 1950, only a month after the final approval of the Development Authority Law. The prime object of the law was to clarify the State's right to ownership of two types of property found within its borders: the property of the Mandatory government of Palestine, and property that had no owner. Clearly, land was the chief component of this "property." On the establishment of the State this amounted to about 13.6 million dunam, of them 12.6 million in the Negev. It should be emphasized that the law did not apply to property which had been allocated to various custodians: to the property of absent owners, to that controlled by the Custodian of Enemy Property, or to property previously belonging to Germans; and in any case it did not apply directly to most of the property with which the Development Authority was supposed to deal. In addition, the law was meant to reaffirm the State's right to water supplies, and prescribed who was authorized to trade in the property of the State. One of the matters with which the draft law dealt was the possibility of the sale of State property. This was, therefore, the second law that was drafted at the initiative of the government one of whose clauses dealt with the sale of government-owned land.[1] Clause 4(a), the "sales cause" of this draft, stated: "The government is authorized, in the name of the State, to sell property belonging to the State – both that referred to in Clause 1, 2, or 3 [i.e., all the property with which the law is concerned] and any other State property – to transfer it in another manner, to rent it, to lease it out, to exchange it, to mortgage it, to permit it to be used or exploited and to grant other rights over it on any condition that the government considers suitable."[2] Thus, the draft law

1 Knesset Protocols, 7a, 7.11.1950, pp. 188–197; Katz 2002, Appendix 4, pp. 119–120; KA, minutes of sub-committee of the Finance Committee for matters pertaining to the State Property Law, 27.12.1950.

2 Katz 2002, Appendix 4, pp. 119–120.

gave the government unrestricted power to sell State lands, in words almost completely identical with those of the Development Authority Law which the government had previously proposed. Moreover, unlike the proposed Development Authority Law, in which the government's sales were eventually made conditional on the approval of each individual sale, in the draft of the State Property Law the State did not need even such authorization for the execution of the sales. Strange though it may seem, it appears that even though, as will be recalled, the government had devoted a wide-ranging discussion to the draft of the proposed Development Authority Law, with special emphasis on the "sales clause," no such discussion on the draft of the State Property Law took place in the government. The proposal was laid before the Knesset, and given its first reading at the beginning of November 1950.[3]

The debate in the Knesset plenum was much shorter than that in the same forum on the Development Authority Law, but the issue of unlimited authorization to sell State lands, as was written in the proposed State Property Law, attracted much attention. Knesset members raised the unavoidable question of the contradiction between the "sales clause" – Clause 4(a) in the proposed State Property Law[4] – and the many restrictions which the Knesset had imposed on the sale of land by the Development Authority (in effect – by the State) in Clause 3(4) of the Development Authority Law. We may emphasize that it is very strange that the government plenum did not point out this contradiction.

Zerah Warhaftig, of the United Religious Front, who was the first speaker after the Minister of Justice had presented the law, emphasized this contradiction. He said:

> We have to take into account that this [law] concerns not only property which belongs to the government, but also absentees' property, since in the Development Authority Law it was agreed that these lands may be sold to the State at any time... Hence, Clause 4, and the wide-ranging possibilities of selling this property which it grants, is important to us... I dissent from the complete authorization which it gives the government to sell this property, or to transfer it in another way... I do not know why we have to be more generous in this law than we were in the case of the Development Authority Law. We added various limitations to the Development Authority Law, depending on the type of land, and only allowed the government to sell urban land; but we did not authorize the government to sell what we called "land available to the public." We added another limitation to the

3 SIA, minutes of government sessions, 24.9.1950, pp. 1, 43. It also appears that in the Ministry of Justice's original draft it was suggested to make sales of land conditional on the authorization of the Finance Committee. See above, note 1, KA.

4 Katz 2002, Appendix 4, pp. 119–120.

> Development Authority Law, with reference to the amount of urban land which could be sold: we said that the government could sell only 100,000 dunam... It seems to me that the lack of such a limitation is liable to abrogate the Development Authority Law; for if this law permits any land to be sold to the government without limit, and the government can sell it without limit, we are indirectly revoking all the limitations on the sale of land in the Development Authority Law.[5]

Aryeh Bahir of Mapai and his fellow party member Shmuel Dayan were also unable to agree to the authorization of unlimited sale of State property, and expressed surprise at the draft law's position on this issue. Bahir repeated Warhaftig's speech almost word for word, and said:

> Therefore I agree with the remarks of MK Warhaftig in relation to Clause 4 of this law. There is no doubt that this suggestion conflicts with the spirit of the law relating to the Development Authority and its land which has been ratified by the Knesset. In my view, this clause must be adapted to the principles on which similar clauses in that law were based.

Joseph Sapir of the General Zionists also opposed the authorization of unlimited sales. It will be recalled that his party supported the authorization of land sales by the Development Authority Law, but demanded that each sale should be approved by the government and the Knesset. Eri Jabotinsky of Herut, who was also amazed at this contradiction, adopted a sarcastic tone to explain it: "The reason is that the government's economic policy has changed. Recently, laws were adopted at a time when the government supported 'socialism in our time.' Today, the government apparently no longer believes in this slogan. It may be that this is for the sake of propaganda in foreign countries." He added, sarcastically, "By the way, I want to point out that I am surprised that the Mapam faction did not attack this clause. It would have been excellent material for them. Apparently they are preoccupied at the moment with preparations for the elections."[6]

In his reply to the debate in the plenum the Minister of Justice admitted that in the Knesset committee which was to prepare the law for its second and third reading it would be necessary to adjust the "sales clause" in the State Property Law to accord with the relevant clause in the Development Authority Law. He placated the Knesset members by saying that, according to the Development Authority Law, the State could not sell agricultural lands bought from the

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5 Above, note 1, Knesset Protocols, pp. 192–193.

6 Ibid., pp. 194–196. All the quotations are from there.

Development Authority to private purchasers, but could only resell them to the Development Authority, the JNF, the local authorities, or an institution for the resettlement of Arabs.[7] Eventually, the Minister of Justice's proposal to assign the law to the Finance Committee was accepted.

The discussion of the proposed law in the Finance Committee and the framing of the final version of the "sales clause"

The discussion on the State Property Law in the Finance Committee, which took from mid-December 1950 until the end of January 1951, was much shorter than that on the Development Authority Law, which lasted for many months. At the end of January 1951 it was given its second and third readings.

At the beginning of the discussions the speakers also spoke of the contradiction between the "sales clause" in the proposed State Property Law and that in the Development Authority Law, and demanded that the principles which had been adopted in the Development Authority Law be applied to the proposed law.[8] Berl Repetur of Mapam expressed complete opposition to any sale, for the same reasons as his colleagues had already advanced in the Knesset debates on the Development Authority Law. Repetur concluded his remarks with the words: "All the territory of the State is dedicated to the people and the State, and is not for sale." Others, among them David Zvi Pinkas of the United Religious Front, the chairman of the committee, who supported the proposal to permit sales to private individuals, "for the benefit of the development of the State," but without infringing the Development Authority Law, demanded that the Knesset should supervise the sales.

The Finance Minister replied to the discussion in the first session of the committee, and said that he was "prepared to insert here [in the State Property Law] the same limitations of sales as in the Development Authority Law." "We have no desire," he added, "to sell agricultural land. I am prepared for an amendment to be added, but we must safeguard the possibility of selling urban land and [agricultural] land on which factories are to be built... I repeat: We are not

7 Ibid., p. 196.

8 KA, minutes of the Finance Committee meeting, 18.12.1950, pp. 4–6.

David Zvi Pinkas.
Source: Knesset Website

prepared to sell agricultural land unless factories are to be built there. As far as the town is concerned, I agree to the same limitations as in the Development Authority Law." Thus, the Finance Minister agreed to the principle of including in the State Property Law the limitations on sales laid down in the Development Authority Law, on condition that it would be permitted to sell agricultural land to private individuals if it were required in order to build industrial enterprises on it.[9] Later on, the Minister explained that there often arose the need to build industrial enterprises in regions distant from urban areas, and investors demanded absolute ownership of the land; in such a case he requested that the sale of agricultural land to private individuals be permitted.[10] It will be recalled that the Development Authority Law did not permit the sale of agricultural land to private individuals under any circumstances. At any rate, the Finance

9 Ibid., pp. 6–7.
10 Knesset Protocols, 8, 5.2.1951, pp. 975–976.

Committee decided to set up a sub-committee to continue the discussion on the framing of the law.[11]

The sub-committee only held one discussion, at the end of December 1950. It took note of the words of the Finance Minister in the first meeting of the Finance Committee on this subject, and also of another commitment by the Finance Minister, who had said in the Knesset that as soon as the total area of urban land sold to private individuals in the framework of the Development Authority Law and the State Property Law reached 100,000 dunam, he would make an announcement about this in the Knesset, so that it could reconsider the question of the sale of urban land and reach the appropriate decisions.[12] In the light of all these considerations, and also of the need for small areas of agricultural land on which to build industrial enterprises, of the committee members' appreciation of the State's need for financial resources which could be raised by selling urban land, of the very small area of urban State land at that time, and of the opinion of the legal counsel to the Ministry of the Interior that it was impossible to impose quantitative restrictions on the sale of urban land (as had been done in the case of the Development Authority Law), since "it is impossible to forecast what the assets of the State will be"[13] – for all these reasons Pinkas, the chairman of the committee, recommended the acceptance of a decision in principle that no limitations should be imposed on the sale of urban land, but that the sale of agricultural land should be limited, and that the permission of the Knesset be required for any sale of more than a hundred dunam of agricultural land to a private individual. The sub-committee accepted a decision in the spirit of this proposal, and assigned the continuation of the discussion on the details of the restrictions on the sale of agricultural land to the plenum of the Finance Committee. It may be added that the decision not to limit the sale of plots of agricultural land whose area was less than a hundred dunam was based on the argument that plots as small as this were not sold for agricultural purposes, which would raise suspicions of speculation in the agricultural sector, but in order to build factories, industrial plants, and the like. In other words, such sales would not infringe the principle that agricultural land should not be sold to private individuals, since, as the Finance Minister maintained in the plenum, the areas were required for non-agricultural development, and investors and entrepreneurs demanded full ownership of the land on which they were making their investment.[14]

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11 Above, note 8, p. 7.

12 Ibid., 6.2.1951, pp. 8–9.

13 Above, note 8, all the minutes; ibid., 8.1.1951 and 15.1.1951; above, note 1, KA.

14 Above, note 8, 8.1.1951 and 15.1.1951.

The principles which were approved by the sub-committee were the basis for the continuation of the discussion in the Finance Committee, which was now centered on the limitations to be imposed on the sale of agricultural land to private individuals, and the adaptation of the possibilities of the sale of agricultural land in general in the framework of the State Property Law to the possibilities of the sale of agricultural land based on the Development Authority Law.

Most of the members of the committee (but not all – for instance, Repetur) were convinced both by Kaplan's explanations and by the explanations of the committee chairman, Pinkas, that the sale of small agricultural plots to private individuals for non-agricultural development should be permitted. Why did the committee members think that in this matter they should deviate from the ruling of the Development Authority Law (which, as will be recalled, forbade the sale of agricultural land to private individuals)? The minutes provide little evidence, but it seems from them that they appreciated the need for non-agricultural development, and saw no real irregularity in the sale of small plots of agricultural land to private individuals. It may also be that they were more sensitive to the needs of non-agricultural development, even at the expense of agricultural land, than the members of the Economic Affairs Committee, and that this explains why they were prepared to permit unlimited sale of urban land. Possibly, too, the committee members were under pressure from the Treasury to relax the inflexible prohibition on the sale of agricultural land to private individuals a little by means of the State Property Law. This prohibition was ordained in the Development Authority Law, and did not permit entrepreneurs who wanted to invest in extra-urban projects to be granted the right to own the land; so it prevented the implementation of such investments. At any rate, Pinkas suggested the restriction of the sale of agricultural land, so that it would be used for non-agricultural development only, that the sale of areas of land greater than a hundred dunam be conditional on the consent of the Finance Committee, and that the sale of areas greater than a thousand dunam be conditional on the consent of the Knesset plenum. The sale of plots whose area was less than a hundred dunam to private individuals would not require approval of any sort; and in any event – as was laid down in the Development Authority Law – any amount of agricultural land could be sold to the Development Authority, the local authorities, or the JNF without authorization.[15]

As a result of the adoption of the principles and decisions of the sub-committee and of Pinkas's recommendations, the text of Clause 5 in the State Property

15 Ibid., 15.1.1951; Katz 2002, Appendix 5, pp. 121–122.

Law (parts of which deal with the sale of land) was submitted for its second and third reading. It read as follows:

> (a) In accordance with sub-sections (b) and (c) [below], the government is authorized to sell property belonging to the State in the name of the State...
>
> (b) (1) The government shall not be authorized to sell or transfer in any other way in the name of the State the right of ownership of any land which is the property of the State of Israel other than urban land – [i] and whose area is not greater than one hundred dunam, except for the alignment of borders or the complementation of holdings, for non-agricultural development or other similar purposes; (ii) and whose area is greater than one hundred dunam but not greater than one thousand dunam, except for non-agricultural development, with the consent of the Knesset Finance Committee; (iii) and whose area is greater than one thousand dunam, except for non-agricultural development, with the consent of the Knesset... (3) Regardless of what is said in this sub-section, the government shall be authorized, in the name of the State, (i) to sell any property mentioned in this sub-section or to transfer the right to its ownership in any other way, for any purpose, (ii) ...to the Jewish National Fund, to the Development Authority, or to a local authority...[16]

The endorsement of the State Property Law at its second and third reading in the Knesset plenum

The version of the amended "sales clause" in the State Property Law proposal detailed above met with two main objections in the Knesset plenum. One was put forward by Moshe Sneh, of Mapam, and the other by Shmuel Dayan of Mapai. Both of them were opposed in principle to the sale of land to private individuals, and used the model of the JNF, which was, they contended, a guiding light of Zionist land policy until the establishment of the State. They both employed arguments similar to those adduced on this issue in the legislative process of the Development Authority Law. Moshe Sneh said:

> The basic defect of this law is that it is not being proposed as the result of a revival of interest in the State's ownership of its assets, but in order to give the government authority to sell those assets, or transfer them in some other way to another authority. This is not a law which adds to the assets owned by the State. It is a law which grants authority for a clearance sale of the assets of the State. Even in the clause which has been hallowed in the tradition of the Zionist movement and the tradition of the development of the country for fifty years – public ownership of land – even in this clause the proposed law creates a serious omission. If the State had a constitution – which it should have – ownership of land, whether urban or rural, whether a plot of a hundred dunam or a wider area, would

16 Katz 2002, Appendix 5, pp. 121–123.

> have to be the guaranteed possession of the people, of the whole of society, forever. In that case the majority would not be empowered to make a change. But we were not given the possibility of proposing this basic law, on which the Zionist movement based the Jewish National Fund. We were not allowed to discuss a constitution, and even the basic laws which were promised instead of a constitution have not materialized, and it is very unlikely that they will do so. And now the proposed law infringes this principle, which is hallowed from the national point of view, which is rooted in the ancient heritage of our people and the history of the Zionist project, and which is socially necessary if the State is to be a progressive nation, and not a regressive one. I protest against the fact that the government and the majority of the committee took it on themselves to undermine and destroy the principle of the people's ownership of the land, and to open the way for speculation, rents, trading in land and its transfer between owners. We have the right to hope that in the transition from a movement of national liberation to an independent state our society may also advance and, at least, not retreat. I want to add that the limitation included in the proposed law, that the government has the right to sell plots of land with an area of less than a hundred dunam, changes nothing; for the government will be able to sell many hundred-dunam plots, and thereby to sell and transfer from national ownership to private ownership unlimited areas of land. This law is an attack on the hallowed principle of the people's ownership of the land. Instead of transferring assets from individual ownership to national ownership, it transfers national, public assets to private ownership...[17]

None the less, since Sneh realized that there would not be a majority in the Knesset for opposition to the "sales clause" in the amended draft law, he asked to oppose the committee's suggestion for the "sales clause" in one matter only: in his opinion, the government should require the Knesset's permission for each individual sale, whether of urban or agricultural land.

Dayan, one of the leaders of the moshav movement, who also opposed any sale of land to private individuals, appreciated that the current need for the mobilization of capital made it necessary to sell urban land to private individuals. But he opposed the sale of agricultural land except to the JNF, in order to preserve and strengthen workers' settlement. In his view, workers' settlements (kibbutzim and moshavim) should be not only the leading element in the occupancy of agricultural land, but the only one. He expressed the suspicion that the loophole in the State Property Law would enable the sale of agricultural land to private individuals to become more widespread. He suggested that agricultural land which was needed for the construction of factories should be declared urban land; in this way, the principle that agricultural land is not sold to private individuals would be preserved. He said, with emphasis:

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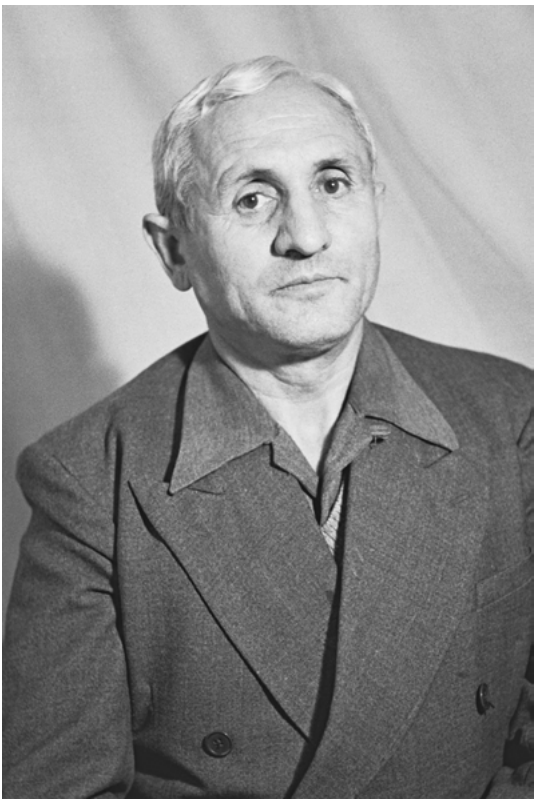
17 Dayan's and Sneh's speeches, Knesset Protocols, 8, 29.1.1951, pp. 890–891; ibid., 5.2.1951, pp. 970–971.

Moshe Sneh, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

I would very much like a constitutional law to be passed stating that the land should not be sold in perpetuity, a basic law which is never revoked or changed, and applies to the whole of the country – including urban land – and I hope we shall still achieve this. Now, however, we have not yet achieved this because the needs of the country require a great deal of capital and foreign currency, and this forces us also to sell this primary asset. I bow to this necessity today, and am prepared to allow the sale of land for various needs of the development of industry. All this is included in urban land, and various other lands may be allotted to development and declared urban areas for purposes of development. Urban land, with the addition of land meant for development, will only be a tiny proportion of the country's land. The great majority of the country's land is rural. I demand that the sale of agricultural land be forbidden, except to the JNF. Why? Because I want the land to belong to the workers. An agricultural worker should not have to acquire land for cultivation in exchange for money. He acquires it in his everyday life, hour by hour, with sweat and labor, and he defends it to the last with body and soul. Land is the principal asset of the nation, and the State is founded on it. It is land which feeds and maintains its sons. It cannot also support those who live on the labor of others, in addition to its workers. The nation should not build itself anew in its land on the foundation of classes of exploiters and exploited. This must be avoided as much as possible – and today we can do this, at this moment it is literally in our hands. Let us do this at least in the village. Three quarters of village lands are agricultural land. Private capital is

not attracted to the village. Up to now those who have settled in the village have been manual workers, without capital, and this will also be so in the future. Let us adopt a constitution stating that village land is not sold in perpetuity. The question is: What if the JNF is not yet ready to buy the land? In that case, the land will remain under the control of the State, and the State will treat it in the way the JNF does – it will lease it out for long terms to workers, subject to the conditions of self-labor, and that it be bequeathed to a son or daughter who will work the soil. The area of land allotted must be within the ability of a working family, and no more. Thus we shall not create with our own hands exploitative owners of extensive estates and, as against them, hired workers and leaseholders enslaved to the owners of the estates. In this country we have been witnesses to Arab and Jewish effendis and, on the other hand, to rural day-laborers, poverty, slavery, and class exploitation. We have been witnesses to shameful speculation in land, at a time when we were hungry for every tiny particle of land. Those people were parasites feeding on the body of the nation: It is in our power to create a new situation in which this phenomenon cannot be repeated. Through the law which I propose we shall enable the people to return to a life of agricultural labor, to a life of purity in nature, without dependence on others, creating food and assets for the people and the State.



Shmuel Dayan, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

Neither Kaplan, the Finance Minister, nor Pinkas, the chairman of the Finance Committee, accepted Sneh's and Dayan's reservations, and attempted to reassure both them and the other members of the plenum as to the true intentions of the government. They emphasized that the government, too, considered itself obligated by the principle that agricultural land should not be sold. The Finance Minister said:

> I want to say to those who are not suspicious a priori, but are interested in considering the matter objectively, that there were no fundamental differences of opinion between the majority of the committee, the representatives of the government, and MK Dayan, and we all emphasized that agricultural land should continue to be subject to the authority of the State or of the people.[18]

Kaplan and Pinkas both emphasized that agricultural land would only be sold when small areas were required for erecting industrial enterprises outside an urban zone (for various reasons which made it necessary to keep the enterprise at a distance from the town), and when it was impossible to expand the urban area as far as these locations; and it would not be logical to declare that these areas were "towns."[19] In order to illustrate that his announcement was made in good faith, Kaplan stated that although the Development Authority Law allowed the government to sell 100,000 dunam of urban land to private individuals, "In general, we have agreed only to two ways of selling land: in exchange for foreign currency [i.e., increase of the State's income in foreign currency, which was most urgently needed], or for erecting industrial enterprises. That is the way we have behaved until now. We did not want to use this right for other purposes." Kaplan also repeated that if the area of urban land sold by the government by dint of both these laws (the State Property Law and the Development Authority Law) were to reach 100,000 dunam, he would inform the Knesset of this, so that it could reassess the issue of urban land sales.

Pinkas and Kaplan also rejected Sneh's proposal to make the sale of State lands conditional on the Knesset's approval of each individual sale. They put forward two reasons: The first was the Knesset's obligation to have fundamental confidence in the government, since "If a government is not trusted by the

18 Ibid., 5.2.1951, p. 975.

19 Pinkas's speech, and Kaplan's, below – ibid., pp. 972–976, and, in Pinkas's words: "If it is necessary to build a factory on 300 dunam, 50 kilometers away from Be'er Sheva, these 300 dunam will not be designated as urban land." Ibid., 6.2.1951, p. 999. Kaplan's announcement was not accompanied by amendments to the laws, but the Knesset took note of his statement.

Knesset – it should be done away with."[20] So the government must not be suspected of intending to accumulate sales agreements for hundreds of dunam in order to sell thousands of dunam of agricultural land. And, in reference to transactions which require the permission of the Finance Committee or the Knesset, these institutions would certainly discuss the matter without fear or favor, and not agree "to a combination of agreements which hide the real state of affairs." The second reason was that granting Knesset members the authority to permit the sale of dozens of plots might well lead to corruption.

Dayan's amendment was rejected by 31 votes against the not insignificant minority of 16, and Sneh's by a majority of 35 against the not insignificant minority of 22. Another amendment was proposed by Israel Rokach of the General Zionists, who proposed that the sale of a plot of agricultural land measuring more than a hundred dunam should be permitted only with the permission of a majority of the members of the House Committee. This proposal was rejected by 30 votes to 28, after the first vote had resulted in a tie (27 against 27). Thus, on February 6, 1951 the "sales clause," as we have described it above, and the law as a whole, were finally passed into law.[21] Once again we have seen that, as in the case of the Development Authority Law, it was the legislators who imposed very significant limitations on the authorization of the sale of land which the government had requested, bearing in mind in one way or another the heritage of the JNF.

20 Ibid., 5.2.1951, pp. 974–975.

21 Ibid., pp. 999–1000; Cohn 1996, p. 894.

Chapter 6
The Legislative Process of the Basic Law: Israel Lands and the Israel Lands Law, 1960

Background

The issue of the limitation of the sale of State lands, which was a center of attention of legislators and of the government in the early fifties, and in the course of legislation concerning which the heritage of the JNF was frequently invoked, returned to the agenda of the Knesset at the end of that decade, during the discussions on the proposed Basic Law: The People's Land,[1] the proposed The People's Land Law, 1959,[2] and the proposed The People's Land Administration Law, 1959.[3] At this time, however, unlike the case of the two previous laws, the JNF was directly connected with the initiative for the law, and with the legislative process.

These three laws were proposed to the Knesset by the government in the middle of 1959. The debates on them were concluded in the summer of 1960 with the adoption of the Basic Law: Israel Lands; the Israel Lands Law, 1960; and the Israel Land Administration Law, 1960.[4] The legislative process with regard to these three laws was particularly lengthy because it was not concluded in the third Knesset and the debate had to be continued in the fourth Knesset.

These three law proposals, as well as the amendments to the State Property Law and the Development Authority Law that they necessitated, rose from discussions between the directors of the JNF and the government since 1955, and particularly in mid-1957. The JNF initiated these discussions for two main reasons, the first of which was a substantial change in the work of the JNF. Since the establishment of the State the JNF had ceased to concentrate on the acquisition of land, as a result of the abandonment of lands by their Arab owners and their transfer to the possession of the State. Instead of this, the JNF was now concentrating on the improvement of land and its redemption from the desert, in order to use it for expanding settlement. The second reason was that, since the establishment of the State, the two largest landowners in the country, the JNF and the State, had been functioning separately, each in its own sphere, including land improvement. This

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1 Katz 2002, Appendix 6, pp. 124–125.

2 Ibid., Appendix 7, p. 126.

3 Ibid., Appendix 8, pp. 127–128.

4 See below, Appendices 6–8; Knesset Protocols, 29, 19.7.1960, 25.7.1960, pp. 1903, 1916, 1918–1927, 1938–1942, 1950–1960.

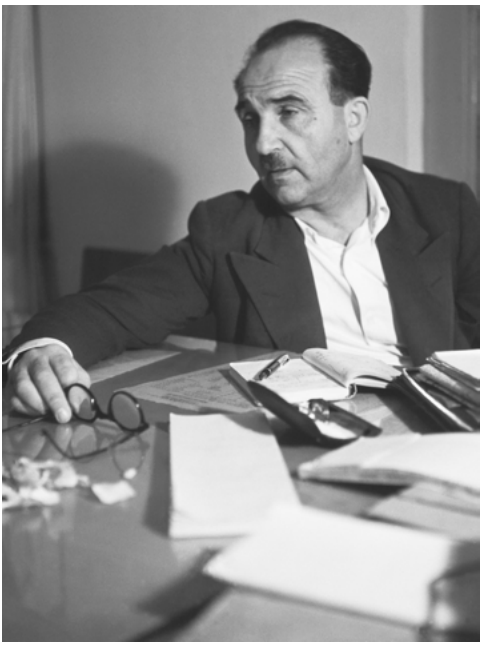
led to duplication and lack of coordination, with all the consequent negative results, and to increasingly fierce public criticism of the JNF and the government. The criticism of the JNF was thought to be particularly important, for since it had lost its primary function – the defense of the land against Arab ownership – increasingly strident voices were heard proclaiming the end of its usefulness and calling for its abolition. Among these voices that of Ben-Gurion was prominent. He was firmly opposed to the continued existence of the institutions of the Zionist movement, including the JNF, after the establishment of the State. "Therefore it became vitally necessary to bring about fundamental changes in the state of affairs concerning the land which had come about both with reference to the management of land and with reference to its development." Thus the governors of the JNF came to realize that they must persuade the government to help in creating some sort of partnership between the State and the JNF, both in the sphere of ownership of the land economy and in the sphere of land development.

A poster of the JNF, 1950. Photo: Avraham Malavsky. Source: JNF Photo Archive

In these joint deliberations of the JNF and the government, it was suggested that a governmental body be set up to manage, according to a uniform policy, both the landed property of the JNF and all the landed property of the State, as covered by

the Development Authority Law and the State Property Law. On the other hand, land development, improvement and forestation would be concentrated in the hands of the JNF. When these ideas were first discussed, the JNF emphasized that in the uniform policy for the management of State and JNF lands the principle of the JNF that land should not be sold, but only leased, should also apply to State lands:

> The principles which were adopted with the foundation of the JNF fifty years ago, which have been observed in the conceptual world of the Zionist movement for more than two generations, and have been crystallized and put into practice in the process of the building of the Land – these two principles are, in fact, one: national land shall not be sold, as laid down in the ancient Jewish commandment: "The land shall not be sold in perpetuity." All public land, whether of the State or the JNF, shall be assigned for agricultural, industrial, or any other use for the building of the State only by leasehold. That is the ideological foundation on which the organizational plan is based.[5]



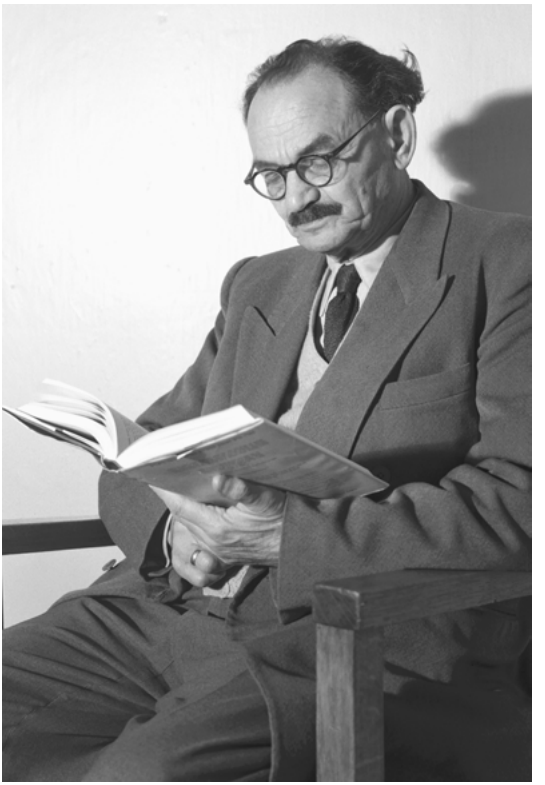
Levi Eshkol, 1947.
Photo: Zoltan Kluger.
Source: National Photo Collection

5 SIA, file C/12/5742, the summing-up of Avraham Granot, chairman of the directorate of the JNF, on the matter of the arrangement concerning land between the State and the JNF, 11.12.1958. See also CZA, file A246/651, the memorandum "On the People's Land Law," undated; Weitz 1965, pp. 47, 53, 134. It may be pointed out that the JNF did not demand that others of its principles, such as the transfer of land only to Jews, the obligation to observe the Sabbath on JNF land, principles of the JNF's leasehold contract, etc., be observed on State land. See ibid., p. 93, whence it appears that there were some in the JNF who demanded that most of the principles of the JNF be applied to State lands.

During 1955 and 1956, largely because of Ben-Gurion's attitude to the JNF, the government did not display much interest in taking part in the deliberations with the JNF in the spirit of its fundamental principles, even though they were confirmed by the institutions of the Zionist Organization, including the Zionist Congress. It was only in 1957, as a result of pressure from the directors of the JNF, that Ben-Gurion appointed a special ministerial committee to discuss the whole issue. The committee included four ministers and Yosef Weitz, one of the managers of the JNF, who acted as the representative of the JNF on the committee. The then Finance Minister, Levi Eshkol, was chairman of the committee. During the time that the committee was active, Eshkol held discussions on fundamental issues with Granot, the chairman of the directorate of the JNF. Granot was prepared to transfer control of the JNF's land to a governmental body which would also manage the land owned by the State (later: the Israel Land Administration – hereinafter ILA), in whose governing body the JNF would participate, on condition that the principle of national land be applied to all the land in the State, and that only the JNF be responsible for land improvement and forestation. These agreed principles were the basis of the recommendations of the ministerial committee, which were submitted to Ben-Gurion at the end of July 1957. Two of the recommendations which were relevant to our subject read: (a) A land administration will be established, at whose head will be a minister who will manage both the lands of the JNF and those of the State. The present legal ownership of the land will be unchanged (i.e., the JNF, the State, and the Development Authority will continue to be the owners of the land registered in their name within the framework of the Land Administration), and the government ministries and the JNF departments dealing with land will be abolished; (b) "It will be established that the principle on which the JNF is based – that the land which it acquires belongs to the people, and will never be sold in perpetuity – applies also to State land. For this purpose the Knesset will pass a basic law stating that the land belongs to the State, apart from certain areas, and that it is not to be sold, but leased on certain conditions for efficient use and exploitation." It may be added that the JNF's readiness to exempt certain areas, which it was permitted to sell, from the general rule had already been expressed in 1955, in relation to the 100,000 dunam which the Development Authority Law permitted it to sell. It may be assumed that, in view of the functions which Himanuta fulfilled by selling land in certain circumstances, it was not difficult for the JNF to accept the principle that in exceptional cases State land could be sold.[6] It was these recommendations that

6 CZA, file A246/107, the committee appointed by the Prime Minister to consider problems of the JNF, minutes no. 4, 23.10.1957; Weitz 1960a, pp. 422–441; Weitz 1960b; Weitz 1965, pp. 21–98, and especially pp. 42–47; Granot 1950, pp. 12–16; Granot 1952, pp. 9–10.

were the basis of the government's decisions to sign a covenant with the JNF, to establish the Israel Land Administration, and to submit to the Knesset the three proposed laws which were drawn up after joint consultation between the government and the JNF, and were intended to give legal validity to the covenant.[7]



Yosef Weitz, 1954.
Photo: Avraham Malavsky.
Source: JNF Photo Archive

It seems that, apart from the ideological support of the ministers for the idea of a basic law, the fact that two other laws which dealt with the government's rights to State land – the Development Authority Law and the State Property Law – had already established the principle of the State's permanent ownership (apart from certain exceptions) and the principle of the transfer of control of State land only by leasehold, made it easy for the government to accept the JNF's demand on the matter of the permanent ownership of State land and to

7 CZA, above, note 5; Weitz 1960b; Weitz 1965; SIA, minutes of the Knesset Finance Committee meeting, 14.10.1959, p. 3.

submit a basic law on this issue. Moreover, the JNF had also accepted the principle that there would be exceptional cases in which sale of land would be permitted. Thus, the Basic Law's significance was no more than a declaration in principle, practical steps in support of which had already been taken with the enactment of the Development Authority Law and the State Property Law in the early fifties.[8] As for the JNF, its directors saw in the government's agreement to submit the Basic Law "a victory for the concepts of the JNF, and the fulfillment of its founders' dreams."[9]

The debate on the first reading of the proposed law in the plenum of the third Knesset

The draft of the Basic Law: The People's Land, which had been approved unanimously by the government and submitted to the Knesset for its first reading in April 1959, contained five short clauses. They affirmed that, apart from exceptions which would be defined by law, the people's lands (which were defined in the law as State lands, lands of the Development Authority, and the lands belonging to the JNF) should not be sold, and ownership of them should not be transferred in any other way; nor should tenure of the people's land be transferred except by leasehold or by the grant of a license. It was specifically said in the explanatory section of the law that it held it necessary "to continue to preserve the legal possibilities – which are limited and qualified – of selling and transferring the people's land in the form in which they exist today; for instance, in Clause 5 of the State Property Law, or Clause 4 of the Development Authority Law." Another law that the government intended to lay before the Knesset, the People's Land Law, 1959, was intended to specify the exceptional circumstances under which the people's lands could be sold.[10]

Thus, the Knesset did not discuss the Basic Law before the People's Land Law, 1959, which specified the exceptions under which sales were permitted, and the People's Land Administration Law, 1959, were laid before it, so that all three laws could be debated as a whole.[11]

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8 From the introductory remarks of the Finance Minister, Levi Eshkol, to the first reading of the three laws in the Knesset, Knesset Protocols, 27b, 3.8.1959, pp. 2839–2842; from the speech of MK Zerah Warhaftig, chairman of the Constitution, Law and Justice Committee, in the Knesset debate on the second and third reading of Basic Law: Israel Lands, ibid., 29, 19.7.1960, pp. 1916–1917.

9 Above, note 5, Granot's words.

10 Katz 2002, Appendices 6–8, pp. 124–128.

11 Katz 2002, Appendices 7–8, pp. 126–128.

According to the People's Land Law most of the lands which could be sold to private individuals belonged to the State and the Development Authority (but not to the JNF, whose statutes forbade it to sell land), and were defined as urban or as agricultural lands designated for non-agricultural development (i.e., for urban development), with the proviso that their total area should not exceed 100,000 dunam. Thus, the permission to sell that was agreed on between the government and the JNF was based on principles which had been affirmed in the Development Authority Law and the State Property Law, and, in effect, created a new combination of the authorizations to sell contained in those laws. It will be recalled that the Development Authority Law permitted only the sale of urban land to a maximum of 100,000 dunam, while the State Property Law did not limit the area of urban land which could be sold, and permitted the sale of small agricultural plots for the sake of industrial development. It seems, therefore, that the proposed People's Land Law increased the possibilities of the sale of agricultural land designated for urban development, but, in comparison with the State Property Law, considerably limited sales of urban land, and limited the area of urban lands which might be sold in comparison with the Development Authority Law. The 100,000 dunam which could be sold to private individuals included both urban land and agricultural land designated for non-agricultural development. It should be emphasized that the limitations placed on the government in relation to the sales of urban property permitted by the State Property Law were the result of the demands of the JNF, to which the government eventually acceded.[12] In any case, the main authorization of sale in the People's Land Law did not match the authorization of sale in the Development Authority Law (for here, unlike in the Development Authority Law, the sale of agricultural land intended for urban development was permitted), nor did it match the authorization of sale in the State Property Law (for here, unlike in the State Property Law, the sale of urban land was limited to a certain amount). Moreover, in the People's Land Law permission to sell was not conditional on the decision of the government or the Knesset. Therefore amendments both to the Development Authority Law and to the State Property Law were required. These amendments were contained in Clauses 3 and 4 of the proposed People's Land Law, 1959. They abrogated the "sales clause" in the Development Authority Law (Clause 3[4]), and in its stead introduced sub-sections according to which the sale of agricultural land whose area was more than a hundred dunam necessitated the agreement of the People's Land Administration Council, and the total area of urban land which could be sold by the Development Authority

12 Above, note 7, SIA, pp. 2–3.

to private individuals would be no more than 100,000 dunam (there was no limit on sales of urban or agricultural land to the State, the local authorities or the JNF).[13] Further, the State Property Law was amended, and Clause 5(b), all of which, as has been mentioned, was concerned with the details of permission to sell State land, was revoked.[14]

Other sales of land were permitted by the People's Land Law: sales for the benefit of absentee owners living in Israel in exchange for land which had been assigned to the Custodian of Absentee Property; exchange of State land for other land (a long-established practice of the JNF); sales of plots measuring no more than a hundred dunam in order to align borders, complement land holdings, and the like. It should be emphasized that according to the proposed law these authorizations of sale also applied to JNF land. Moreover, there was no restriction on the sale of land by the JNF, the State, and the Development Authority from one to another.[15]

The Basic Law: The People's Land, the People's Land Law, and the People's Land Administration Law were submitted together to the Knesset for their first reading by the Finance Minister, Levi Eshkol, at the beginning of August 1959, a few days before the dissolution of the third Knesset. Eshkol believed that the submission of these laws was a historic event, and most of his speech in the Knesset centered on a detailed description of the work of the JNF and its tremendous contribution to the building up of the country, as well as a full account of the reasons for the formulation of these three laws, and the intention to ratify a covenant with the JNF.[16] Speaking of the principle of national land and the prohibition on the sale of the nation's land, he said:

> The application of the principle of national land to the great majority of the people's lands, which, in effect, constitute more than 90% of the land in the State, bases the land administration of Israel on progressive principles which many enlightened states are still aspiring to achieve. It constitutes a victory for the idea on which the JNF was based, in the spirit of the forefathers of the people.

Most of the debate which followed Eshkol's speech consisted of a song of praise to the work of the JNF, and an expression of the wish that it should continue

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13 Katz 2002, Appendix 8, pp. 127–128.

14 Ibid.; above, note 12. At a later stage the Israel Land Administration Law contained an amendment to the State Property Law according to which the sale of more than a hundred dunam of agricultural land required the authorization of the Council of the Administration. See below.

15 Katz 2002, Appendix 7, p. 126.

16 Above, note 8, Knesset Protocols, 27b.

to be a full and active partner of the State. Most of the speakers were from Mapai and the parties which favored settlement activity (such as the National Religious Party, Mapam and Ahdut Ha'avoda-Poalei Zion). Some of them were themselves members of workers' settlements, and three were members of the directorate of the JNF. They emphasized the importance of the Basic Law, which made the principles of the JNF part of the legal system of the State, and would apply to more than 90%(!) of the 20.4 million dunam bounded by the borders of the State of Israel. The law prevented land speculation, ensured the continued existence of workers' settlement, which was of great economic and social importance, safeguarded the rights of the working settler "and prevents his exploitation by the control of private owners," strengthened the link between the people of Israel and its land, and applied to the State moral and educational values clearly based on the sources of Judaism.[17] Thus, for instance, MK Michael Hazani of the National Religious Party, who was also a member of the directorate of the JNF, emphasized the fundamental importance of the Basic Law:

> The fundamental principle of the JNF, that the land is and shall remain the property of the people, and shall not be sold but only leased to the workers, will from now on be applied to all the State's lands, apart from those urban areas which the law defines as exceptional. This is the result not of incidental legislation in the Development Authority Law, the State Property Law, and the like, but of special legislation, basic legislation, I might say festive legislation. This principle, on which the JNF is based, is not only intended to deal with a socio-political problem with which many nations are struggling. It also links the individual in Israel wherever he may be with the Land of Israel, and grants him a birthright in the Holy Land. It is clear, however, that this principle of the JNF, which the Knesset is now asked to apply to all the lands of the State, is definitely a principle of the Torah which we were given in Sinai: "And the land shall not be sold in perpetuity... and in all the land of your possession you shall grant a redemption for the land" (Leviticus 25, 23–24). This is the principle which will realize in Israeli society the sublime moral concept: "for the land is mine; for you are strangers and sojourners with me" [Leviticus 25, 23], as if He has granted it to us only to cultivate and preserve, and to produce from it our bread by the sweat of our brow, and not to treat it as property or merchandise, or to charge rent on it.

Bahir of Mapai, a member of Kibbutz Afikim, said:

> A historian investigating the legislation of the third Knesset will find, among the laws which it has enacted, two of the most important laws in the State of Israel. One is the Basic Law: The People's Land... And the other is the Water Law, 1959... Both of these fundamental laws are unparalleled throughout the world. They ensure public ownership of land and water, and guarantee the agricultural worker the possibility of settling independently on the land of

17 Ibid. (Eshkol's words, and those of the subsequent speakers, in the Knesset plenum), 6.8.1959, pp. 2945–2960.

the State and the people. These two laws together constitute the acme of the JNF's acquisition and improvement of land and forestation over decades, and the work of Mekorot, the JNF of water, since before the establishment of the State. Pioneering settlement, the settlement of kibbutzim and moshavim, was made possible before and after the establishment of the State by the people's control of land and water, through the JNF and Mekorot. We who have settled on JNF land, including myself and the other members of Kibbutz Afikim, who have settled on JNF land in the Jordan Valley, commend the agreement between the government and the JNF, as a result of which we gladly endorse the Basic Law.

Planting in Eshtaol, 1951. Photo: Avraham Malavsky. Source: JNF Photo Archive

It is surprising that the Knesset members who took part in the debate did not adequately emphasize the fact that the principles of the Basic Law and the People's Land Law had been established by the legislative assembly ten years earlier, in the Development Authority Law and the State Property Law. The minutes also show that the speakers paid little attention to the authorizations of sale which were set out in detail in the People's Land Law. Two of them, however, did allude to this issue. Their points of view were diametrically opposed. One was Israel Rokach of the General Zionists, a party whose standpoint on the rights of private

initiative and the extension of the permission to sell land has been discussed above. Rokach claimed that the restriction of urban land which could be sold to 100,000 dunam (as proposed in the People's Land Law, on the basis of the provisions of the Development Authority Law which dated from 1949) was not suited to the current situation, since urban areas had grown and moshavot had undergone a process of urbanization.

Forest planting, 1952. Photo: JNF. Source: JNF Photo Archive

> During this decade the area of jurisdiction of the town councils has grown by a third. The area of jurisdiction of Tel Aviv alone has doubled. But other big towns such as Jerusalem and Haifa have also grown, and as the State has become more urbanized, moshavot have turned into towns. What is 100,000 dunam? We have been thinking in concepts and dimensions of the areas of jurisdiction of Tel Aviv, Jerusalem, Haifa, Hadera. And I think that today we have to double the area at least, and to decide that it will be possible to sell 200,000 dunam permanently to private enterprise or Histadrut enterprise.

Rokach supported his case by pointing out that the JNF itself could sell very large tracts of land through its holding company Himanuta.

The other speaker was Moshe Sneh of Maki, whose point of view was completely opposed to that of Rokach. He demanded the transfer of the JNF's lands to the State, in order to prevent discrimination against the Arab minority, who could not settle on JNF land. He drew the MKs' attention to the infringements of

the Basic Law inherent in the People's Land Law, and maintained, correctly, that this law did not only permit the sale of 100,000 dunam of urban and agricultural land destined for non-agricultural development. It also permitted the sale of even more extensive tracts of agricultural land, with the authorization of the Council of the People's Land Administration, since the covenant between the State and the JNF authorized the council, the responsible minister and the JNF to permit exceptional sales, and this applied also to the amendment to the Development Authority Law.

Israel Rokach, 1944. Photo: Zoltan Kluger. Source: National Photo Collection

A majority vote of the plenum agreed to pass these three proposed laws to the Knesset Finance Committee, to prepare them for the second and third readings. The Herut party opposed the transfer of the three laws to the committee,[18] since, in its view, they negated the right of private ownership of land.[19]

18 Ibid., p. 2960.
19 SIA, minutes of the Finance Committee meeting, 24.9.1959, p. 5.

The discussions on the laws in the Finance Committee of the third Knesset and their transfer to the fourth Knesset

Intensive discussions on the three proposed laws took place in the Finance Committee from mid-August 1959 until mid-October of the same year, in order to complete the preparations for their second and third reading and bring them before a special session of the third Knesset during the recess before the elections. In fact, the committee completed its discussions on the Basic Law and the People's Land Law – whose names it decided to change to Israel Lands[20] – but did not complete its discussions of the People's Land Administration Law. Since, in the event, the plenum did not convene, the whole process of the legislation of these three laws had to be begun again in the fourth Knesset. Therefore these proposals were submitted again for their first reading to the first session of the fourth Knesset. But the work of the Finance Committee of the third Knesset was not wasted, since the drafts of the first two laws which it had approved were laid before the plenum of the fourth Knesset for their first reading.[21]

The discussions in the Finance Committee of the Knesset did not lead to substantial changes either in the Basic Law[22] or in the Israel Lands Law,[23] apart from the requirement that certain authorizations to sell land were conditional on the assent of the Finance Committee. These will be discussed in detail below. None the less, in these discussions the conflict between different outlooks – between those which supported the basic principles of the laws, and those which opposed them or aspired to change them in some way – was expressed.

It will be recalled that most of the lands which the proposed law permitted to be sold to private individuals consisted of urban land or agricultural land allocated to non-agricultural development, which was owned by the State or the Development Authority, and whose total area did not exceed 100,000 dunam. On this matter, and "in order to avoid any possible doubt," the legal adviser to the government explained at the outset of the discussions that the government had reached an agreement with the JNF,

> that the government's proposal, to limit the authority to sell up to 100,000 dunam of urban land which was not allocated to agricultural development, does not prevent the

20 Ibid., 9.9.1959, pp. 7–11; 16.9.1959, p. 9; 23.9.1959, p. 5; 24.9.1959, pp. 5–6.

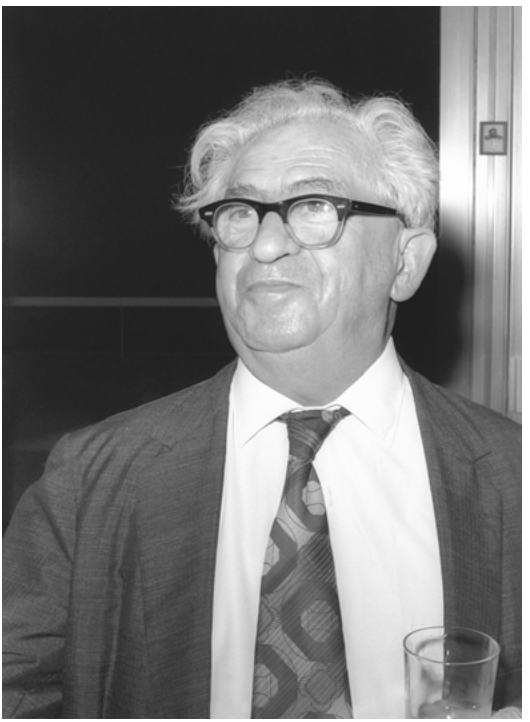
21 Ibid., 14.10.1959, pp. 8–9; Knesset Protocols, 28, 22.2.1960, pp. 675–676.

22 Katz 2002 – compare Appendices 6–7, pp. 124–126, with Appendices 9–10, pp. 129–130.

23 Above, note 19, 12.8.1959, p. 2, observations by the legal adviser to the government, Haim Cohn; 14.10.1959, p. 3.

> government, when it becomes necessary at some time in the future, from coming to the Knesset with new legislation and adding to this authority, either by increasing the permitted area of land or by adding different categories of land... this, of course, necessitates only regular legislation, and not fundamental legislation.[24]

The demand of Yohanan Bader (of Herut) not to limit the government's right to sell urban land, on the model of the State Property Law, came as no surprise. It was rejected by the committee on the basis of the government's commitment to the JNF. Bader's demand to raise the maximum area of land which could be sold to 200,000 dunam was also rejected.[25]



Yohanan Bader, 1971.
Photo: Moshe Milner.
Source: National Photo Collection

It will be recalled that permission to sell land to private individuals was also given in the case of a maximum of a hundred dunam of any category of land which was required in order to align boundaries or complement holdings.

24 Ibid., 14.10.1959, pp. 2–3
25 Ibid., 7.10.1959, pp. 4–5, and the observations of the legal adviser to the government, below.

Unlike the "100,000 dunam permission," which was afforded only to lands owned by the State or the Development Authority, the "hundred dunam" permission was also given to JNF land; indeed, this was the first time that the JNF had allowed itself to sell land under these conditions. As the legal adviser to the government emphasized in the committee, "The JNF has agreed to the suggestion in the proposed law and, even though up to now it has not acted according to these principles, it has undertaken to act in accordance with them." Despite this, in the discussion in the committee Hazani asked that the sale of such lands, if they were owned by the JNF, should be conditional on the prior permission of the directorate of the JNF (of which he was a member). In other words, he wanted to deny the ILA the power to act in these cases. Since the whole matter had been agreed between the government and the JNF, and the JNF had agreed to sell plots of no more than a hundred dunam on these conditions, it is not surprising that the legal adviser to the government opposed it vehemently. "If this law contains a provision requiring any transaction to receive the prior agreement of the directorate of the JNF, which would grant that council some legal standing, I will advise the government to reconsider the covenant altogether." As a result, Hazani withdrew his proposal.[26]

As has been noted above, the proposed People's Land Law permitted sales in some other cases.[27] But, although according to the proposed law these sales were not subject to the permission of the Finance Committee, the committee decided to make them conditional on the consent of the Finance Committee in the following cases: (a) sales for the benefit of absentee owners in exchange for land held by the Custodian of Absentee Property; (b) non-profit sales of no more than a hundred dunam of land for the alignment of boundaries or for complementing holdings; (c) sales of land by the Development Authority or the State to the JNF. This last limitation was the result of harsh criticism in the committee of the low prices at which State lands and lands of the Development Authority had been sold to the JNF in the past, and on the failure of the JNF to pay even the price which had been agreed on.[28] In addition, Bader's proposal to permit the transfer of ownership of Israel land to the local authorities was rejected by a majority of the committee.[29]

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26 Katz 2002, Appendix 7, p. 126.

27 CZA, file KKL5/24036, letter from Haim Cohn to the Minister of Justice and the chairman of the executive council of the JNF, 8.10.1959. See, too, SIA, discussion of the Finance Committee on the Basic Law and the Israel Lands Law throughout September and early October 1959.

28 Ibid., CZA.

29 Above, note 19, 16.9.1959, p. 6.

Michael Hazani, 1951.
Photo: Teddy Brauner.
Source: National Photo Collection

In the course of the discussion in the committee some of its members tried to extend the Basic Law and the People's (Israel) Land Law to other areas in which the proposers held a sectoral or ideological interest. Thus, for instance, Yosef Efrati and Shmuel Dayan of Mapai requested that the laws should forbid speculation in leased land in the village as well as in the town.[30] Nahum Levin of Mapai stated that he could not support the Basic Law and the Israel Lands Law unless the clause in the JNF's contract with the settlers forbidding the employment of non-Jewish workers on JNF land is revoked. Only after the legal adviser to the government had explained that, although this clause did indeed exist, "For some time now this directive has not been included in the JNF's contracts; and it need not be added that it does not appear in any law or regulation," was he mollified.[31]

30 Above, note 25, p. 2.
31 Above, note 19, 23.9.1959, p. 5; 24.9.1959, p. 7.

Hazani requested that the obligation to observe the Sabbath and the Jubilee laws on Israel lands be included in the Israel Lands Law and the Basic Law,[32] and committee members who identified with the labor movement asked to emphasize in the Basic Law that the land would be leased to the workers.[33] Hazani was willing to agree that the law should state that "tenure of Israel agricultural land shall be granted only for agricultural cultivation, according to the law."[34] Sneh was more extreme: He demanded that the law should state that "tenure of the people's land shall only be granted by lease to those who cultivate it without exploiting others."[35]

Although the Minister of Justice requested that various matters connected with agrarian policy should not be included in the laws,[36] most of the committee members agreed that at least in the matter of agricultural land Clause 4 of the Basic Law should state that it should be leased only to those who cultivated agricultural land according to the law. But the legal adviser to the government explained that the government was opposed to the addition of this clause, since:

> The situation is that Israel's agricultural land is not only intended for the use of those who cultivate it. It is also intended for non-agricultural development, for industry. If, in the Basic Law, we limit the leasing of agricultural land only to agricultural workers, we shall do a great wrong to the building and development of the country, and pass a decree which is impossible to abide by. Therefore there is serious opposition [of the JNF as well] to this precept. It may perhaps be stated that tenure of Israel land shall be granted only for creative and constructive purposes; but there should be no restrictions which will prevent the Administration from using the land for purposes which are not only connected with agricultural work.[37]

In the end, the committee refrained from extending the laws to subjects beyond the sphere of agrarian policy, and left Clause 4 in the form that the government had proposed.[38]

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32 Above, note 27, CZA; letter from Haim Cohn to the Finance Minister, the Minister of Agriculture and the chairman of the directorate of the JNF, 25.9.1959.

33 Above, note 19, 30.9.1959, p. 3.

34 Ibid., 24.9.1959, p. 8.

35 Above, note 33, p. 7.

36 Katz 2002, Appendix 6, pp. 124–125.

37 Above, note 24, pp. 4–5, statements of committee members and of the legal adviser to the government.

38 Compare Katz 2002, Appendices 6–7, pp. 124–126, with Appendices 6–7 below.

The debate on the first reading of the proposed laws in the plenum of the fourth Knesset

At the end of February 1960, four months after the Finance Committee (of the third Knesset) had completed its discussions on the proposed Basic Law: Israel (the People's) Lands and the Israel (People's) Lands Law, 1959, these two proposals, as well as the Israel (People's) Land Administration Law, were laid before the plenum of the fourth Knesset for their first reading. As we have seen, the suggested wording of these two proposed laws, which had already been discussed in the Finance Committee, was identical with the amended version that had been approved by the Finance Committee of the third Knesset.[39] It may be mentioned that the proposed Israel Land Administration Law was also an amended version of the People's Land Authority Law, as a result of the deliberations of the ministerial committee on legislation at the beginning of February 1960.[40] The amendment to the People's Land Administration Law which is relevant to our topic (in paragraph 6 of the proposed Israel Land Administration Law) was the amendment to the Development Authority Law: Section (4)(c) of Clause 3, and the other subsections of Section 4 of Clause 3 – which constituted the "sales clause" discussed above – were deleted. This clause permitted the sale of urban land up to a total of 100,000 dunam to private individuals.[41] It is most probable that it was deleted because it was no longer relevant in view of the proposed Israel Lands Law; moreover, it involved a double contradiction to the proposed Israel Lands Law. In the first place, according to the proposed Israel Lands Law (and, earlier, the People's Land Law) the total area of urban and agricultural lands that were not destined for agricultural development that could be sold to private individuals was 100,000 dunam. Secondly, there was a contradiction between Section (4)(a) of Clause 3 in the Development Authority Law, which permitted sales to the local authorities, and the Basic Law and Israel Lands Law, which permitted sales to the local authorities only in the framework of the Israel Lands Law.

The debate in the plenum on the first reading of the three laws lasted for two days. Many of the things said in the debate on the first reading in the third Knesset were repeated. The main innovation in the new debate was the standpoint of Herut, whose spokesman, Bader, completely opposed the Basic Law. Most of the other speakers – members of Mapai, and sympathizers of workers' settlement – responded

39 Compare Katz 2002, Appendix 8, pp. 127–128, with Appendix 8 below.
40 Katz 2002, Appendix 11, pp. 131–134.
41 Knesset Protocols, 28, 22.2.1960, pp. 680–682.

to Bader's speech, while Sneh of Maki repeated his party's extreme views opposing the law, and demanded complete nationalization of Israel land.

Herut opposed the Basic Law for two reasons (compared with the General Zionists, who were not opposed in principle to the Basic Law, but demanded that it should be permitted to sell more land): first, because the law denied the right to private possession of land, and, secondly, since they claimed that according to modern economic theory, unchanged ownership of land blocks the path to economic progress. Bader also maintained that the JNF did not adhere to the principle of the prohibition of the sale of land out of socialist or other ideological motives, but because of the danger that Jewish ownership of land would be transferred to non-Jews. This danger no longer existed since the establishment of the State.[42] Therefore, he believed, in promoting the proposed Basic Law, the two other laws, and even the covenant with the JNF, the government had the hidden aim "of handing over the lands of the State to the JNF, removing them from the supervision of the Knesset and from democratic control, granting broad authority uncontrolled by the State Comptroller to the Development Authority, and shielding assets from the electorate's will in the future." Therefore Bader had no alternative but to demand that the three proposed laws be returned to the government.[43] So, most of the debate on the first reading in the plenum consisted of polemical responses to Bader's arguments and conclusions.

It is not clear whence Bader elicited the reason for the prohibition of the sale of land in the JNF's doctrine. His adversaries from Mapai and the parties allied to it argued that the reasons for this principle were more complex than Bader maintained, but they also failed to base their arguments on definite historical sources. Thus, Shmuel Shoresh of Mapai said that

> MK Bader is mistaken if he says that the matter of national land was intended only to acquire land for the Jewish people. There was in this precept a deep social principle, a principle that still obtains today, and which the State must also observe in the future. This principle is "land to the workers." In other words, the owners are those who cultivate it. The concept of national land includes the idea of agrarian equality in the State of Israel.

Other Knesset members based their support for the laws on ideological arguments. Hazani, for instance, again emphasized that all of Bader's views and economic arguments (which he also did not accept) could not outweigh the divine

42 Ibid., p. 683.

43 Ibid. (speeches of Bader, Shoresh, Hazani, Degani, Kesseh, Hazan, Eshkol and Sneh below), 22.2.1960, pp. 686, 688; 23.2.1960, pp. 694, 696–698, 701, 703, 707.

commandment and the moral and religious concept of "The land shall not be sold in perpetuity," which, in the eyes of his party, was the decisive argument for the people's ownership of the land.

> We are now discussing a basic law which recognizes this principle as the basis of our land policy and agrarian policy. I consider this principle to be important not only because it is relevant to the socio-political problem which we have just been discussing, but because, in my opinion, it contributes to the consummation in Israeli society of a supreme moral and religious concept: "for the land is mine; for you are strangers and sojourners with me." This is the outlook of Judaism, a moral and religious outlook which says that God gave us the land only to preserve and cultivate it, in order to produce our bread by the sweat of our brow – and not to trade in it, or to buy property with it or amass rents from it. Therefore, even were MK Bader to persuade us that for reasons of economics or current politics, according to his suppositions, we should abandon this principle, we should not do so, since its roots are deeper, they are embedded in Jewish consciousness and the Jewish moral and social outlook that reaches back to Mount Sinai.

Amos Degani of Mapai emphasized the viewpoint of public ownership of the basic means of production – water and land:

> Which were not given as a permanent gift to any individual; these are the treasures of this State, these are given to all of us. It is hard to imagine the possibility of a plot of land given to an individual for him to do anything he likes with it... The treasures of land and water are the riches which have been granted by nature not to any individual person but to the whole people, and only the whole people can decide what to do with them. It is entitled to give land to one person or another to cultivate for his livelihood, in order to enrich the economy of the State.

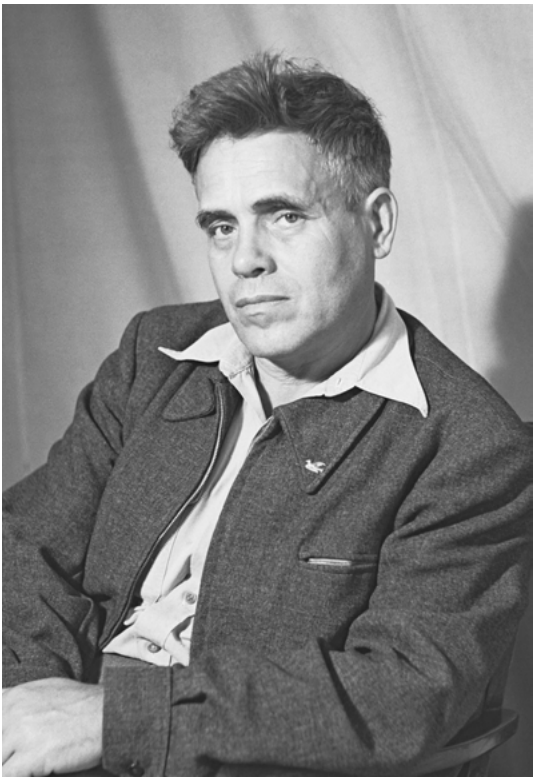
Even without the ideological controversy, most members of the Knesset found it difficult to understand Bader's position when he rejected the Basic Law in principle; for they considered the law to be important not only ideologically but, primarily, from a practical and contemporary point of view: How was it possible to deal with matters of land planning and overall development which could only be effected in the circumstances of the time if the land were to be owned by the State? Yonah Kesseh of Mapai emphasized the point:

> Our country encompasses about 20 million dunam of land. With the aid of this restricted area of land we have to solve economic problems, and problems of development in the spheres of agriculture, industry and water projects. Planning in this sphere, which must of necessity be collaborative, makes it necessary for every plot of land in our State to be completely at the disposal of the State... Who knows what problems of planning and re-planning we shall face as a result of urgent and dynamic use of land and structural changes in agriculture which may prove to be necessary, such as the limitation or extension of agricultural land, or, similarly, the distinction between the need of agriculture for land and the need of industry for land... We are not nationalizing land which has been acquired by

> private individuals, but is there any doubt that all of the limited area of land which is under the control of the State should be at the disposal of the State?

Yaakov Hazan of Mapam, who also defended the Basic Law with arguments drawn from socialist ideology, attacked Herut:

> Does the Herut faction really think that it would be possible to build up this country, and to bring vast numbers of poverty-stricken Jewish immigrants to it and settle them on the land, if the land were not at the disposal of the people? Does not the Herut faction understand that in Israel, more than in any other country – not because we are worse than other peoples, but because our country is developing turbulently – leaving land in private hands would most probably turn it into a commodity subject to the worst sort of speculation?



Yaakov Hazan, 1952.
Photo: Fritz Cohen.
Source: National Photo Collection

Bader's argument regarding the blocking of development of lands whose ownership was unchanged was also rejected. The Finance Minister, Eshkol, explained that during the ten years since the adoption of the Development Authority Law the demand for the purchase of urban land had not reached more that 13,000

dunam of the 100,000 dunam which the law allowed. Most of the development took place on leased land. On this issue, Degani added: "In the course of our economic activity, too, it appears that the principle of national ownership of land does not impede the investment of private capital in the State. For instance, let us take Rogozin's enterprises. As far as I know, he was given land by the State, but he did not demand permanent ownership. State ownership does not hinder private enterprise, and does not impede the investment of capital in the State." Apart from this, continued Eshkol, "It should be remembered that the planner, the settler, the colonizer in the 20th century must consider what will be in a hundred years. That is more important than the feigned fear of the 'dead hand,' which will be seen to be very much alive."

Sneh's speech was, in the main, a repetition and expansion of the arguments he had used in the discussions of the proposed laws in the debate on their first reading in the third Knesset. He demanded complete State ownership of all the lands within the borders of the State, apart from those which were already in private hands and cultivated by their owners, and opposed the possibility of sales to private individuals. Therefore, he demanded that the ownership of land of the JNF be transferred to the State: "I do not understand why the JNF should be exceptional. For example, the education department of the Va'ad Le'umi has been transferred to the Ministry of Education; the Haganah and the Palmach have become part of the IDF; and all the departments of the central institutions of the pre-State Yishuv have been transferred to the State." But Sneh advanced two more reasons for his demand: First, he maintained that since the fees for the lease of JNF land were paid in perpetuity, in the long run they amounted to more than the value of the land. "Is this a praiseworthy practice? If the land belonged to the State, those who cultivated the land could fight for the abolition of the leasing fees; they are also represented in this Knesset. But when the JNF is the owner, the Knesset cannot decide on the terms of the lease, and the people of the workers' settlement are exploited and underprivileged." Further, unlike many Knesset members who praised the laws for guaranteeing that the land would be leased to those who cultivated it, Sneh maintained, correctly, that this matter was not mentioned in the law at all. "Where is it written in the laws that the land shall be leased only to those who cultivate it?" Moreover, according to the proposed law land could be leased "to large farms and plantation companies which will exploit hired labor with no restriction." Secondly, Sneh said that the existing discrimination against Arabs should not be tolerated: Considerable areas of Arab land which had been transferred to the State as absentees' property had been given to the JNF, whose statutes forbade it to lease land to Arabs – only to Jews. "And what is the result? Arab land is granted to the State, the State passes it on to the JNF, and then it is impossible

to settle, to lease land to, or even to employ an Arab fellah on land which was taken from Arabs. Is this possible?... It can only be prevented by transferring the land of the JNF to the State, and not the opposite." Sneh also objected to the clause in the proposed Israel Lands Law which permitted the government, with the consent of the Finance Committee, to transfer the ownership of land to absent Arab landowners residing in Israel in exchange for land which had been taken from them. He demanded that the law should grant the government permission to make similar arrangements in relation to all absentee landowners, whether they resided in Israel or abroad; for, apart from the moral issue, if the land were not returned it would be impossible to solve the refugee problem, which the government's spokesmen declared that they were willing to solve.[44]

Like Bader, Sneh was opposed to the approval of the three proposed laws at their first reading. But the other members of the plenum voted for the approval of the laws at their first reading. It was agreed that the House Committee should decide which committee should prepare the laws for their second and third reading. The committee decided that the discussion on the Basic Law should take place in the Constitution, Law and Justice Committee, and that the other two laws should be discussed in the Finance Committee as soon as the Constitution, Law and Justice Committee had concluded its deliberations.[45]

The discussion of the Basic Law in the Constitution, Law and Justice Committee of the fourth Knesset

The discussion of the Basic Law: Israel Lands in the Constitution, Law and Justice Committee took two weeks, from mid-March 1960 until the end of that month. In addition, in mid-July the committee met again to discuss the government's request to amend the definitions contained in the Law.[46] Despite a considerable number of disagreements within the committee, no significant changes were made as a result of these discussions to the text of the Law proposed by the government in 1959 as the People's Land Law.

As in the case of the discussions of the proposed Basic Law: Israel Lands (and earlier of the proposed Basic Law: The People's Land) in the plenum of the

44 Ibid., pp. 710–711; SIA, minutes of the Constitution, Law and Justice Committee meeting, 16.3.1960, pp. 1–2; KA, minutes of the Finance Committee meeting, 17.5.1960, pp. 4–5.
45 Ibid., KA.
46 SIA, minutes of the Constitution, Law and Justice Committee meetings, 16.3.1960, pp. 2, 4, 5–8; 21.3.1960, pp. 2–4; 28.3.1960, pp. 2–4, 7–8; 30.3.1960, pp. 2–7; 18.7.1960, pp. 5–7.

third and fourth Knesset and in the Finance Committee of the third Knesset, the fundamental question of whether in principle it should be forbidden to sell nationally-owned land was discussed in the Constitution, Law and Justice Committee of the fourth Knesset. The discussion centered both on ideological differences and on practical issues. The religious MKs again cited the concept of "The land shall not be sold in perpetuity, for the land is mine," from which follows the concept which rejects in principle any transfer of land to private ownership and requires that it remain under public control, in the hands of the State, "because there are other owners in the whole world." In addition, "there are other, concrete, aspects of the concept 'The land shall not be sold in perpetuity': It educates people not to steal land from the public, and not to disobey the commandment 'Thou shalt not covet.' "

MK David Bar-Rav-Hai of Mapai considered the principle that State lands should not be sold to be self-evident – a kind of axiom with no link to conditions or time – and that it did not require any detailed discussion or rationale: "Public ownership of the land is one of the principles on which we were educated. I do not agree that in this matter what was true before the establishment of the State is no longer true."

On the other hand, S. Z. Abramov of the General Zionists, an advocate of private property and private entrepreneurship, was opposed to the principle that State land should not be sold to private individuals:

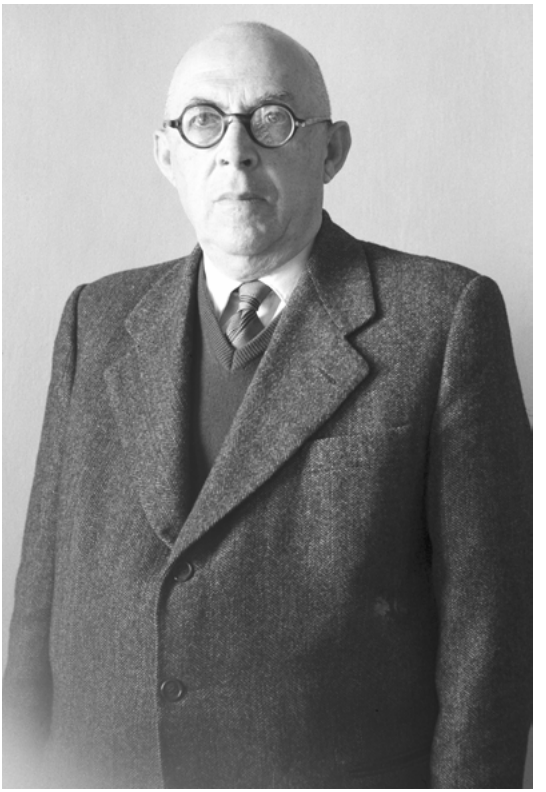
> There is an anachronistic element in our special view of matters of land. In ancient times land was the only type of ownership. It was the basis of men's livelihood. We live in a period in which the proportion of people engaged in agriculture is growing smaller, and it is not clear why a government enterprise may be sold, but land may not. What is sacred about land? Land is only one of our resources, and there is no reason to sanctify this type of resource.

Abramov's approach, that national land was no different from any other resource owned by the State, was rejected by the religious Knesset members Zerah Warhaftig and Moshe Unna, who maintained that land is the basis of the State's existence, and cannot, therefore, be compared to any other resource.

Baruch Azania of Mapai supported the fundamental prohibition for two practical reasons which had been advanced in various forms in previous discussions: first, in order to prevent the sale of land to foreigners (to which Abramov replied: "What would we say if we were to hear that a member of the US Congress proposed a law to prevent the transfer of land to a member of another denomination?"); and, secondly, in order to assure the future of the farmer by ensuring that he would not be dispossessed of his land. He used the example of the concern for the farmer, and the prohibition of his eviction from his land in ancient times, which had been adduced by Abramov. He claimed that if the

principle of the prohibition were not accepted it would be impossible to ensure that the farmer would not be dispossessed of his land in the future. He said:

> In my view, the main consideration is that the farmer should not be dispossessed of his land. The State is now at a stage of development which is partly capitalistic, and there is nothing more dangerous than the possibility of transferring land with no limit from one owner to another... In the long run, the possibility of selling land will lead to the eviction of the farmers from their land. That is the danger, and it is exceedingly concrete. I have to say that this is the first case in our legislation in which I would be prepared to say that this law should not be changed without a special majority. The principle is most important, and if it is abandoned we are in danger of losing much of the farmer's security.



Shmuel Ussishkin, 1960.
Photo: Avraham Malavsky.
Source: JNF Photo Archive

Shmuel Ussishkin, the legal adviser of the JNF, who took part in the committee's discussions, chose to emphasize the practical arguments for the principle of the prohibition of the sale of State lands rather than the ideological arguments which had been formulated in the past in the doctrines of the JNF and the Zionist

Organization. It will be recalled that the JNF considered the agreement with the government and the proposal of the Basic Law, which applied its principles to all State lands, to have been an ideological victory. Now its legal adviser preferred to present the practical arguments:

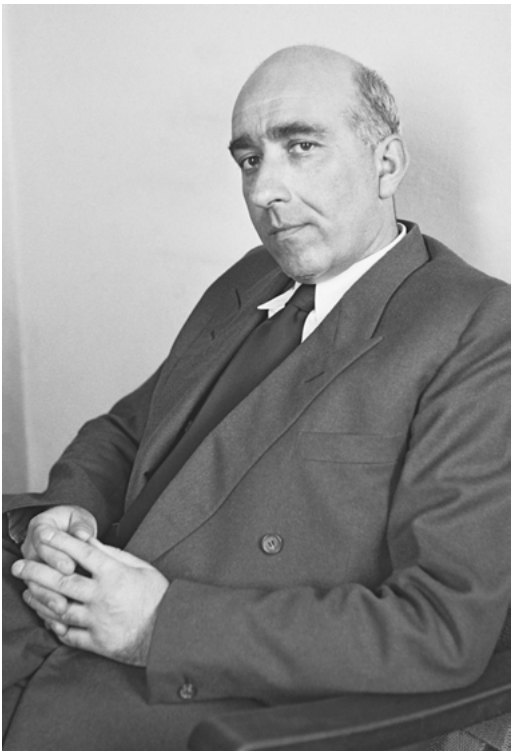
> After the experience of fifty years, we know the advantages of this system. A large body of Jews who live on the land and cultivate it themselves has been created. There is very little jealousy. It is a fact that the agrarian system is one of the most tranquil areas of the State economy. And we believe that in the future, too, there is no reason to diverge from this practice in respect to Israel land.

Further, "The Law was proposed with a view to practical arrangements for common management of the land by the JNF and the State of Israel, and there must be a basis for common management. This basis is that lands are not sold."

The Knesset members disagreed on another major issue which was derived from the fundamental question of the prohibition of the sale of State lands – whether this law should have the status of a basic law: in other words, whether the principle that land should not be sold should be included in the future constitution of Israel. It seems that it was the legal adviser of the government, Haim Cohn, who suggested when the Basic Law: The People's Land was proposed that it should be afforded the status of a basic law, since "in his [Cohn's] opinion, this principle is so important that it should be included in the constitution."[47] But, unlike the past, when there had been no discussion of the status of the Law in the different bodies of the Knesset, not all the members of the Constitution, Law and Justice Committee of the Knesset agreed with the recommendations of the legal adviser. For instance, Abramov, who, it will be recollected, had been opposed to the principle of the prohibition of the sale of State lands, also opposed the proposal to confer on the proposed law the status of a basic law, for three reasons: firstly, "there is no state in which the sale and purchase of land are included in the category of matters which belong to the basis of the constitution." Secondly, "it may be that what is appropriate to the economic situation of the State today will no longer be appropriate in ten years' time. I believe that today the State should not be empowered to sell land, but it may be that in ten years' time I will hold the opposite opinion." Thirdly, since the Law contains exceptions which make it meaningless to a great extent, it cannot have the status of a basic law whose object is to ensure that there will be no changes in the principles it lays down. Yizhar Harari, of the Progressive Party, supported Abramov's viewpoint, and enlarged on his first contention:

47 Ibid., 16.3.1960, p. 2.

"This law cannot be a basic law, since it cannot constitute a section of the constitution, because it is limited only to lands owned by the State and by a company founded by the Zionist Organization. It does not deal with land which has other owners." Moreover, Harari asked, according to the logic underlying the proposed law, why is any land in the State to be left in private hands? "Why is it not proposed that after three generations all land be returned to the State?" But the Minister of Justice assured him categorically that "the government will not agree to any law which negates the possibility of private ownership."



Haim Cohn, 1952.
Photo: Teddy Brauner.
Source: National Photo Collection

Other members of the committee, among whom was its chairman, Zerah Warhaftig, believed that because of the profound moral importance of the subject it should be afforded the status of a basic law. Azania also expressed a similar opinion. Warhaftig added: "The special relationship with the land, with Israel's portion and inheritance, has accompanied the people and preserved it throughout the years of its exile. Therefore, the land problem is a fundamental problem which must be discussed in the framework of a basic law." Pinhas Rosen, the Minister of Justice, who was present during the discussion, held firmly to the

view that the Law should be afforded the status of a basic law, and opposed Abramov's contentions. In the first place, he pointed out that exceptions, as well as statements of principle, are included in most of the constitutions in the world. Secondly, he maintained that this was a "law of really eternal principles, which we shall never change as far as can be foreseen," apart from the exceptions postulated in the Basic Law. It is very interesting that Ussishkin, the representative of the JNF, the body which should have been most interested in giving this ordinance the status of a basic law, did not insist on this point, and was prepared to merge the Law with the Israel Lands Law. In reply to a question, Ussishkin said: "I do not think that the JNF has a view on the question of whether this should be a basic law." The discussion was concluded with a majority decision to grant the Law the status of a basic law.

Another question of principle which was discussed in the committee was whether the lands of the JNF should be included in the clause forbidding the sale of Israel land. As will be recalled, the proposed law forbade the sale of land belonging to the State, the Development Authority, and the JNF. Surprising though it may seem that any doubt was expressed as to the inclusion of JNF land in the Law, serious arguments against it were adduced. This time, too, Abramov, with the support of Menachem Begin of Herut, advanced a reasoned argument, part of which echoes views expressed by Sneh in a different context. Because of the importance of Abramov's speech, we shall quote it in full:

> I have several reasons for my views. In the first place, the JNF has been managing its affairs independently for sixty years, and if there is any need for an arrangement between the JNF and the State it can be made by a contract. A law can also be passed if it is seen to be necessary. But, in any case, a body whose permanent existence is not assured – not to the same extent as the State of Israel, whose existence is assured in perpetuity – should not be included in a basic law. The Zionist Organization can decide on its own initiative to break up the JNF, just as PICA was abolished when the State was established. The property of the State is, according to the State Property Law, that property to which the principles of the State, as expressed in the Declaration of Independence, apply. The JNF property has no such features. The JNF has statutes of its own, which can be amended by the World Jewish Congress [the allusion is, in fact, to the Zionist Congress] without the State's agreement. The JNF can decide that it is entitled to sell its land. According to this law, the State will forbid it to do this. The statutes of the JNF forbid the leasing of land to non-Jews. I do not understand how the State can assume responsibility for a body which practices discrimination against a people. It contradicts the Israeli Declaration of Independence. In the statutes of the JNF there is a clause about the observation of the festivals of Israel on its land. Such a clause cannot apply to land which this law raises to the standard of one of Israel's resources. If the JNF wants to manage its lands according to its statutes after this law is passed, it will be acting in a manner opposed to the Declaration of Independence... The statutes of the JNF even include a clause forbidding the employment of non-Jews... The JNF's leasing contracts forbid the employment of hired labor on its land. All praise is due to the concept of self-labor,

> thanks to which, in my opinion, we have laid the foundations of Jewish agriculture. But what applied before the establishment of the State no longer applies now that we have attained our independence. I remember that five years ago the Prime Minister asked the kibbutzim to employ hired labor, and I know that they did so. So, the State cannot authorize a statute which forbids hired labor at a time when the failure to employ hired labor would be a drastic economic error.

It should be mentioned that, on the background of Abramov's arguments, one of Azania's suggestions was to transfer the JNF lands to State ownership (it will be recalled that Sneh had made the same suggestion), and thereby not to apply the Basic Law to the JNF.

It is hard to say that Abramov's opponents gave real answers to his arguments. Their replies were more formal than relevant or fundamental, and some of his arguments did not even receive a formal reply. Thus, for instance, the Minister of Justice maintained that he was not opposed to applying some of the principles of the JNF to the other State lands; Ussishkin claimed that the prohibition of the employment of non-Jews on JNF land had been rescinded; Warhaftig emphasized that the Law contained provision for cases in which the JNF wanted to change its statutes; and Bar-Rav-Hai claimed that Abramov's proposal was opposed to the foundations of the Law itself ("If the Law did not apply to JNF land it would not be necessary") and that the statutes of the JNF were not relevant to the question of the Basic Law.

Unlike JNF land, there was no difference of opinion with regard to the application of the principles of the proposed Basic Law to the property of the Development Authority; but a political controversy, in which great importance was attributed to the wording of the Law, arose. Begin demanded that the Development Authority's land should be considered State land in every respect, and therefore suggested omitting the words "property of the Development Authority" (whose sale was prohibited, as was the sale of State and JNF lands) in favor of "property of the State," or, at least, "property of the State, including the property of the Development Authority." But the legal adviser to the government emphatically rejected Begin's proposal – this, too, was for clearly political reasons: the clear distinction made by the government between the land of the Development Authority and State land (which has been discussed in detail earlier in this book):

> I am opposed to this proposal for a reason which is purely political. We could have done without the Development Authority and transferred these lands to the State. But we deliberately created a separate authority. We intend to use this independent body and the fact that it is separate from the State in the future, in the negotiations which we hope will some time take place. We are interested in emphasizing that the property of the Development Authority is not identical with that of the State.

On hearing his words, Warhaftig exclaimed that he was afraid that the separate mention of the category of property of the Development Authority in the Basic Law would be interpreted as a prohibition of their sale because they were being saved for future negotiations, and not because of the fundamental reason – the prohibition of the sale of State lands. The legal adviser could only reply that "the government is apparently ready to undertake this risk." In the end, the committee decided that both JNF lands and the lands of the Development Authority should be explicitly mentioned in the Law.

The last fundamental question which the committee dealt with had already been discussed in the Finance Committee of the third Knesset. It was the question of the inclusion in the Basic Law of the clause stating that Israel lands should be assigned only by leasehold. This clause was superfluous, since the possibility of leasing was inherent in the clause which forbade the sale of land. Moreover, the mention in the Law of the possibility of leasing could add nothing to the principle of the prohibition of the sale of Israel lands. Further, the inclusion of a clause about leasing could lead to unnecessary complications, which the committee members broached regardless of their political allegiance. In the first place, the inclusion of this clause in the Law would involve fixing a period of leasehold; for, otherwise, the government would be able to make concealed sales by leasing land for a period of 999 years. Unfortunately, according to Warhaftig, fixing the period of leasehold at forty-nine years, as was practiced by the JNF, would harm "those who have been occupying the nation's land for a long time. If a kibbutz has been occupying land for forty years, it cannot be that it will be expelled at the end of the period of leasehold. Therefore, if a certain period is decided on, it must be added that the lease may be prolonged for a certain period if the lessee continues to observe the conditions of the lease." But the committee did not wish to consider such details when formulating the Law: they were essentially unsuited to the character of a basic law, which in principle deals with fundamentals and not with details. Therefore, following the advice of the legal adviser to the government, the committee decided to delete all reference to the leasing of Israel land from the Basic Law, and to leave the Land Administration to initiate in the future legislation which would deal with the whole question of the leasing of Israel lands. It should be emphasized that this decision was opposed by the JNF, which demanded that these articles be included in the Basic Law for two reasons: first, in order to prevent undesirable allocation of land, as had happened in the past; and secondly – and this was the principal reason, as advocated by Ussishkin, the JNF's legal adviser:

> It is in the Basic Law that there should be not only a prohibition of the sale of land but an indication of how land holdings should be arranged in a way which has been accepted by

> general agreement in the Yishuv for decades; and it may be assumed that the majority in the Knesset agrees that this – leasehold and licensing – is the right way. If this is not stated in the Law, this will be a grievous fault.

It seems that this was the way in which the JNF aspired to perpetuate every aspect of its heritage in the Basic Law. But, as we have seen, the committee rejected its request.

Thus, the Constitution, Law and Justice Committee submitted the Basic Law for its second and third readings. It contained only three clauses: The first established the principle that the lands of the State, the Development Authority and the JNF should not be sold; the second alluded to the exceptional permissions to sell detailed in the Israel Lands Law; and the third defined "land" in the Basic Law as including only land, houses, buildings and anything permanently fixed to the land (and not, as was stated in the interpretative order, also right to a mortgage, right of passage, etc.). It may be added that Hazani's proposal to include in the Basic Law a clause saying "No Jew shall execute on Israel land any agricultural, industrial, construction or commercial work on Sabbaths or festivals" was rejected by the committee, as was Sneh's proposal to state in the Basic Law that "holding of Israel land shall be granted only by leasehold to those who cultivate it, with no regard for religious or national differences, provided that they do not exploit the work of others."[48]

The discussion of the proposed Israel Lands Law in the Finance Committee of the fourth Knesset

The Israel Lands Law, and, at the same time, the Israel Land Administration Law, were discussed by the Finance Committee of the fourth Knesset, from May to July 1960. After these discussions, the three laws (the Basic Law: Israel Lands, the Israel Lands Law and the Israel Land Administration Law) were submitted to the Knesset plenum for their second and third readings. The subject of most of the discussions in the Finance Committee was the Israel Land Administration Law, which the Finance Committee of the third Knesset had not had time to discuss; as for the Israel Lands Law, in general the committee accepted the conclusions reached by the Finance Committee of the preceding Knesset.[49] None

48 Above, note 44, KA.

49 SIA, minutes of the Finance Committee meeting, 2.6.1960, p. 2; ibid., p. 9; above, note 44, KA, pp. 15–17.

the less, in certain matters, which will be discussed below, some changes were made in the proposed law as a result of the discussions in the Finance Committee, in addition to those which had already been accepted in the discussions of the Finance Committee of the third Knesset.

The only subject on which alterations were made related to the section in the proposed law that permitted the transfer of ownership of Israel lands in exchange for land which did not come into the category of Israel lands, or as compensation for land which had been requisitioned from private individuals. As has been mentioned above, the principle of exchange was accepted in the JNF's doctrine, and the proposed law was intended to equalize State lands and those of the Development Authority with those of the JNF in this respect. But most of the committee members requested that the possibility of exchange should be limited to the exchange of agricultural land for agricultural land, and urban land for urban land, and that the exchange of agricultural for urban land, or *vice versa*, should not be permitted, even if the difference in the value of the land were paid. In this way the committee sought to preserve the reserve of agricultural land in the possession of the State, which was liable to be reduced if the exchange of agricultural for urban land were to be permitted – since the profitability of agricultural land was always greater than that of urban land. None the less, the committee members accepted the suggestion of Dr. Gad Kitron, a representative of the Ministry of Justice who was present at the discussions, where in exceptional cases, with the permission of the Minister of Agriculture, agricultural land could be exchanged for urban land, and *vice versa*. Thus, in unusual circumstances the Law would not prohibit an exchange in which "somebody will be willing to give five dunam of land in Tel Aviv in exchange for one dunam in the Galilee."[50]

Another important question which the committee discussed was Hazani's proposal to make the sales permitted by the Law conditional on prior agreement of the JNF, if it was intended, by applying this law, to sell lands owned by the JNF. In other words, even after the establishment of the Israel Land Administration the JNF would be able to prevent the sale of its land, including sales to the State and the Development Authority, and have absolute control over the application of its statutes. Thus, the ILA would have no authority to force the JNF to sell land according to the authorization of land sales in the Israel Lands Law. It will be recalled that Hazani made a similar proposal in the course of the discussions of the Finance Committee of the third Knesset, but that it was categorically rejected by the legal adviser to the government.

50 SIA, ibid. (and see statements by Hazani, Tzur, Ussishkin and Bader, below), pp. 4–6; 6.7.1960, pp. 3–4.

It appears that, although the government and the JNF drew up the proposed law together, the JNF did not ensure that the condition suggested by Hazani should be included; apparently it believed that the matter was guaranteed by one of the clauses in the covenant between the JNF and the State – which, as we have seen, was to be signed together with the ratification of the three laws. But, in view of Hazani's proposal, and the recognition that the covenant would have no legal status, the representatives of the JNF who participated in the committee meetings supported Hazani's proposal – or demand. In the words of Yaakov Tzur, the then chairman of the directorate of the JNF:

> There are restrictions in all these clauses: Property which belongs to the Development Authority or the State requires the agreement of the Finance Committee of the Knesset. But there is no provision with regard to the transfer of land owned by the JNF.

Ussishkin added:

> According to these laws, the management of land is granted to the State, in other words to the Administration, which is subject to political factors and civil servants. But there is no provision in the Law stating that the JNF has the right to express an opinion about its land.

Knesset members, including Bader of Herut and Sapir of the General Zionists, found it difficult to agree with the special right of veto that would be given to the JNF according to Hazani's proposal, which struck at the heart of the administration. Now Sapir said, in the spirit of the words spoken by the legal adviser to the government in the Finance Committee of the third Knesset:

> I want to ask the representatives of the government: What do they see as the point of this law? What is it worth, if the JNF, within this partnership, preserves certain prerogatives which are not included in this partnership?... First of all a great many of the rules of the JNF are imposed on State lands, and then the JNF is given special status. I want to ask: What is the foundation of this partnership? What is the point of making all land subject to one administration?

Bader added:

> It is very strange to demand partnership between the JNF and the State not on the basis of equality. The JNF has the right of veto in relation to land, whereas in relation to State land it is not even proposed to require the permission of the Finance Committee.[51]

In any case, according to the minutes of the Finance Committee for July 6, 1960, Hazani's proposal was rejected. But the minutes are completely contradicted by

51 Knesset Protocols, 29, 19.7.1960, pp. 1926, 1939, statement by Bader.

the words of Israel Guri, chairman of the Finance Committee, in the plenum of the Knesset two weeks later, when the Israel Lands Law was submitted for its second and third readings. Guri expressly maintained that the committee had added to the proposed Israel Lands Law the condition that the transfer of ownership of JNF land in accordance with the authorization of sales permitted by the Israel Lands Law would be permitted only with the agreement of the JNF. This was also the version of the Law which was submitted by the Finance Committee for its second and third readings (and ratified).[52] So it must be assumed that the minutes were inaccurate, or, perhaps, that Hazani's proposal was rejected by the committee, but in the end, as a result of the JNF's demand, the government requested that the draft law be amended, and the committee agreed.

As a result of another proposal by Hazani, a third fundamental amendment to the draft law was made following the discussions in the Finance Committee of the fourth Knesset. He requested that a special clause be added to the Israel Lands Law stating that the Basic Law did not apply to the sale of land (to non-Jews) during a *shmita* (fallow) year. According to the *halacha* these sales were the only way for an observant Jew to cultivate the land and grow agricultural produce during the year. Moreover, the observant Jew who was not a farmer could not consume produce which was grown on "unsold" land. It is true that from the point of view of civil law the "sales" of land in the year of *shmita* were short-term sales, and were therefore not recognized as sales in the eyes of civil law; and in any case they did not infringe the Basic Law which forbade sales of land. But, as a prominent representative of religious Zionism, Hazani was interested in including this item in the Law, for two reasons: first, the very mention of Jewish religious law (the *halacha*) in a civil law was of more than symbolic importance; and, secondly, by this means a contradiction between the Jewish *halacha* and the laws of the State was avoided, and the religious Zionist Jew could observe both the *halacha* and the laws of the State in whose institutions and regulations he believed, and with which he was interested in full partnership (unlike the *haredi* community at that time). Since the *halacha* considered the sale of land in a year of *shmita* to be a real transaction, it infringed the Basic Law; alternatively, it could be concluded from the Basic Law that the sales in a year of *shmita* were not real sales – and this was an infringement of the *halacha*. In point of fact, in the discussions of the Finance Committee of the third Knesset Hazani had asked that a section on *shmita* be inserted in the Law, but his proposal was rejected by the committee because Bader and the legal adviser both maintained that the sale was a fiction, or at most a short-term sale,

52 SIA, minutes of the Finance Committee meeting, 23.9.1959, pp. 5, 9–10; 14.10.1959, p. 7.

recognized by the *halacha*, but with no validity as a sale in civil law. (In the words of the legal adviser: "If you make a short-term sale, you are renting or leasing.")[53] But now Hazani held firmly to his opinion, and even threatened to vote against the Law if it did not include a clause about *shmita*.[54]

The following is Hazani's explanation of his tenacious stand, for the benefit of those committee members who found it difficult to understand:

> From its own point of view, the *halacha* does not need the agreement or legal confirmation of the law. However, the *halacha* wants one thing only: It will do nothing that may infringe the law of the State. All we want is that there should be no contradiction between our actions – which in our eyes are property transactions – and the laws of the State. For if there is a contradiction, in our opinion, from the point of view of the *halacha* the property is not property. Therefore, I do not have to argue with anybody about whether the rules of property obtain from the point of view of the law, or not. My only objective is that the Law shall not interfere with these actions, or that they are not opposed to the law.

Hazani's tenacity bore fruit, and his proposal was accepted, even though the objections which had been raised in the House Committee of the third Knesset were raised again.[55] Thus, the *shmita* clause was the only one in the Basic Law and the Israel Lands Law of a sectoral and ideological nature which was proposed by a member of the committee and included in the clauses of the Law submitted to the Knesset by the government. Other proposals by members of the Finance Committee of the third Knesset to include clauses of a sectoral or ideological nature had eventually been rejected.

The ratification of the Basic Law: Israel Lands at its second and third reading in the Knesset plenum

The Basic Law: Israel Lands was ratified in the Knesset plenum on July 19, 1960, in the form submitted by the Constitution, Law and Justice Committee under the chairmanship of Warhaftig, who sought to confer on the debate a festive nature and historic status.[56]

In his summing-up of the Law, as submitted by the committee, Warhaftig emphasized, correctly, that in fact the Law contained few material innovations,

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53 Ibid., 6.7.1960, p. 5; 18.7.1960, pp. 9–11; KA, minutes of the Finance Committee meeting, 10.7.1960, p. 11.

54 SIA, minutes of the Finance Committee meeting, 18.7.1960, pp. 10–11.

55 Knesset Protocols, 29, 19.7.1960, p. 1916.

56 Ibid. (and see the speeches of Abramov and Meridor, below), pp. 1916–1924.

since its fundamentals had already been accepted by the Knesset in the framework of the Development Authority Law and the State Property Law. As to the land of the JNF, the principle had long been embodied in its statutes. Moreover, it was the Knesset which had accepted the principle of prohibition of the sale of State land in the framework of these two laws, unlike the government's proposals, which, it should be recalled, contained no limitations on sales. Thus, Warhaftig considered that, apart from putting principles which were already grounded in legislation into appropriate legal form, there was no material innovation in the Basic Law, except for that concerning the JNF. This was a double innovation: first, because the JNF statutes had acquired legal validity with regard to other Israel lands; and, secondly, the Law now forbade the JNF to sell its land; therefore, even if it amended its statutes with regard to this issue, it would not be able to sell any of these lands. Warhaftig emphasized:

> This law is intended to impose another restriction, in addition to what is included in the statutes of the JNF; it is intended to add, rather than to subtract. It is enough if a part – an important part – of the Zionist movement says that it thinks that the JNF should change its procedure. In that case this law, which forbids sales, is necessary.

Using this opportunity, when the proposed Basic Law which had been approved by a committee under his chairmanship was submitted to the Knesset, Warhaftig attempted to enumerate the fundamental reasons which, in his opinion, underlay the Law. Some of them – those which expressed the views of religious Zionism – had already been advanced during the discussions of the Constitution, Law and Justice Committee. In the first place Warhaftig again emphasized the religious foundations on which the Law was based: "Giving legal expression to the essentially religious principle of 'The land shall not be sold in perpetuity, for it is mine.' This expresses in legal terms our original belief in the sanctity of the Land of Israel: 'For the land is mine' – 'The sanctity of the land is mine' (Gittin 47)." In addition, Warhaftig discerned in the distinction made by the Basic Law (directing to the Israel Lands Law) between agricultural land, whose sale was prohibited, and urban land, which might be sold under certain conditions, the principles of the Law of Moses, as he had already pointed out in the discussion on the Development Authority Law; for in chapter 25 of the Book of Leviticus it is laid down that agricultural land is not sold in perpetuity, but returned to its owner at the Jubilee, whereas urban land may be sold in perpetuity. This biblical distinction is "clear and comprehensible, since only with regard to agricultural land is the land the fundamental element, whereas with regard to urban and industrial land what is executed and produced on the land is the fundamental element." Further, according to Warhaftig's outlook, it is agriculture which is the foundation of every state: "It is possible to make a

livelihood only from industry rather than agriculture, but no people which does not produce its bread from the earth can survive. A people that will live solely on industry, while buying its bread from others, will not survive as a people. It will survive as an industrial society, but not as a people." Another argument for the prohibition of land sales was national and historical: God promised the land to the whole of the people, and it was the whole people which conquered and acquired it. The first conquest was at the time of Joshua and the time of David; the second was accomplished by those who returned from the Babylonian exile,

> and the third conquest, in our time, has been accomplished by the people who dwell in Zion with the help of the people all over the world. The lands of the JNF were also bought by the tiny contributions of the whole people throughout the Diaspora, and the land of the Development Authority was sanctified by the blood of our young soldiers, and we do not have the right to turn this property, these resources, which have been conquered and acquired by all the people, into the property of individuals – private property.

Warhaftig's third argument was pragmatic: According to past experience, only the concentration of most of the lands of the State in the hands of the State could ensure the possibility of all the operations of development and absorption.

Three major amendments were put forward in the plenum which debated this law. The first, put forward by Abramov, was the antithesis of Warhaftig's thesis. Abramov saw no reason to give the Law the status of a basic law. As we have seen, he had already expounded his reasons for opposing the Law as a whole, and its special status in particular, in the committee. When he spoke before the plenum, he confined himself to a discussion of the status of the Law, but his opinion of the whole of the Law is clear from his speech. As an advocate of free enterprise and industry, he, like Bader before him, expressed the fear that, if the Law were defined as a basic law, it would be unchanged for a long time, which would impair the economic and social development of the State. In his speech before the plenum, Abramov added further arguments to the points he had made in the committee:

> We are only at the beginning of the development of the economy and society of Israel. But in the light of technological development and objective considerations, we can assume that only a minority, and not a large minority, of the Israeli population will earn its livelihood from agriculture, while the majority will subsist on handicrafts and industry. This is the only way in which we can increase our population and ensure it a reasonable standard of living. Like all enlightened nations, we are making progress towards an industrial society. It may be – and, in my opinion, it is virtually certain – that the principles which guided the founders of the Yishuv in this country, in whose vision the revived Jewish people was pictured as a nation of farmers, will no longer be suited to the industrial society which will take shape in this country; in that case, the principle of State ownership of 80% of Israeli land will be a hindrance to the proper development

> of this society. The principle of national ownership of the land grew out of the principle of the superiority of agricultural work. This superiority is vanishing before our eyes, and with it the whole system of social values which has accompanied it over the past two generations: Handicrafts and industry are inheriting the superior status of agriculture. Every social principle... must serve the development of the society and the economy, and not hinder it... The attempt to grant the principle of State ownership of land prestige and constitutional status is like an attempt to rebel against the desirable and inevitable development of Israeli society and economy... Israeli society is already paying dearly for the survival of many strange anachronisms. Let us not aid the survival of this principle, and raise it to the level of a constitutional law. There are already enough laws in existence.

According to another amendment, JNF land should not be included in the Law. This was suggested both by Abramov and by Yaakov Meridor of Herut, but for opposite reasons. Meridor maintained that applying the Basic Law to JNF land did an injustice to the whole of the Jewish people, since the people had contributed to the JNF in the knowledge that the land would belong to it in perpetuity, and this was also laid down in the statutes of the JNF. Unfortunately, in principle the Basic Law also permitted the sale of JNF land, through the use of the exceptions contained in the Israel Lands Law.

> Why should we now infringe the promise given by the JNF to its contributors?... Whence have we the right to interfere with the moral commitment given by the JNF to all the contributors living in the Diaspora, who have given, and are still giving, their money to this fund?

On the other hand, Abramov proposed to remove JNF lands from the Law, for the fundamental reason that the State could not impose legal prohibitions on the sale of land which did not belong to it. Apart from the infringement of the sovereignty of the JNF, and the denial of its right to sell land if it were to change its constitution in the future, he feared that the inclusion in the Law of JNF land whose sale the Law forbade would constitute a precedent for restrictions which the State might impose in the future on property which it did not own – that is to say, private property.

> What right does the State of Israel have to forbid the Jewish people, which is the owner of the JNF and its land, to change its constitution?... In other words, the Jewish people, which is the owner of the land, is forbidden to do with it what it will. So, since I see in the inclusion of the JNF an undesirable experiment and a dangerous precedent with regard to the laws concerning property which is not owned by the State, I propose that the words "or of the Jewish National Fund" be deleted from the first clause of the Law.

Sneh, who held consistently to his views throughout the process of legislation of the Basic Law and the Israel Lands Law, voiced a third amendment to the Law. As in the past, he demanded that in the framework of the Basic Law the JNF

lands should be nationalized and transferred to the absolute ownership of the State, for three reasons: Firstly,

> The ownership of the JNF does not ensure, and cannot ensure, the Israeli nation's control of the land. Not only because it is not an Israeli institution, but an international Jewish body in whose administration people who are not citizens of Israel participate, actually and potentially... The State of Israel is bound only by its laws, it is sovereign. The JNF is not.

Secondly,

> One of the statutes of the JNF constitution states that only Jews may settle on JNF land. The State of Israel cannot enact such a law. It contradicts the very nature of the State of Israel, and not only from the point of view of international law, in view of the words of the decision of the United Nations; it also contradicts the Declaration of Independence of the State itself.

Thirdly, in view of its moral and political defects: The land of the JNF consists of many lands of Arab refugees which have been transferred to it by the Development Authority, and now, in accordance with the statutes of the JNF, may not be settled by Arabs. Therefore, only the transfer of the JNF lands to the State in the framework of the Basic Law can correct this defect. Sneh also proposed to restore the leasing clause, which the committee had deleted, to the Basic Law, and to state in this clause that "holdings of Israel lands shall only be leased to those who cultivate them, regardless of national and religious differences, except that they shall not exploit the labor of others." This was the only way in which the control of the national government and the prevention of speculation and exploitation could be assured.[57]

The three amendments were rejected by the plenum, and, as has been noted, the Law was ratified on its second and third readings in the form in which it had been submitted by the Constitution, Law and Justice Committee. It should be noted that in his reply to the opponents of the Law Warhaftig emphasized that the Law had been submitted not only with the agreement of the JNF but at its request, and that it confirmed the JNF's statutes; therefore Meridor's and Abramov's objection to the inclusion of JNF land was unfounded. As for Sneh's proposal to nationalize the lands of the JNF, Warhaftig replied that the State had no right to do this. Moreover, any act of the type advocated by Sneh would lead to the severance of the ties between Israel and the Diaspora, and this would harm the interests of the State.[58]

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57 See the text of the law at Appendix 6 below.

58 Above, note 55, pp. 1924–1926.

The ratification of the Israel Lands Law, 1960 at its second and third reading in the Knesset plenum

The debate on the ratification of the Israel Lands Law began immediately after the ratification of the Basic Law. Guri, the chairman of the Finance Committee, presented the Law as it had been framed by the committee. He, too, wanted the debate to be festive and historical, and extolled the profound significance of this Law's application of the principles of the JNF to all Israel land. He said:

> The passing of the Basic Law... and of the two laws which will be ratified after it [Israel Lands Law and Israel Land Administration Law] will be inscribed as one of the most significant events in the history of Zionism and of the State of Israel. It is important for three reasons: (a) With the ratification of these laws there will be complete theoretical and practical uniformity in the policy of use of Israeli land... (b) This policy and these principles bear the deep impress of the values which are embodied in the idea of the JNF, one of the hallowed values of Zionism and the people. (c) When these principles are confirmed this policy also acquires legal validity. In fact, the government of Israel has acted in accordance with this policy since the establishment of the State... The JNF has grown deep roots not only in the heart of every Zionist but in the heart of the great majority of the Israeli nation. There are not many values that have enlisted the support of such a majority.[59]

Four major amendments to the Law were proposed. Three of them were intended to add to its authorization of sales, and one to reduce it. Bader proposed two of the amendments. In the first, he proposed what he had already proposed in the committee, to add to the Law a clause that would permit the sale of agricultural land out of Israel lands to the local authorities:

> According to the Law as submitted by the committee, a local authority cannot acquire land apart from limited areas within the current boundaries of urban areas. In other words, according to this law the towns' area is doomed to be frozen, in order that agricultural land may be sanctified forever. I am not saying that agricultural land should be abolished and the country turned into a huge town... but to turn the Israeli town into Tel Aviv at the time of the Mandate, when it was bordered on the one side by Jaffa, on the second by Sharona, and the third by the Yarkon, and was strangled, with no possibility of development – and we know how this affected the town's future – do we want to do this to every town in the State of Israel which does not have the right to acquire land? This is a very strange thing. I understand the desire to be Socialist, to reject the private ownership of land, to restrict it to the present situation... but also to deny town councils the possibility of extending their land holdings?

He added at once: "I understand that, considering the present composition of the Knesset, there is no possibility that even this amendment will be adopted."

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59 Ibid., 25.7.1960, pp. 1951–1955 (and see the words of Bader, Kargman and Sneh, below).

And, in fact, the deputy chairman of the Finance Committee, Israel Kargman, rejected the proposal on the grounds that the Law permitted sales of a maximum of 100,000 dunam for urban needs, and that over the past ten years no more than 13% of this area had been used. So the local authorities still had a huge reserve of land that could be acquired under the Law. For the same reason, and in order not to reduce the reserve of agricultural land – a reason which most of the MKs who participated in the different stages of the legislative process of the Basic Law and the Israel Lands Law deemed to be important – Kargman rejected the amendment suggested by Sapir, who proposed increasing the overall area of urban land and agricultural land destined for urban development which could be sold to private individuals according to Clause 2(7) of the Israel Lands Law from 100,000 to 200,000 dunam.

Bader submitted another amendment. He proposed that a clause be added to the Law permitting Israel agricultural land to be sold to the agricultural workers who cultivated it. In other words, he wanted to permit the various types of workers' settlement not only to lease land but also to buy it. In the terminology of the second decade of the 21st century, Bader was demanding the "securing of the farmers' rights to the land," and his proposal accorded with the world-view of his party, Herut, and also of the General Zionists, with regard to the right to private property. However, his proposal also posed a palpable threat to the continuation of the collectivism of workers' settlement. Bader said:

> I think that this proposal is the fundamental way to create a healthy class of farmer, linked to the land, loving the land, who sees in his farm a precious individual possession; land on which he does not only dwell, but which he loves, land which is passed on from son to grandson and from grandson to future generations. I do not want the farmer always to be a tenant, dependent on the good graces of the government; I do not want him to be a cultivator of land which from one point of view is his, and from another not; I do not want him to read in the newspapers about ministers' plans to redistribute land, to take land from one land worker and give it to another on the basis of a formula decided by the bureaucracy. That is not the way to create a farming class; we shall not create a farming class by denying the farmer's ownership of the land he cultivates, improves and guards, and in which he invests his energy. It is, perhaps, the way to create a class of farmers who are partly permanent, partly hired laborers, partly secure and partly insecure, who will be the slaves of the regime and dependent on the favors of its officials. I understand that my words will not find favor in the eyes of the regime, which attempts to make every individual dependent on its good will, to abolish the citizen's independence, the degree of absolute legal security which he enjoys, and his right to decide on the fate of his possessions... We will learn from the bitter experience of many countries, and will pay dearly for this knowledge. The experience and perplexities of many countries have proved that a farmer is one who owns and cultivates his land.

Sneh, faithful to his own belief, proposed that the State should retain ownership of all public land in perpetuity, and that the rights of Arabs with regard to land

be protected. He put forward three reservations. The first was on the matter of transfer of land to absentee landlords. As will be recalled, one of the clauses dealing with permission to sell permitted the transfer of Israel lands to absentee landlords living in Israel, in exchange for lands which were entrusted to the Custodian of Absentee Property (Clause 2[2] of the Israel Lands Law). Sneh proposed expanding this authorization, and also permitting the transfer of Israel lands to absentees who were not in Israel but would return to it legally in the future. He did not deny that the version of the Law submitted to the Knesset for its second and third reading might satisfy his proposal; in that case, all he asked was linguistic clarification of the text.

> But if the formulation of the government and the committee is meant to apply only to the refugees who are living in Israel today, in that case the Law is seriously flawed. Nobody in the Knesset, and no thinking person outside the Knesset, can consider it completely impossible that such refugees will return legally to Israel, on the basis of a mutual Israeli-Arab agreement or a unilateral decision of the Israeli government.

According to the existing wording, even if the government agreed to return the lands which these absentees had abandoned or to recompense them with other land, they could not be given Israel land. Kargman replied explicitly that the wording of the Law as it stood satisfied Sneh's request.

In a second amendment, Sneh proposed that, in the clause which permitted the transfer of ownership between the JNF, the Development Authority, and the State (under certain conditions), provision be made for the possibility that in the future all the JNF lands would be transferred to the State, by agreement between these bodies or by legislation. It will be recalled that this proposal of Sneh's had been rejected in the debate on the Basic Law.

In his third amendment, Sneh proposed to repeal the clause which permitted the sale of a maximum of 100,000 dunam of urban land and agricultural land destined for urban development (Clause 2[7] in the Israel Lands Law) to private individuals, and to make every conversion of agricultural land to urban development dependent on the preservation of national ownership, without limiting the amount of agricultural land that could be converted. For

> Why must the act of changing the use of land from agricultural to non-agricultural involve transferring its ownership from the nation to a private individual? If it is necessary to create a large industrial concern and to convert agricultural to non-agricultural land, please, let the factory be built on the nation's land. The nature of the ownership of the concern does not have to affect the national ownership of the land... If such a conversion of the land is a necessity arising from the advance of industrialization and urbanization, it will be impossible to stay within the 100,000 dunam limit... So I say: assure national ownership, and you will not have to limit the number of dunam to be converted; it will take place as needed.

However, this amendment contradicted the government's standpoint since the early fifties (which was approved by the Knesset, as has been shown in detail above): the needs of urban development necessitate the sale of a certain amount of land (which was limited to 100,000 dunam) to private individuals, since the entrepreneurs stipulated that their investment should be classed as real ownership, and not only leasehold. It was on this background that Sneh's amendment was rejected.[60]

All the amendments to the proposed law at its second reading were rejected, and it was ratified at its second and third reading on July 25, 1960.[61] We may add that the Israel Land Administration Law was ratified on the same day.[62] With regard to this Law it is worth mentioning one amendment (which was rejected) that is relevant to the subject of this book. It was proposed by Nahum Nir-Rafalkes of Ahdut Ha'avoda-Poalei Zion, who pointed out that in the framework of the Israel Land Administration Law, one of whose clauses was an amendment to the Israel Property Law, there would be no limitation on the sale of Israel lands if the area of land in any sale was less than a hundred dunam:

> Thus, the government can sell and transfer ownership of tracts of land which are smaller than a hundred dunam without limitation. This makes it possible to sell 80 or 90 dunam every day, amounting to almost 2,500–3,000 within a month. In effect, this makes the Basic Law which we have passed ineffective.[63]

60 Ibid., pp. 1952–1953.
61 Ibid., pp. 1955–1956. And see Appendix 7.
62 See Appendix 8.
63 Above, note 59, p. 1959.

Chapter 7
The Government Plan of 2009 to Transfer Ownership of State Lands, the Public Opposition, and the Changes in the Lands Laws in 2009–2012

In February 2009, soon after Benjamin Netanyahu, head of the Likud Party, began his second term as Prime Minister, he put the lands issue at the top of the list of issues with which his government was about to deal. Netanyahu, a supporter of neo-liberalism, had pushed in his role as Finance Minister (in the last decade of the 20th century) and during his first term as Prime Minister (in the first decade of the 21st century) towards extreme reforms in Israel's economy, mainly privatization of companies and bodies belonging to the State. Now, he intended to formulate substantial reform in the Israel Land Administration and to privatize part of the 93% of Israel lands owned by the State and the JNF. Netanyahu believed that the transfer of State-owned land to private owners would greatly increase economic growth and decrease the discord between citizens and the bureaucratic system, since according to the existing rules, each change that a person wished to carry out on his land (e.g., expansion of his apartment) required approval not only of the planning authorities but also of the Israel Land Administration as the representative of the land owners. After an accelerated process of moving towards capitalism and privatization of the public market that the State of Israel underwent from the 1980s, it was now facing the greatest of all – land privatization. The practical significance of this was the transfer of State lands to the ownership of the lessees. Some of the transfers were to be made without compensation to the State (apartments in condominium complexes), and others were to be paid for (plots and private houses).

The Prime Minister's initiative of 2009 resulted in the amendment to the Israel Lands Law, which was approved by the Knesset in the summer of the same year. The amendment to the law permitted the State of Israel to privatize up to 800,000 dunam of urban land, that is to say, to transfer them from the full ownership of the State to private ownership. This would be done by transferring the ownership to people holding the land through leasing, or by selling the land to private individuals who have not held the land previously through leasing. As mentioned above, the Israel Lands Law, legislated in 1960, allowed the State to sell a maximum of 100,000 dunam of urban land.

The process of amending the law, described below, was accompanied by considerable public opposition, shared by right-wing and left-wing parties, religious and non-religious individuals, Jews and Arabs. Because of this opposition,

the law finally approved by the Knesset significantly limited the extent of land that the State was allowed to sell in comparison to the government's proposed amendment. As opposed to the proposed amendment, which spoke of privatization of all urban lands managed by the Israel Land Administration – i.e., State lands, as well as lands held by the Development Authority and the JNF – the amended law, as stated above, limited the amount of lands to be privatized to 800,000 dunam. The JNF lands were not included in this process and were not privatized.

The background to the government's resolution regarding the reform, and the proposed amendment to the law of June 2009

The proposed amendment that the government presented to the Knesset in June 2009[1] was based on the government's resolution with regard to the land reform, made a month earlier, and the source of which was the resolution of the ministerial committee (headed by the Prime Minister) regarding the issue of a reform in Israel lands.[2] This resolution itself was based on a section of the "Hundred Days" plan, which the Prime Minister and his advisers had formulated in March 2009 upon entering office. This specific plan was part of a list of plans that the Prime Minister had decided to carry out immediately upon taking office. One of them concerned "Israel Lands Administration – Land Reform."

The proposed reform dealt mainly with two issues. The first was turning the Israel Land Administration into a government land authority, dealing particularly with the following issues: formulation of the land policy according to which Israel's lands (State lands as well as lands of the Development Authority and of the JNF) would be managed; marketing urban lands; maintaining the State's and the JNF's land rights; providing services to the lessees; and acquiring land for public needs. All this was to be done while safeguarding Israel lands as a resource for the public good, for the environment and for the benefit of future generations. The second issue with which the reform was concerned was a dramatic change in the tenet of the urban lands owned by the government and the JNF.

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1 *Reshumot: Legislative Proposals*, The Economic Reorganization Law Proposal (Legislative Revisions for Implementing the 2009 and 2010 Economic Plan), 2009, chapter 18, Israel Land Administration, June 16, 2009.

2 Government secretariat, resolution MMI/5 regarding the reform in Israel Land Administration, which was enclosed to the government resolutions protocol and received the force of a government resolution, No. 117, 12.5.2009.

As may be recalled, according to the Basic Law: Israel Lands and the Israel Lands Law, 1960, the government was not allowed to sell its lands, except for 100,000 dunam of urban lands. Transfer of lands to their holders was allowed through leasing only. Now, according to the reform, it was suggested that the government be allowed to sell all of its urban lands. As to agricultural lands – which constitute most of the State's and the JNF's lands – no change was suggested: The prohibition of their sale and the possibility of leasing them only – remained unchanged.[3]

The proposed reform regarding the sale of the urban lands, which soon afterwards turned into a government resolution resulting in a proposed amendment to the law, was based on public committees' reports and on past government resolutions. Three main public committees dealt with the issue: The first, in 1986, was called the Public Committee for Examining the Objectives of the Land Policy, headed by Amnon Goldenberg (the Goldenberg Committee); the second, in 1997, was called the Committee for Reforms in Israel Land Policy, headed by Boaz Ronen (the Ronen Committee); and the third, in 2005, was called the Public Committee on Reforms in the Israel Land Administration, headed by Yaakov Gadish (the Gadish Committee).

The reports of the Goldenberg and Ronen Committees recommended the options of long-term leasing or selling of lands, but the recommendations were implemented only partly because they were too far-reaching and ahead of their time.[4] The Gadish Committee reviewed the previous committees' recommendations. Most of the committee's members believed that the objectives of preventing the disagreements between the lessees and the Israel Land Administration (ILA) and of the elimination of the bureaucratic bottlenecks would be achieved by leasing the urban lands for two periods of 98 years: "This will enable an affinity, even a minimal one, between the owners and the land..."

The minority in the committee held that since such long-term leasing with all rights – existing rights as well as future rights – is in practice the same as ownership, then in order to achieve the object of preventing disagreements with the lessees it would be preferable to transfer full ownership to the holders, in other words – to enable the sale of lands. The committee decided to present to the government the two options, so that it could make its principal decision to implement one of them. Let us emphasize that the Gadish Committee dealt with urban lands only, since the urban lessees constitute the majority of the lessees

3 Land Reform, March 15, 2009, TK 5944-2009.

4 The Report of the Public Committee on Reforms in the Israel Land Administration (Gadish Committee), 1.6.2005; see The Economic Reorganization Law Proposal (above, note 1).

from the ILA, and therefore the potential discord between the lessees and the ILA concerns them.

The Gadish Committee did not discuss the reforms regarding agricultural lands, but it pointed out that the two options – namely, long-term leasing or transfer of ownership – would have to be examined also with regard to residential plots in agricultural settlements. The committee further recommended that the government should pay attention to amendments to the law needed in order to limit sale of lands to people who are not Israeli citizens. In other words, whether the landholder receives the land in long-term leasing for two periods of 98 years each or by full transfer of ownership, limitations on transferring his rights to people who are not Israeli citizens would be imposed in a way that such transfers would require the State's confirmation. The committee also recommended that the government start negotiations with the JNF for enabling the sale of JNF's urban lands, too.

The Gadish Committee report from 2005 was the main report on which the government's resolution from mid-2009 was based. In fact, the government adopted in principle this report upon its publication in 2005,[5] and chose the option suggested by the minority in the committee, namely the transfer of ownership, rather than the option of long-term leasing for two periods of 98 years. The adoption of the Gadish Committee report was not comprehensive; it only dealt with the possibility of transferring to lessees of residential properties built on State lands the ownership of their apartments. In other words, it was decided to enable privatization of apartments.

The government based its decisions in law, and thus the Knesset approved two amendments relating to our issue in the framework of the Arrangements Law of 2006. The first one was an amendment to Israel Land Administration Law (Amendment 6), setting a mechanism for transferring ownership rights to lessees of residential apartments in buildings. The second amendment was made to the Israel Lands Law, 1960, and it doubled the amount of urban land permitted to be sold from 100,000 dunam to 200,000 dunam.[6] Now, for the first time since the formulation of the two laws (Basic Law: Israel Lands, and Israel Lands Law, 1960), which totally prohibited the sale of State and JNF lands and permitted only the sale of 100,000 dunam of urban lands, the prohibition was breached and the amount of land permitted to be sold was doubled.

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5 Government resolution, No. 3759, 19.6.2005. The adoption of the report included the issues of restrictions on sale of lands to foreign citizens and the land exchange with the JNF.

6 *Reshumot: The Statute Book*, No. 2057, 15.6.2006, pp. 312–314, Israel Land Administration Law, Amendment No. 6.

Let us emphasize that the law was amended within the framework of the Arrangements Law – a law that enables the government to submit to the Knesset once a year, together with the Budget Law, dozens of amendments that relate to economic issues without their first being discussed in detail in the Knesset committees, as is customary when dealing with ordinary laws. In this way, the public does not get the opportunity to express an opinion, as it would if discussions about the amendments were held in the Knesset committees. That is why the dramatic change of doubling the amount of land permitted to be sold aroused no public response – neither in the Knesset nor among the public. The public was not aware of the change, and the members of Knesset paid no attention to it. When the issue was revealed in 2009 (while discussing the lands reform), Knesset members as well as the public were greatly surprised by it, unaware of the fact that the reform had already begun in 2006.

Another issue that did not receive public attention at that time was a resolution passed in 2006 in the general meeting of the JNF (on the basis of the Gadish Committee report), to amend the JNF regulations so that it would be allowed to exchange, in a one-time transaction, built-up lands in cities (meaning apartments and houses) for State lands in the Negev and Galilee, in addition to an amount of money covering the difference in the value of the urban land that the JNF would transfer to the State and that of the agricultural land that it would receive from the State. This was a dramatic digression from JNF principles, since it meant sale of the JNF urban lands and not regular exchange of lands, which was permitted, as shown above, by the original JNF regulations.[7]

As may be recalled, in 2006, transfer of the ownership of State urban lands to holders of residential apartments in buildings only was permitted, with the aim of reducing discord between the State and the lessees; the area permitted to be sold was limited to 200,000 dunam of urban land; and in fact the State utilized very little of this option to privatize apartments. In 2009, however, the intentions of the government went much further. The government wished to privatize all urban lands (in other words, to enable the transition from leasing to ownership), without any limitations: apartments, houses and plots – all designated for residence and trade, and all lands that are not designated for agriculture. The government's aim was not only to reduce discord; it also aimed to fulfill a neo-liberal economic ideology that raised the banner of privatization in general and land privatization in particular, based on the assumption that these would bring economic growth.

7 *Jewish National Fund* 2007, p. 10.

Let us note that the government's proposed amendment presented to the Knesset in June 2009 referred implicitly, not explicitly, to limitations on such sales to people who are not Israeli citizens.[8] The proposal also hinted that in order to implement the reform, land exchanges between the State and the JNF would be required: The JNF would transfer to the State its urban lands, and in exchange it would receive undeveloped lands in the periphery.[9] The transfer of the JNF urban lands to the State was needed because the Israel Land Administration managed the State lands as well as the JNF lands, and the government intended to privatize all of the urban lands managed by the ILA. Moreover, the JNF urban lands were often adjacent to the State urban lands, and it did not make sense to enable the privatization of State urban lands while not allowing the privatization of JNF urban lands near them.

The public struggle against the reform, and the legislative process of the law permitting limited ownership transfer of State urban lands

The government's proposal regarding privatization of urban lands was presented to the Knesset for the first reading as "Amendment No. 7 to Israel Lands Law." The proposal was presented not as an ordinary proposed amendment but rather as a section in the Economic Reorganization Law (Legislative Revisions for Implementing the 2009 and 2010 Economic Plan), 2009. The law included 44 amendments, abolition of laws and new provisions, all meant to enable the Israeli market to cope with the influences of the global economic crisis of the time and to permit its growth.[10] The proposal notably resembled the format of the annual Arrangements Laws; in other words, its sections and details were not supposed to be discussed in the Knesset specifically according to regular procedure. Thus, the Knesset members as well as the public did not have a chance to influence the final wording of the law, as is usual in the committees' discussions preparing a law for its second and third readings. Indeed, the government's proposed amendment was passed without any special discussion in its first reading

8 The Economic Reorganization Law Proposal (above, note 1). The restriction was imposed both on lessees who received the ownership from the State and wished to sell the asset to a foreign citizen, and on those who purchased the land from the State or purchased it from the buyer, and wished to sell it to a foreign citizen.

9 The Economic Reorganization Law Proposal (above, note 1).

10 The Economic Reorganization Law Proposal (above, note 1), p. 348.

on June 17, 2009. The coalition intended to resume the accelerated legislation procedure, but the wide public criticism regarding the reform itself and the accelerated procedure in which it was about to be approved – as will be discussed in detail below – brought about the demand of the Knesset members to separate the section dealing with the land reform from the Reorganization Law, and to discuss it in a regular procedure. The Knesset decided to give in to this demand, and towards the end of June 2009 it passed the section of land reforms to the Economic Affairs Committee for further discussion.[11]

The extensive public protest against the privatization of land, expressed in the newspapers at the time, in position papers, at conferences[12] and in Knesset discussions,[13] started immediately after the government's intentions became known in May 2009. The protest did not stop even after the Knesset approved the reform in the second half of July. One way in which the objection was manifested was by presenting petitions to the High Court of Justice against the legality of the new law. The opposition to the law encompassed right-wing and left-wing parties, including the Arab parties, as well as environmental organizations and religious and ideological bodies. Thus, a rare coalition was created, a coalition of bodies that were unlikely to cooperate in other matters.[14]

Various reasons were offered for forbidding the sale of lands: national-political, religious, ideological-social and economic arguments, as well as environmental and planning ones. It should be emphasized that the fear that the government would soon expand the privatization to include agricultural lands too intensified the opposition.[15]

Among the national-political arguments one may consider the fear of right-wing bodies that privatization of lands will bring about a situation in which Arabs and hostile agents would purchase the lands and thus take control of the lands held by the State and the JNF. This fear intensified following various pub-

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11 Israel Land Administration Law Proposal (Amendment No. 7), 2009, Appendix m-436 a.

12 One of these was the public academic conference organized by the Association for Distributive Justice, which took place in Tel Aviv on May 24, 2009, and in which a wide-ranging objection to the reform was expressed. See Greenberg 2009.

13 On the various objections to the land privatization, see in detail, inter alia, the minutes of the Knesset Economic Affairs Committee meetings, June–July 2009.

14 See, for example, the title of the story published by Michal Greenberg, "'There is a wall-to-wall coalition against the State lands' privatization,' said right-wing Prof. Yossi Katz at a conference held against the reform in Israel Land Administration, a conference that shaped a joint front of socialists, green activists, Zionists and religious scholars" (Greenberg 2009).

15 See, inter alia, Hamaisi 2011; Knesset website, minutes of the Knesset Economic Affairs Committee meeting, 7.7.2009, speech of Prof. Yossi Katz.

lications noting that money coming from the Gulf States reaches Israeli Arabs with the aim of purchasing lands from private agents. Another argument was that the idea of the "national land" that should not be sold, as stipulated in the Basic Law, was an old Zionist ethos on which both Zionism and the State have grown, and it is no less important than the flag and the national anthem. Therefore, one should not violate it.

The opponents also raised the religious argument, stating the principle "The land shall not be sold in perpetuity," which we discussed in the previous chapters of the book. Another point that was emphasized was the prohibition in Jewish Law to sell lands in the Land of Israel to non-Jews.[16] A fear was expressed that foreign elements, namely capitalists who are not Israeli citizens, would make use of a public resource, would expand their hold on the State of Israel, and would harm clear interests of Israel, especially political ones. This fear was shared by many, and they demanded that a special clause be included in the law that would prevent the takeover of lands by foreign elements following privatization.[17]

Strange as it may seem, the Arab parties and non-parliamentary Arab bodies also opposed the privatization of lands, on the basis of their historical demand to return the Development Authority lands held by the State to their Arab owners, who had left the country during the War of Independence. They believed that as long as these lands were held by the State, there would be a chance of returning them to their original owners; as soon as they were privatized and transferred to private ownership and then to third and fourth holders, the chance of them being returned to the Arab owners would be miniscule. They also opined that this is true with regard to other property that the State had seized from the Israeli Arabs.[18]

The ideological-social and economic opposition to privatizing State lands was based on some concerns: (1) the objection of social organizations and of

16 See, for example, Bin-Nun 2009; "The Reform in Israel Lands," position paper, campaign headquarters for fighting against the privatization of Israel lands, July 2009; Knesset website, minutes of the Knesset Economic Affairs Committee meeting, 7.7.2009, speech of Prof. Yossi Katz.

17 At the conference held on May 24, 2009, Prof. Yossi Katz said inter alia: "I found out that Knesset members still do not know what we are dealing with and do not understand the risks involved in the lands getting into the hands of private capital at first, and to the hands of foreigners later. The State of Israel is not so expensive; three Saudi sheikhs could buy it, and at the end they would have sovereignty over the State" (Greenberg 2009). See also Knesset website, minutes of the Knesset Economic Affairs Committee meeting, 7.7.2009, speech of Prof. Yossi Katz.

18 On this background, Arab bodies submitted a petition to the High Court of Justice against the legality of Amendment No. 7 to the Israel Land Administration Law, namely the reform law. On this see High Court of Justice, file 729/10.

parties with a social-democratic orientation to the government's neo-liberal policy and its intention to privatize assets and services; (2) the fear that the privatization of lands would bring about their concentration in the hands of capitalists, and this would result in deepening the economic gap between rich and poor and in impairing the distributive justice of all public assets.[19]

The environmental organizations also expressed their concern that the open spaces would be marred as a result of the land privatization process. Thus, for example, an environmental journalist wrote in one of the leading newspapers in Israel at the beginning of May:

> The land privatization procedure and the expansion of building on agricultural areas carry far-reaching social and economic consequences. It is an unprecedented incentive for weakening the urban centers of Israel, for the strong populations and the businesses will abandon them for homes in the country and adjacent employment areas. It also means a giant waste of infrastructures that will have to be spread in order to serve all the scattered building that will develop as a result of land privatization.[20]

Planning bodies, from their side, turned attention to the planning difficulties that the State is going to face once the lands are privatized and to the expected injury to the public interest – as opposed to the freedom that the State has with regard to planning when it holds most of the lands.[21]

From the end of June until mid-July 2009, the Knesset Economic Affairs Committee discussed the land reforms. Knesset members, as well as experts and representatives of various organizations, were invited to the committee's discussions and voiced their objections to the reforms based on the reasons mentioned above. The problem was that the opponents had no chance to stop the reform, since the majority in the committee was comprised of representatives of the coalition, headed by the Likud party.[22] Therefore, the opponents tried to pass changes to the reform, which might be accepted by the government. One of their main demands was to restrict the amount of land that may be sold to a few hundred dunam only – as opposed to the stance of the government, which sought to transfer all of

19 See Greenberg 2009. On June 17, 2009, Dr. Sandy Kedar from the Association for Distributive Justice published a position paper in which he wrote, inter alia: "We are not dealing with a reform; we are dealing with the mother of all privatizations – the privatization of the land on which we live. In a few years, when a small number of capitalists will control most of the lands here, what will we tell our children when they ask us how did this happen?..." See also Raviv 2009; Shauli 2014.

20 Rinat 2009.

21 Dabush 2009; Golan 2009.

22 The discussions at the Knesset Economic Affairs Committee, mid-June to mid-July 2009.

the State's urban lands to private hands. This is, for example, what the author of this book said at the committee's discussion:

> And now I come and argue, in accordance with the rationale and quieting words of the government representatives [according to which the reform concerns only the urban lands]: Why should urban lands be privatized without any limit? The opposite should be maintained: If, according to your [the government's] way, the issue of land reform is connected to reorganization in the ILA and its aim is to reduce the discord with the lessees, then you should limit in the law itself the privatized area to 300–350,000 dunam of residential land only, and to plots not larger than a dunam. This extent of privatized land includes more than 90% of the lessees, and there is no need to include land for commerce and industry. Such a move will prove the sincerity of the government's intentions, and will annul the fear that we are dealing with a gradual process, meaning that next year the government will add another portion of the State lands to the privatized lands, and ten years from now we will find out that agricultural land, too, is being privatized.[23]

The government, which was determined to pass the reform in the Knesset as soon as possible, agreed in the end at the Economic Affairs Committee meeting to a series of amendments in the proposed law. The most important of these was its consent to limit the amount of privatized urban land to 800,000 dunam – about 4% of the State of Israel's lands. This meant an increase of 700,000 dunam from the amount of land permitted to be sold according to the Israel Lands Law, 1960, and an increase of 600,000 dunam in comparison to the amount of such lands to be sold according to the amended law that was passed in 2006.[24]

However, the opponents of the reform, especially those who did so from ideological reasons, objected to this compromise, too. Therefore, they put heavy pressure on coalition members, including ministers, to object to the law, even to the version limiting the amount of urban lands to be sold.[25] The author of this book, for example, tried to convince some ministers and Knesset members to oppose the law for ideological reasons. Towards the end of July 2009, demonstrations against the law were held in some places in Israel, and petitions signed by professors were sent to the Prime Minister. One of the newspapers that covered a demonstration held near the Knesset wrote:

> About 450 people protested against the reform in the ILA and held signs calling "Prime Minister Benjamin Netanyahu and Defense Minister Ehud Barak are selling the State lands." According to the organizers, 650 demonstrators were at the place, holding signs on

23 Knesset website, minutes of the Knesset Economic Affairs Committee meeting, 7.7.2009, speech of Prof. Yossi Katz.

24 See note 11; Nachum-Halevi 2010a.

25 Denesh 2009; Liberman 2009b.

> which it was written "The land shall not be sold in perpetuity," and "Bibi, Barak and Eli Yishai [who headed the Shas party] are selling Israel"... Among the speakers at the demonstration were Knesset members from the right-wing and left-wing parties... The demonstrators from among left-wing organizations oppose the reform because of their basic opposition to privatization, while right-wing organizations object to the reform for fear that it would bring about the sale of lands to Arabs. Green organizations are concerned about the acceleration of building in open spaces... A group of 34 PhDs and professors... who object to the reform wrote today a protest letter to the Prime Minister... and to all government ministers and Knesset members, trying to convince them to oppose it: "The government is carrying out a faulty and anti-democratic procedure by which it tries to pass one of the most important reforms in the history of the State of Israel – the reform in the ILA – via an hasty legislation process that does not allow a true public discussion..."[26]

Another newspaper reported:

> In the last weeks, a bloody battle was held in Israeli society around the issue of land privatization. On the one side a coalition was formed comprised of members from all political stripes – settlers, socialists, green activists, members of youth movements, religious individuals, members of the settlement movement and human rights organizations... The opponents wandered around the country, handed out small bags of sand, called government ministers, held home groups and fought in any possible way...[27]

In an additional effort to weaken the opposition – in particular of those who were afraid that the lands would be transferred to capitalists, especially foreign ones – the government clarified on the eve of the second and third reading of the law in the Knesset that it will act to strengthen the limitations on sale of lands to non-Israeli citizens. Also, an additional mollification was included in the proposed amendment, namely that the privatization of 800,000 dunam would be divided into two stages: one half of the lands would be privatized until 2014 and the other half over the following five years.[28]

However, at the end of the day, and to the surprise of many, when the law was submitted on July 22, 2009, for the second and third reading at the Knesset plenum, the government had no majority for its final approval. Members of the opposition voted against the law, but also some coalition members and even seven of the government ministers chose to leave the plenum during the voting. "Before the voting, a war room was set up in the office of MK Shelly Yachimovich [Labor party], operated by members of youth movements... and other organizations, to persuade Knesset members to vote against the proposal. At the entrance

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26 Goldstein 2009e. See also Lavi 2009a.

27 Tarchitsky 2009.

28 Lavi 2009a; Lavi 2009b; Israel Land Administration Law Proposal (Amendment No. 7), 2009, Appendix m-436 a; Zerahia, Ravid and Huri 2009.

to the Knesset there were demonstrations of Hashomer Hatzair members, and the campaign headquarters sent bags of sand to the Knesset members…"[29] The newspapers headlines on the day after the voting emphasized the government's failure to pass the law, and stressed the victory of ideology and values. One of the newspapers wrote: "Netanyahu lost, values won… In the fight for passing the land reform, the attitude of force lost temporarily to the ideological stances. The Prime Minister should make a self-examination and ask himself how it did come about that he tried to advance such wide privatization that is opposed to the values of most of the public and its representatives…"[30]

A week later, a joint article by the author of this book and Dr. Alexandre (Sandy) Kedar from Haifa University was published in the newspaper, and because of the importance of the issues being discussed, we will cite from it at length:

> Last Wednesday [July 22, 2009] a brave coalition of caring citizens, organizations of social change and committed Knesset members managed to block, even if temporarily, the privatization of public lands through legislating the amendment to the Israel Land Administration Law. This amendment… may carry far-reaching consequences for Israeli society and its values. The coalition that fights the law that intends to privatize a large part of the valuable lands in Israel, and at the end of the day maybe even most of Israel lands, is a rare sight, stimulating optimism. It brings together opposite ends and ideological differences.
>
> In the fight against land privatization, many joined in: right-wing organizations such as Professors for a Strong Israel, the Movement for the Preservation of the Nation's Lands, the Legal Forum for Israel, Bnei Akiva [a religious youth movement] and Im Tirtzu movement; leftist and centrist organizations like Dror Israel movement, Hashomer Hatzair [a socialist-Zionist youth movement], Hamahanot Haolim [a socialist-Zionist youth movement], the communal faction in the Kibbutz Movement, the Social Democratic Desk and the Histadrut Hanoar Haoved Vehalomed [a youth movement]; Jewish identity organizations… human rights organizations and social organizations such as the Association for Distributive Justice, Hakeshet Hademocratit Hamizrahit [an apolitical, non-parliamentary social movement], the Association for Civil Rights in Israel… and green groups like Adam Teva V'Din [Israel Union for Environmental Defense], the Society for the Protection of Nature in Israel and so forth. Knesset members fighting together are crossing political borders… The ministers Moshe "Bogie" Ya'alon and Daniel Hershkowitz have also joined the battle.
>
> We, the writers of this article, ideological rivals who usually stand on opposite sides of the barricade that divides Israeli society between right and left, hawks and doves – we too disagree about the future of the territories/Judea and Samaria, the status of the Arabs/Palestinians who

29 Zerahia, Ravid and Huri 2009.

30 Tarchitsky 2009 – the source of the citation. See also Katz 2009; Marenda and Somfalvi 2009; Ravid, Zerahia and Huri 2009; Somfalvi 2009; Zerahia, Ravid and Huri 2009.

are Israeli citizens, religion and state, and issues concerning the Jewishness and Zionism of the State of Israel. Nevertheless, in this historic fight there seems to be a significant common denominator that inspires much hope.

We share the deep concern for the future and identity of Israeli society, the hope for solidarity, the aspiration for social justice, the wish to provide not only for the here-and-now but also for future generations.

We share the recognition that land is a unique resource that is nonrenewable; we are both concerned about the centralized control of land by capitalists, including foreign capital and elements that are hostile towards the good of the State. We see in the privatization of lands an opening to corruption and depravation, and to disintegration of the fabric that joins together the various parts of Israeli society. Since the initial steps toward legislation, we have been viewing with contempt the way in which political parties and Knesset members are renouncing their declared ideology through aggressive processes with the aim of trying to silence opposition. On the basis of this agreement, we are cooperating, together with many others, in the battle against the privatization of lands.

What is there, in this proposed amendment, that unites so many diverse groups? The law proposal is a neo-liberal step that privatizes the land on which we live and turns it into merchandize. The law proposal crushes Jewish-Zionist, social and universal basic values on the basis of which we grew up and were educated, those we use as a basis for educating our own children; it removes from the hands of the public's representatives control of the land and transfers it to a non-transparent institution; it enables a mode of corruption and distribution of benefits to favored associates; it will decrease greatly the possibility of using the public lands for public aims; it distributes benefits to the more powerful in society, who will control the land reserves of all of us; it leaves the weakest groups outside; it will increase the social gaps; it harms the values of distributional justice; it harms the values of nature and environment, and it mortgages the next generations' interests for benefits to the present generation.

Above all, through the enticement of transferring ownership of apartments, the land is being prepared for the real step that no one speaks about and that should worry us all – in the city, kibbutz or moshav, in the center of the State and the periphery, Arabs and Jews, religious and non-religious citizens: In the next stage, our free lands will be sold to a small group of capitalists who, through the control of the land, will control us too. This has been done by implementing neo-liberal processes in many other places, from South America to Eastern Europe; and this, as opposed to all denials and appeasing statements, may happen here, too.

The good news is that it is still not too late. This exceptional coalition not only succeeded in inserting amendments into the law proposal... It succeeded in causing the government to pull back the law proposal temporarily. But the priests of the privatization religion – Netanyahu, Barak and Ariel Atias [Minister of Construction and Housing] – that for them the privatization of communication lines and that of Israel lands are one and the same, are doing their utmost to pass the proposal, maybe even next week.

This is the time to take an interest, to volunteer and to fight. This is a historic moment, and at this moment, honest people should unite and stop this regressive revolution. Maybe our hope is not lost yet – but it depends on every one of us.

> The giant coalition that has been formed around opposition to the law should not be scattered at the end of the current fight. It should be ready for future battles for the shape of the State. No more emphasis on what separates us, but rather a constant search for what unites us. We believe that it is quite a lot.[31]

The Prime Minister did not give up his plan, of course. He put intense pressure on his partners in the coalition and made it clear to the ministers and deputy ministers that he would fire them if they did not support the law in the additional vote that was scheduled, also as a result of his pressure, for the week after.[32] The pressure yielded results. On August 3, 2009, the Israel Land Administration Law (Amendment No. 7), 2009, was passed with the support of 61 Knesset members against 41 opposed.[33] According to the law, an amendment was made to the Israel Lands Law, by which the total extent of urban lands permitted to be sold was increased from 200,000 dunam[34] to 800,000 dunam. This extent of land, comprising 4% of the State of Israel's lands, was permitted to be sold, but a restriction was stipulated: Half of the land would be sold by August 2014 and the other half would be sold over the following five years.[35] As may be recalled, the proposed amendment suggested an option of unlimited sale of all State urban lands.

Thus, in the same way as the idea of selling the lands of the Development Authority and State lands was rejected – an idea that the government proposed regarding these two categories of land in the early 1950s – now, too, 60 years later, the Knesset rejected the government's law proposal to sell all urban lands owned by the State (the option of selling agricultural lands was not discussed at all). All this in spite of the far-reaching transformation that took place in Israel during the six decades since its establishment – from a State that stressed the importance of the collective to a State emphasizing the individual; and from a centralist-socialist market to a capitalist economy. The ideological battle, with all its various elements, even the conflicting ones, to preserve the State lands in the ownership of the State – succeeded. However, the success was only partial, since the extent of urban lands permitted now to be sold was significant and unprecedented.

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31 Katz and Kedar 2009. See also Berger and Huminer 2009; Katz 2009.

32 Mualem 2009; Ravid, Zerahia and Huri 2009.

33 Ibid.; "The Knesset approved" 2009; *Reshumot: The Statute Book*, Israel Land Administration Law (Amendment No. 7), 2009.

34 As may be recalled, the increase of the amount of land permitted to be sold, from 100,000 dunam, as stipulated in 1960, to 200,000 dunam, was done in 2006 through an amendment to the Israel Lands Law.

35 *Reshumot: The Statute Book*, Israel Land Administration Law (Amendment No. 7), 2009.

An unfinished battle: The pursuance of the battle against the reform in 2009–2012 and its results

In 2009–2012, the wide coalition of opponents to the privatization of land acted to fend off its implementation, or at least to limit as much as possible its negative implications, according to their view. This they did in three ways: first, by putting pressure on the JNF not to join the reform; secondly, by legislating a law limiting the right of non-Israeli citizens to purchase State lands; and thirdly, by submitting a petition to the High Court of Justice against the legality of the amendment to the law that was passed in 2009 and that permitted the sale of 800,000 dunam of State urban lands. Hereafter we will elaborate on these three ways of action and on their achievements.

The battle to prevent the JNF from joining the reform

As mentioned above, the government reform plan from 2009 was based on the assumption that the JNF would also privatize its urban lands. It was supposed to transfer to the State 60,000 dunam of urban lands, and in return it would receive from the State 60,000 dunam of lands in the Negev and Galilee and also a sum of money that would compensate for the difference between the value of the urban lands transferred to the government and the value of the agricultural lands received from the government. A draft agreement in this spirit was signed between the government and the JNF directorate already in May 2009, a week after the government resolution regarding the land reform.[36]

Nevertheless, in order to finally authorize the agreement, the approval of the JNF directorate was needed as well as the confirmation of its General Assembly. In fact, the agreement did not speak of a barter transaction – that in principle was allowed according to the JNF regulations – but of a sale transaction with all it implies, since the JNF was about to receive not only land in exchange for land but also a considerable amount of money for its urban lands. If the JNF directorate wished to accomplish this exceptional move, it could base itself to a certain extent on the amendment passed in 2006 in the JNF regulations, in view of the Gadish Committee recommendations. As may be recalled, a new section was

36 The principles of the agreement between the State and the JNF, draft from 21.5.2009, signed by the general manager of the Israel Land Administration, Yaron Bibi, and chairman of the land department in the JNF, Menachem Leibowitz.

added to the regulations with the approval of the General Assembly, permitting the JNF to execute in a one-time transaction with the government an exchange of built-up lands for State lands in the Negev and Galilee, with the addition of a sum of money that the JNF would receive from the State as compensation for the difference between the value of the urban lands that it transfers and that of the lands in the periphery it receives.[37] The problem was that the change in the JNF regulations of 2006 applied to built-up lands only, while the draft agreement with the government of 2009 spoke of the sale of unbuilt urban lands, too, by the JNF to the State. In this manner, the JNF was to act now in contradiction to its own regulations (even after the amendment of 2006).

The change in the JNF regulations of 2006 did not draw any attention at the time, and in fact was not brought to the attention of the wider public, although it constituted a dramatic deviation from the JNF's 100-year-old principles and regulations. In 2009, on the other hand, the JNF's intention to join the land reform of the government aroused wide public opposition based on ideological arguments. As may be recalled, it was the JNF that established at the beginning of the 20th century the idea of the national ownership of land – an idea that turned out to be one of the main Zionist symbols, struck roots in the State of Israel, became an ethos and stood as the background of the Development Authority Law, the State Property Law, and the Basic Law: Israel Lands, that prohibits the sale of State lands, JNF lands and the Development Authority lands. Now the JNF was about to betray its own basic idea, both by selling its lands and by joining the government in its wish to privatize State lands. It also constituted a breach by the JNF of its loyalty to its donors, who donated money to the organization based on their belief that JNF lands would be kept in its hands – as a trustee of the Jewish people – forever.

These considerations stood at the background of the intense pressure that the opponents of the privatization who based themselves on ideological and national arguments put on the members of the JNF directorate and the General Assembly. They demanded that they should not approve the draft agreement between the government and the JNF directorate. This pressure took the form of letters and position papers passed from the opponents to the members of the JNF directorate and the General Assembly, publications in newspapers, appeals to courts and conversations with members of these institutions.[38]

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37 See above, note 7.

38 See, for example, Yossi Katz to the vice chairman of the JNF directorate, 27.5.2009; Yitzhak Bam to Uri Bank, member of the directorate; Uri Bank, member of the directorate, to the heads of the directorate; file b.s.a. 8096/09, petition submitted by Uri Bank, member of the directorate,

In spite of the pressure, at the beginning of June the agreement was confirmed by the JNF directorate after most of its members supported it.[39] The opponents did not spare them their criticism. Thus, for example, one of the newspapers reported right after the JNF directorate's confirmation:

> ...MK Danon, who is chairman of the World Likud, said that he intends to fend off the resolution through parliamentary battle: "This is a sad resolution that may result in the nation's lands reaching foreign hands contrary to the aims of the JNF's existence"... The media uproar against the resolution was aroused by the National Union party [an alliance of right-wing parties], but now the resolution arouses angry responses from Zionist organizations of all political stripes. The campaign headquarters fighting against the privatization of the nation's lands... said in response to the resolution that "we are very sorry about the resolution to liquidate the JNF role for 'change money.' The principle decided upon in the Zionist Congress, 'The land shall not be sold in perpetuity,' was given a degrading burial"... [One of the directorate members said, prior to the decision:] "I resist the idea of transferring to the Israel Land Administration houses in the center of the country that might later be sold to capitalists, and lands that are designated for building near Nazareth that Arabs want to build on, and to receive in exchange lands of Bedouin from around Mitzpe Ramon [in the Negev desert], so I object."[40]

In any event, now the campaign headquarters could only put all its pressure on the members of the JNF General Assembly – the supreme body of the JNF – whose members serve also as the members of the Zionist General Council. While the number of the JNF directorate members is about 40, the General Assembly has 170 members, representing many Zionist organizations belonging to the Zionist Organization. The vote took place on June 22, 2009. It was preceded by an unplanned speech to the Assembly by Prime Minister Benjamin Netanyahu, who came to convince the members to vote in favor of the agreement with the government. During his speech, members defied him by saying that he is selling the lands to the rich.

However, when the voting envelopes were opened, it turned out that 62 voted in favor of the agreement, 55 voted against it, and 13 abstained. But the abstainers, who voted as a group through representatives, clarified immediately after the vote that they intended to vote against and that they voted "abstained" by mistake. The alliance of the abstainers with the opponents gave them the majority vote, and therefore it was understandable that the supporters of the agreement objected vigorously to the acceptance of the abstainers' claim that

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against the JNF and the heads of the directorate, 12.6.2009; radio interview with Member of Knesset Haim Oron, Reshet B, 19.6.2009; Goldstein 2009b; Goldstein 2009c; Goldstein 2009d; Katz 2010.

39 Goldstein 2009a; Liberman 2009a.

40 Goldstein 2009a.

they had made a mistake. The whole issue reached the district court shortly after that, and the abstainers' claim was accepted. Therefore, the court did not allow the JNF to carry out the draft agreement with the government signed at the beginning of June 2009. And indeed, to this day (the end of 2015), the JNF has been prevented by court order from joining the reform and actually privatize its urban lands.[41] From the reform opponents' point of view, this is a substantial achievement.

The restrictions in law on the sale of State lands to non-citizens

As may be recalled, one of the main reasons mentioned by the opponents to privatization of lands was the fear that State lands would be sold to people who are not Israeli citizens and may even be hostile to Israel. During 2009, the period in which the reform was discussed, there were even those who indicated that Arab capital from the Persian Gulf is reaching Israel through Israeli Arabs who serve as straw men, and lands are being purchased in Israel with this money.[42] Channel 1 of the Israeli television even broadcast a story about the sale of lands to Arabs in Jewish settlements in the Galilee where lands are privately-owned.[43] Some people in the Israeli public used to say (and still do) that the State of Israel is small, and two Saudi sheikhs, together with a member of the Russian mafia, could purchase all of the State lands... With the background of all this, the opponents raised the demand that if the reform in State lands is confirmed, and sale of the State's urban lands becomes possible, as planned, their sale to non-Israeli elements should be limited. Apparently, this was also the demand of ministers and deputy ministers from the Prime Minister. After their demand was accepted, they withdrew their objection. They agreed to vote for the second time in the Knesset plenum in favor of the reform for privatization of urban lands, after, as may be recalled, they acted at first to block the process.[44]

In fact, since 1982, the Israel Land Council (which is the highest body for determining the government's land policy) passed a series of resolutions that limit greatly the sale of State lands to foreigners – namely people who are not Israeli citizens in fact or potentially. The resolutions stated that only the

41 Goldstein 2009c; Mitelman 2009.

42 Cohen 2009; *The Economist* 2009.

43 See the report by Hasson 2010.

44 Katz 2009; Lavi 2009a; Lavi 2009b; Mualem 2009.

Chairman of the Israel Land Council (who is the minister in charge of the Israel Land Administration) is permitted to approve the sale of State lands, or their rental for a period longer than five years, to a person who is not an Israeli citizen, is not a new immigrant according to the Law of Return (in other words, is not a Jew) or is not eligible for an immigrant certificate under this Law (again – is not a Jew), or to a corporation administered by such individuals.[45] Apparently, some of the objectors to the privatization in 2009 and those who demanded to set limitations to the option of selling the lands to foreigners were not aware of these resolutions. Those who were aware of them wished to deepen and widen the restrictions, but especially to anchor them in an explicit law.[46] Either way, all those who demanded the legislation of a law limiting the sale of lands to foreigners were not satisfied with Clause 10(4.19 [a], [b]) in Amendment No. 7 to the Israel Land Administration Law, 2009 (namely, the reform law of 2009). This clause, "Safeguarding Israel Lands," enables the State to impose restrictions on the ownership rights of State lands that are transferred to private owners.[47] In fact, the clause hinted at the regulations of the Israel Land Council with regard to restrictions on the sale of lands to foreigners.

In view of all this, MK Nachman Shai placed a proposed amendment to the law on the Knesset table, headed "Transfer of Rights in Private Lands to Foreigners." The proposal was based, among other things, on research made at the request of Shai by the Knesset Research and Information Center regarding restrictions on sale of private land to foreigners. The research showed inter alia that in Europe, too, some restrictions are imposed on acquisition of lands by people who are not citizens of the country.[48] MK Shai's proposal wished in principle to anchor in law the latest resolution of the Israel Land Council with regard to restrictions on the sale of State land to those who are not Israeli citizens (Resolution 1148, passed in March 2008). Thus, Shai's proposal stated that sale of lands originating in State lands to a person who is not an Israeli citizen or is not entitled to citizenship under the Law of Return would require the confirmation of the minister in charge of the Israel Land Administration, after

45 Resolutions of the Israel Land Council: No. 259, 29.6.1982; No. 342, 11.11.1986; No. 1111, 21.5.2007; No. 1148, 9.3.2008.

46 See, for example, Adi Arbel, "Revisions are needed in the Lands Law Proposal (Amendment – Restrictions on transfer of rights in lands to foreigners)," position paper, The Institute for Zionist Strategies, November 2010, http://izs.org.il/papers/Additives.pdf.

47 *Reshumot: The Statute Book*, Israel Land Administration Law (Amendment No. 7), 2009, Clause 10(4.19[a], [b]).

48 Troan and Goldschmidt 2009.

obtaining the opinions of the Defense Minister and the Foreign Affairs Minister.[49] Since it was a private proposal, it passed through a series of discussions until it was confirmed in the Knesset plenum at first reading, and at the beginning of 2011, it was passed for discussion at the committee in preparation for its second and third readings.

In the course of the discussions, some changes were inserted into the proposal, expressing a more rigorous restriction on the sale of lands to foreigners. Thus it was set in the proposal that, firstly, the transfer of rights (through sale or rental for a period of more than five years) in lands that originate in State lands to a foreigner will not be permitted unless executed according to the provisions set by the law, as detailed below.

Secondly, a person wishing to sell land to a foreigner or to let it for more than five years must obtain the approval of the Chairman of the Israel Land Council, namely the minister in charge. The minister may give his approval only on the condition that he received the recommendation of a sub-committee of the council set for discussion of these issues, and after consultation with the Defense Minister and the Foreign Affairs Minister. He will also have to consult other bodies, as set in the regulations, considering the assignment of the land and the identity of the applicant.

Thirdly,

> When deciding whether to grant an approval... the Chairman of the Israel Lands Council will take into account, inter alia, the following considerations: (A) The welfare and security of the public; (B) The foreigner's connection to Israel, including his personal information, the periods of his residence in Israel, and his family relationship with someone who is not a foreigner; (C) The objective for which the foreigner seeks to have the lands granted or transferred to him; (D) The scope of the lands purchased by the foreigner or transferred to him prior to the date of the request; (E) The features of the desired land, including the size of the desired territory, the location of the lands, and their designation.

Fourthly, in case transfers to foreigners were made in contradiction to the provisions of the law – they will not be valid.

Fifthly, the provisions of the law will not apply in case they contradict obligations of the State of Israel in international agreements signed with a state or with an international public organization with respect to transferring ownership rights in lands for the purpose of conducting their affairs in Israel.[50]

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49 Lands Law Proposal (Amendment – Restrictions on transfer of rights in lands to foreigners), 2010.

50 *Reshumot: Legislative Proposals*, No. 359, 10.1.2011, pp. 43–45, Israel Lands Law Proposal (Amendment No. 3 – Restrictions on granting or transfer of rights in lands to foreigners).

At the end of March 2011, about three months after the proposed amendment had been approved in the first reading, it was passed in the Knesset plenum. The provisions of the law that was passed were very similar to those appearing in the proposal. Yet, as opposed to the proposal, but similarly to the last resolution of the Israel Land Council regarding the restriction on transfer of rights to foreigners (Resolution 1148 from March 2008), the law excluded two cases in which the Chairman of the Israel Land Authority[51] is permitted to approve the sale of land to foreigners: (1) a foreigner who is not a corporation, who wishes to purchase one residential unit, and who does not have another residential unit on State lands; (2) a foreign investor to whom the government approved a grant for his investment.[52]

The law restricting sales of State lands to foreigners marked an achievement for those objecting to the reform from ideological reasons. It not only anchored in law the resolutions of the Israel Land Council on the issue, but it also clarified them and set clear rules and criteria for a process that should examine the transfer of rights in State lands to foreigners. These rules reduced greatly the possibility that foreign and hostile elements would take over urban lands originating in State lands. Thus, at least from this aspect, the risks involved in selling State lands diminished.

The petition to the High Court of Justice against the legality of selling State lands

The objectors to the privatization of State lands who based themselves on ideological-national arguments refused to accept any compromises regarding the restriction imposed on the sale of State lands, and were not satisfied with the many achievements that they had attained, which were reflected in the differences between that original government's proposed law and the version of the law that was finally passed. They objected to the law in principle. And thus, even after it became clear that the State lands permitted to be sold would be limited to urban lands only, their extent would not exceed 800,000 dunam (4% of all the State of Israel's lands), their sale would be executed in two stages, the JNF lands would not be sold, and the option of foreigners to purchase lands

51 As part of the reform, the name of the Israel Land Administration was changed to the Israel Land Authority.

52 Israel Lands Law (Amendment No. 3) passed in its second and third readings on March 29, 2011. See also Nachum-Halevi 2010c.

would be restricted – in spite of all that, they intended to do everything possible to invalidate the law from its foundation by submitting a petition to the High Court of Justice claiming that it was illegal.

At the end of January 2010, a petition was submitted to the High Court of Justice on behalf of seven organizations and three Knesset members. The dominant organizations in this move were Hanoar Haoved Vehalomed, Hamahanot Haolim, Hashomer Hatzair, and the graduates' movement of Hanoar Haoved Vehalomed – Dror Israel. All of these ideological organizations were quite active during the fight against the law in summer 2009.

The main argument raised by the petitioners was that the law was not constitutional because by allowing the sale of 800,000 dunam of land it contradicts and empties of meaning the Basic Law: Israel Lands, which declared that State lands, JNF lands and lands of the Development Authority should not be sold. The Israel Lands Law of 1960 excluded 100,000 dunam of urban lands (an amount that was doubled in 2006, as may be recalled, to 200,000 dunam). A Basic Law, being a future basis for the State of Israel's constitution, overrides any statute law. In this case, the petitioners argued, the new law also emptied the whole rationale and aims of the Basic Law. Let us note that already during the discussions of the law at the Knesset in summer 2009, the argument regarding the contradiction between the proposed law and the Basic Law was raised.

Moreover, the State urban lands that were to be privatized were not necessarily apartments, but also unbuilt urban plots. With respect to this, the petitioners argued that the definition of urban land in the new law was much wider and referred not only to land that is located within the zone of an urban settlement (as was set in the previous laws). In the new law this definition included a large variety of lands – any land that a certain plan applies to it, regardless of its assignment (except for agricultural use and breeding of animals), and among these are included lands that may be located in open spaces. The petitioners also maintained that the discussions in the Knesset institutions with regard to the legislative procedure were not complete and comprehensive.[53]

In mid-July 2010 the petition was discussed in the High Court of Justice. The panel of judges was headed by the President of the Supreme Court, Dorit Beinisch. About a month later, the High Court of Justice requested that the parties submit written supplements to the court,[54] and about two years later, on May 24,

53 Chudi 2010; Efrati 2010; High Court of Justice, file 729/10; ibid., supplementary statement by the petitioners, 10.1.2011.

54 High Court of Justice, file 729/10, minutes of the discussion, 14.7.2010; ibid., interim decision, 4.8.2010; Efrati 2010; Glickman 2010; Mitelman 2010; Nachum-Halevi 2010a; Nachum-Halevi 2010b.

2012, the court published its verdict, written by Judge Beinisch. It was one of the last verdicts that she wrote before retiring.[55] It should be noted that earlier, at the beginning of January 2011, the petitioners submitted another petition to the High Court of Justice, claiming that the State has begun in fact to transfer ownership of urban lands to lessees (in other words, began the privatization process), without waiting for the decision of the High Court of Justice. This petition was rejected.[56]

As stated, in May 2012 the High Court of Justice published its verdict. It rejected the petition and accepted the State's position. Judge Beinisch detailed a series of arguments supporting her decision. First of all, she wrote, the transfer of ownership of 800,000 dunam of urban lands from the State to the lessees does not contradict the Basic Law: Israel Lands, because after the first clause, which prohibits the sale of lands, the second clause states that the Basic Law will not apply to categories of land determined by law. In other words, the Knesset set the principle that the Basic Law is not comprehensive, and allows exceptions. The Israel Lands Law, which was legislated in the same year, sets the exceptions, inter alia the 100,000 dunam of urban land – as opposed to agricultural land, which is never permitted to be sold. Beinisch emphasized:

> Indeed, the extent of land for which transfer of ownership will be permitted [now] increased significantly compared to the quota of 100,000 dunam set in 1960, but considering the extent of the land proposed now in relation to all of the State lands [4% only]; considering that the lands will be transferred in two stages; in view of the fact that Amendment No. 7 [to the Israel Lands Law, namely the reform and the option of transferring ownership of 800,000 dunam] refers to urban land only; and keeping in mind the natural increase of the population and its needs [in other words, much more land is needed for urban building because of the enormous growth of Israel's population compared to 1960] – [in view of all this] it cannot be said that Amendment No. 7 deviates from what is permitted in the framework of the exception to the national ownership principle to such an extent that it may change the Basic Law in principle.

Moreover, in the wording of the Basic Law itself there is no limitation imposed on the extent of land that may be excluded, provided that the exclusion is done within the framework of the law. And in the same manner as the Israel Lands Law had set in 1960 the amount of 100,000 dunam of lands permitted to be sold, and in 2006 the frame of 200,000 dunam, there is no legal obstacle to its excluding now 800,000 dunam.

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55 See the verdict at http://elyon1.court.gov.il/files/10/290/007/n15/10007290.n15.pdf.

56 High Court of Justice, file 729/10, petition of the organizations for an interim order against the State forbidding it to transfer ownership of its urban lands, 10.1.2010. See also above, note 53.

It seems that Beinisch made every effort to convince in her verdict that the privatization of 800,000 dunam of urban land does not contradict the Basic Law and does not empty it of content. Therefore, she thought it right to elaborate on her arguments. Because of their importance, we will quote her words at length:

> Although apparently no one will disagree that the reform accomplished in Amendment No. 7 widens significantly the extent of land the ownership of which may be transferred, it seems that it does not change the essential principle that was set in the Basic Law. Three main pieces of evidence support this argument.
>
> Firstly, the extent of land – although it increased considerably and it is sufficient for the State's needs for many years – still constitutes a very small part of the total lands of the State. From the State's response it emerges that the 800,000 dunam with regard to which transfer of ownership will be allowed comprise only about 4% of Israel lands. In this context it is important to note that the Basic Law: Israel Lands did not set a land quota for which transfer of ownership will be permitted, and left this ruling to the legislature. In a certain sense, this practice reflects the need to fit the constitutional arrangements to the changing reality, and in our case – to the natural increase of the population and to the change in land uses. However, even without fixing a quota, as mentioned above, it is clear that the Basic Law set a proportion of a principle and an exception. Therefore, not every quota will necessarily meet the conditions of the Basic Law. In the case before us, considering the fact that the extent of land the ownership of which will be transferrable constitutes 4% of the total of State lands, and in view of the fact that according to the State's claim, most of the open spaces remain under public ownership, it cannot be said that the exception exceeded its limits.
>
> Secondly, the sort of land which ownership may be transferred, namely urban land, matches the distinction that is also expressed in the constitutional history of the Basic Law, between agricultural land and urban land; when the concern was accepted that transfer of ownership will be allowed only with regard to urban land... In their response from September 16, 2010, the respondents [the State] emphasized that the aim of changing the definition [of urban land in the new law] was to decrease the land that will be considered urban land. They argued that Amendment No. 7 and the ownership transfer will not apply to agricultural areas and open spaces designated for preservation and to spaces designated for community affairs, national infrastructures, army bases, firing ranges or forests. The respondents [the State] noted that according to the distribution of land uses in Israel, as determined in national master plans, most land uses are not considered urban land under the new definition, and even the land that is considered urban land – about 1.5 million dunam – is larger than the land quota permitted to be transferred according to Amendment No. 7. The respondents argued further that in urban areas designated for public uses in the framework of urban development and building, such as gardens and public buildings, ownership will not be transferred... It seems that indeed, the aim of the change of definition [by the State regarding urban land] was to decrease the amount of land that will be considered urban lands... In the new definition the designation of the land was examined, so that it will be possible to transfer ownership only of land that is designated for residence or employment... The definition of urban land was minimized because, according to the new definition, it was determined that lands that are eligible for ownership transfer are

> lands specified in detailed master plans for development, and we are not dealing with lands that comprise open spaces or agricultural areas...
>
> Thirdly, Amendment No. 7 limited the transfer of ownership... to two stages, and in each stage 400,000 dunam will be transferred... Naturally, the division of the total of lands that may be transferred to two groups will enable better control of the land transfer. Since the second stage begins "at the end of the first period," and considering the fact that it is not permissible to transfer more than 400,000 dunam in the first stage, the appropriate interpretation of the clause, in our view, is that the second stage will not begin before the first quota of 400,000 dunam has been transferred... The clause should be seen as determining a minimum period and not a maximum period of five years for the transfer of 400,000 dunam. Therefore, if the first 400,000 dunam are not transferred in the course of the first period, the second period will not come into force. Similarly, the second period, too, will not be less than five years, but may stretch over a longer period...
>
> It should be hoped that the transfer of lands will be done mindfully and according to the needs that are created by the natural increase of the population. The division into two stages that each one of them allots a minimal period of five years assists in so doing. From the evidence presented to us it emerges that the extent of 800,000 dunam is sufficient, so it seems, for many years. Therefore, it will be appropriate if the bodies in charge of implementing the law examine carefully the transfer of lands in general, and during the transition from the first stage to the second in particular.
>
> Thus, because of the arguments presented here, it seems that it should not be said that Amendment No. 7 is a formation of a new arrangement that presents a change to the Basic Law... Unlike other Basic Laws, the Basic Law: Israel Lands outlines explicitly the way in which it is possible to deviate from the main principle set in it. In its legislation it was recognized that there is a need to reserve the dynamic option to fit its directives to the changing reality, and it was explicitly recognized that the Knesset has the authority to set exceptions to the law. As we did not find that "the exception absorbed the rule," it should not be said that the Amendment constitutes a change of the Basic Law...[57]

The verdict by Beinisch, on the one hand, brought to an end the possibility of stopping the process of transferring the ownership of 800,000 dunam of State urban lands to private hands. On the other hand, the verdict gave renewed validity to the Basic Law, which determined that it was not permitted to transfer to private ownership the agricultural lands of the State – constituting most of the State lands – unless the Basic Law is changed (an act that is extremely difficult from the parliamentary aspect). With regard to the urban lands, too, the verdict hinted that the extent of land permitted to be sold is close to depletion when considering the need not to impinge the Basic Law. The High Court of Justice also ordered the State to set clear criteria for transferring ownership to private hands in plots larger than 16 dunam. From these aspects, the verdict

57 See the verdict above, note 55.

may be regarded as an accomplishment of the wide public struggle that began in summer 2009 against the policy of land privatization of the Netanyahu government. This achievement was added to the other accomplishments of the struggle: the removal from the agenda of any idea to extend the privatization of State lands to agricultural lands; the limitation of the amount of urban lands permitted to be transferred to 800,000 dunam only, privatized in two stages of 400,000 dunam each; the restrictions imposed on transferring ownership of privatized lands to foreigners; and the leaving of the JNF – the body that symbolized more than anything else the idea of national land – outside the reform of land privatization.

Afterword

The Jewish National Fund, which was established at the end of 1901 with the aim of being the instrument of the Zionist Organization for the redemption of the Lands of Eretz Israel as a basis for the future state of the Jewish people, set the principle of the national land that should not be sold but remain forever at the possession of the public – the Jewish people. The formulator of the idea, Rabbi Professor Zvi Herman Shapira, was the one to suggest that upon the renewed settlement of the Jewish people in its ancient homeland, it should adopt the divine command declaring that "The land shall not be sold in perpetuity, for the land is mine." This old religious decree stands at the core of the public ownership of land until today – about 90% of the State of Israel's lands are owned by two public bodies: The State of Israel (primarily) and the JNF.

The religious decree accorded with the social ideas of the people who have settled the land, and, moreover, led the Yishuv in the pre-State period and constituted the majority in the Knesset until the end of the 1970s – namely the Labor Movement. This contributed greatly to the establishment of a land system based upon the ownership of most lands by the State and the JNF. It was also influenced by the JNF establishing itself as the leading body purchasing Eretz Israel lands since the British Mandate period and until the 1950s. However, at the root of the land system in Israel, which is based on the ownership of most lands by the State and the JNF, stands the religious decree.

The adoption of the JNF principle that the State's lands should not be sold began with the Development Authority (Transfer of Property) Law, 1950, and with the State Property Law, 1951, which preceded the Basic Law: Israel Lands and the Israel Lands Law, 1960 by a full decade. As early as the Development Authority Law, 1950, the legislature prescribed the adoption of the principle of the JNF, and rejected the government's intention, which was stated in the proposed Law of the Transfer of Property to the Development Authority, 1949, to permit the Authority complete freedom to sell its land. A year later, the legislature again adopted this principle in the State Property Law, 1951, and rejected the government's intention, which was expressed in its draft of this law, to allow complete freedom for land sales. The two laws that were enacted in 1960, together with the Israel Land Administration Law and the ratification of the covenant with the JNF – legislative actions through which the State is generally thought to have adopted the JNF's doctrine "The land shall not be sold in perpetuity" – were, in fact, no more than confirmation of principles that the legislature had already accepted.

There is no doubt that the power behind the clause in the proposals for the Law of the Transfer of Property to the Development Authority, 1949, and the

State Property Law, 1951, which gave the government complete liberty to sell its land, was David Ben-Gurion. His views are depicted in the fourth chapter of this book. This viewpoint did not attain broad agreement, to say the least, either in the government or in the Knesset as a whole. Mapai, Mapam, the Religious Front and some of the Progressive Party – who together constituted a majority in the Knesset – believed in the JNF's principle of prohibiting the sale of land, and the transition from Yishuv to State did not change their opinion, as it did Ben-Gurion's.

What was the source of this deep belief? The unchallenged central role of the JNF in the implementation of Zionist settlement in the period of the Yishuv, the fact that it was the most important purchaser of lands from the mid-thirties onwards, and its intensive educational and propaganda activity were certainly influential. The Jewish religious element in the JNF principle contributed to the support of the Religious Front, as did the long-standing involvement of some of the Progressives, such as MK Avraham Granot (Granovsky), who himself was the chairman of the JNF directorate. But there can be no doubt that the most important influence was the fact that the concept of national land accorded with the socialist worldview of the labor parties and of Hapoel Hamizrahi (which was one of the components of the Religious Front), and had long been part of their ideology of agriculture and settlement. Many of the legislators who were members of these parties were themselves members of the labor settlement or directly connected with it; others approved of its values and actions. Erosion of the principle of national land posed an ideological threat both to their socialist views and to their belief in a centralized economy and the central role of agricultural settlement. But it also constituted a practical threat to the stability and future of labor settlement, since the ability to sell land on the free market did not only cast doubt on the ability of workers who might lack means in the future to settle and earn a livelihood from agriculture; it also made the fate of labor settlement uncertain, if the agrarian system were completely changed.

It is not surprising, therefore, that, as well as emphasizing the ideological reasons for forbidding the sale of State lands, the lawmakers advanced practical reasons such as the fear of land speculation, the rise in the price of land, the expropriation of the land worker's rights, and the like. At the same time, the fear that the land would fall into Arab hands if it could be sold to private individuals was emphasized less. Therefore, it is clear why the lawmakers who belonged to these parties were not, in general, prepared to accept compromises on agricultural land, but (apart from Mapam) were prepared to accept a certain degree of compromise with regard to the sale of urban land. It was only with great difficulty that they were persuaded to agree to very limited sales of agricultural land that was scheduled for urban development. Unlike agricultural land, urban land

was never sanctified in the ideology of the Labor Movement. Even so, the pragmatic attitude of Mapai, and of other parties, could not ignore the need for urban development and the State's need of capital, which made it necessary to sell urban land and agricultural land scheduled for urban development – but only in very limited amounts, which were not considered to infringe "the basic principle of nationalized land."[1]

During the 1950s there were no appreciable changes in the attitude of these movements – primarily Mapai (though Ben-Gurion's opinion did not change) – to the issue of the prohibition of land sales. There were also no changes in the condition of the State of Israel that might have caused them to alter their views. The reasons for which they had held to this principle in the past still obtained at the end of the 1950s, when the Basic Law: The People's [Israel] Land and the People's [Israel] Land Law were enacted. Moreover, over the years, from the early 1950s, their fundamental view could only have been strengthened in view of the cumulative experience of the decade in matters such as overall planning and the absorption of immigrants, objectives for which the government's almost complete control of the State's lands constituted a huge advantage. Since there was also no revolutionary change in these parties' strength, it was only natural that the principles that had been decided on at the beginning of the 1950s should again be reaffirmed, in view of the need to regulate the relationship between the State and the JNF. In any case, it was clear that the legislators' main contribution consisted of their formulation of the two laws in the early 1950s, for it was they, and not the government, which had initiated the laws, who ordained for generations the principles connected with the prohibition of the sale of land; whereas in the proposals which were made and confirmed a decade later the additions made by the legislature were only marginal, since the proposed laws already constituted an expression of principles accepted in the past. But here, too, the legislators' contribution was to strengthen these principles, not to weaken them. Thus, as opposed to the proposed Israel Lands Law, according to which the sale of JNF lands permitted by the law was not conditional on the prior agreement of the JNF, the legislators succeeded in adding a limitation on the sale of JNF land permitted by the law – that it should be subject to the prior agreement of the JNF. Dissenting from the government's proposal, they also limited the possibilities of the exchange of land, and directed that urban land could only be exchanged for urban land and agricultural land for agricultural land, thus safeguarding the reserve of agricultural land.

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1 SIA, minutes of the Knesset Finance Committee meeting, 14.2.1950, p. 17, from the speech of Shraga Goren of Mapai. See also Granot 1954, pp. 102–104.

Three different attitudes to land sales current in Israeli society in the first decade of the State were expressed in the discussions of various deliberating bodies in the Knesset between 1950 and 1959. The first was that held by the Labor Movement in a broad sense, including the religious arm of the Labor Movement. It was expressed in the content and ultimate formulation of the Basic Law and the Israel Lands Law. The second attitude, of Herut and the General Zionists, expressed the economic and liberal viewpoint. It was almost the antithesis of the Labor Movement's viewpoint, and supported private capital, in whose name it demanded freedom to sell State lands. These two parties held to this view from the beginning of the 1950s. The third attitude to land sales, which was opposed to the rights of private capital, was that of Maki, which, in accord with this party's extreme left-wing socio-economic and political stance, demanded complete nationalization. In view of the electoral weight of these parties – one on the left, and two on the right – it was quite clear that they had no possibility of altering the Basic Law and the Israel Lands Law. As Bader ably put it when presenting one of his amendments during the second and third reading of the Israel Lands Law: "I understand that, considering the present composition of the Knesset, there is no possibility that even this amendment will be accepted."[2]

The core of the principle of national land in the State of Israel was so strong that even the right-wing governments that presided in Israel for a few periods of governance (not successively) from the end of the 1970s did not act to change the existing land system to a system of private land, or at least to privatize all urban lands. In this context, it should be noted that the right wing has always raised the banner of private capital, and its representatives in the Knesset at the beginning of the 1960s expressed their reservations about the Basic Law. Still, all the transformations in Israeli society since the 1980s in the direction of a Western-capitalistic society, and the processes of privatization, globalization and accelerated urbanization, which Israel did not miss in the last decades of the 20th century and the first decade of the 21st century – all these did not affect the land system in Israel. We have seen earlier in this book that in spite of recommendations issued by public committees in the 1980s and 1990s, there was no change in the land policy.

Only following the Gadish Committee recommendations in 2005 did a change process begin. However, the change referred to urban land only and not to agricultural land. The urban land was never sanctified, neither in the JNF doctrine nor in the ideology of the Labor Movement, and not in the policy of the

2 Knesset Protocols, 29, 27.5.1960, p. 1952.

State of Israel – and, interestingly, even not in the Law of Moses.[3] In the seventh chapter of this book we came to realize that not only did the government not wish to change the existing system with regard to agricultural land; even its success in changing the urban land system, from public to private, was limited. As may be recalled, the total land to be privatized amounted to 800,000 dunam of urban land, and it was to be done in two stages – as opposed to the government's plan to privatize all of the State's urban lands (about 1.5 million dunam). Also, the JNF was not part of the privatization process, and limitations were imposed on the ownership transfer that was approved. The 2009 reform, which was defined at the beginning as "the mother of all privatizations" and as a dramatic change of direction in the land policy, ended with a small weak utterance; the land policy was changed only with regard to 4% of Israel's lands, and the High Court of Justice gave renewed validity to the decisiveness of the Basic Law: Israel Lands and to the existing land system.

Thus, the public land system in Israel is deeply rooted, although 114 years have passed since it was established with the JNF's founding in 1901 and more than 65 years since it was anchored in legislation, and in spite of the fact that the State of Israel has been for years far from being governed by a socialist-centralist rule. The idea of "The land shall not be sold in perpetuity, for the land is mine," with all its religious and social implications, has remained until today one of the causes for the solidness of the public land system in Israel. Over the course of the years, this principle was joined by a series of causes, all of which created a very strong consensus in Israel for continuing the existing land policy and a deep fear of changing it. Some of these causes are the idea of the national land being one of the symbols of Zionism and of the State of Israel and an ethos in itself; the fear of the takeover of the State's lands by foreign elements, both Arabs and hostile elements, in the case that the land system were to change to privatization; the perception of the land as a most important public resource, which must stay forever in the hands of the public, for its good, especially as the public land might be the last barricade against the total privatization of the State; the fear of destroying open spaces in particular and the environment in general in a private land system; the difficulties that would be imposed on the options for future planning for the public good and for the next generations; and the concern of the Arab sector about the future status of the Development Authority lands in case State lands were privatized.

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3 As opposed to agricultural land, which according to the Law of Moses should not be sold in perpetuity, urban land is allowed to be sold. See Leviticus 25, 14–16, 29–31.

Various (and even contradictory) interests, originating in the perceptions of the government, the Knesset parties, various movements and non-governmental bodies, have joined to create a large consensus between right and left, Jews and Arabs, Zionists and non-Zionists, government and opposition. They strengthen the ancient idea that "The land shall not be sold in perpetuity, for the land is mine" in the State of Israel and with it the public land system that Shapira formulated with the establishment of the JNF. The story of the legislation of Amendment No. 7 to the Israel Land Administration Law in 2009, together with all the matters connected to it, as detailed at length in this book, demonstrate more than anything the consensus that has fortified the land system in Israel until today, according to which almost 90% of the 21,000 square kilometers of the State of Israel within the 1967 borders are owned by the State and the JNF.

Appendix 1: **Keren Kayemeth Leisrael, Limited: Memorandum of Association, 1907**

THE COMPANIES ACTS, 1862 TO 1900

ASSOCIATION LIMITED BY GUARANTEE AND NOT HAVING A CAPITAL DIVIDED INTO SHARES

KEREN KAYEMETH LEISRAEL, LIMITED

Memorandum

And

Articles of Association

Incorporated the 8th day of April, 1907

THE COMPANIES ACTS, 1862 TO 1900

ASSOCIATION LIMITED BY GUARANTEE AND NOT HAVING A CAPITAL DIVIDED INTO SHARES

Memorandum of Association

of

KEREN KAYEMETH LEISRAEL, LIMITED

1. The name of the Association is "KEREN KAYEMETH LEISRAEL, LIMITED."
2. The registered office of the Association will be situated in England.
3. The objects for which the Association is established are (subject as hereinafter expressly provided) as follows:
   (1) 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 other parts of Turkey in Asia and the Peninsula of Sinai) or any part thereof, for the purpose of settling Jews on such lands.
   (2) To clear, cultivate, irrigate or otherwise improve any of the lands of the Association, and to erect, alter, maintain and improve on any such lands any buildings which may be required for any of the purposes of the Association.
   (3) To let any land or other immovable property of the Association to any Jew or to any unincorporated body of Jews or to any company as to which the Board of Directors of the Association shall before the letting, at a meeting of which fourteen days' notice at the least specifying the intention to propose such resolution has been given, have passed a resolution to the effect that, having regard to the identity of the person or persons controlling the majority of the voting-power and to the nature of the actual or intended operations of the Company, the Board is of opinion that the following conditions are satisfied, that is to say: (1) the Company is a Company under Jewish control and (2) the Company is engaged or intends to engage in the settlement of Jews in the prescribed region, or is directly promoting or is by financial support, the provision of employment, or otherwise directly furthering or assisting such settlement or intends directly to promote or in manner aforesaid directly to further or assist such settlement: provided that no lessee

or lessees shall be invested with the right of selling, assigning, mortgaging, charging, or by way of sub-letting or in any other manner disposing of or dealing with his, their, or its interest in the land or other immovable property of whatever nature demised by the Lease or in any easements, rights of pasturage or other rights or privileges enjoyed by the Lessee or Lessees or by virtue of his, their, or its Lease, save by virtue of the express written authority of the Association to that effect. Subject always to the second proviso to this Clause, any such authority may be given by the Association in its absolute discretion either as part of the terms of the letting or otherwise, and subject to such conditions (if any) as the Association may think fit to impose, and either generally or with reference to any particular transaction or class of transactions.

(4) To acquire, carry out, establish, construct, maintain, alter, repair, improve, manage, work, control and superintend any roads, ways, tramways, railways, bridges, viaducts, aqueducts, harbours, docks, wharves, reservoirs, watercourses, waterworks, embankments, hydraulic works, telegraphs, telephones, electrical works for power or lighting purposes, saw-mills, factories, workshops, markets, storehouses, cellars and shelters in the prescribed region.

(5) To make any donations, either in cash or other assets which may be deemed conducive to any of the other objects of the Association, or likely to promote the interests of Jews in the prescribed region or the attainment of the primary object of the Association.

(6) To purchase or otherwise acquire, and to sell, dispose of, work, develop, deal with and otherwise turn to account mines and mining rights and property supposed to contain minerals or precious stones of any kinds in the prescribed region or any part thereof, and undertakings connected therewith, and to carry on the business of mining and metallurgy in any part of the prescribed region, but so that nothing in this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil of the prescribed region which it may from time to time acquire.

(7) To purchase or otherwise acquire, sell and dispose of personal property of all kinds.

(8) To collect rents and debts.

(9) To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person or company carrying on any business which this Association is authorised to carry on, or possessed of rights or assets which may seem suitable for the purposes of the Association.

(10) To acquire from any government or other authority any concessions, grants, decrees, rights, powers or privileges in the prescribed region or any part thereof, and to enter into and carry out any arrangements with any government or any supreme, municipal, local or other authorities, which seem conducive to the Association's objects or any of them.

(11) To sell, mortgage, grant licences, easements and other rights in respect of and over, and in any other manner deal with or dispose of, or turn to account the undertaking, and all or any of the property and assets for the time being of the Association, but so that nothing in this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil of the prescribed region which it may from time to time acquire, save only that the Association may (on the occasion of a transfer of its undertaking as a whole to a body having similar objects to the Association) transfer to such body as part of such undertaking the paramount ownership of the soil aforesaid.

(11a) Either with or without payment by the Association for equality of exchange, to exchange land held by the Association in the prescribed region for other land (which for the purposes of this sub-clause shall not include a leasehold interest in land) in the prescribed region, if no part of the consideration receivable by the Association is receivable otherwise than in land, and if the Board of Directors of the Association, at a meeting of which seven days' notice at the least specifying the intention to propose such resolution has been given, shall have previously passed a resolution to the effect that the Board is satisfied that the exchange will be conducive to the carrying out of the primary object of the Association, and that the asset to be acquired is at least equal in value to the asset to be given in exchange therefor, together with the sum (if any) to be paid by the Association for equality of exchange.

(12) To borrow or raise money on any terms and conditions, and in particular by the issue of debentures and debenture stock, redeemable or irredeemable, and charged or not charged upon all or any of the property and rights of the Association, both present and future, but so that nothing is this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil of the prescribed region which it may from time to time acquire.

(13) To make, accept, endorse and execute promissory notes, bills of exchange and other negotiable instruments.

(14) To promote any companies for any purpose which may seem likely to directly or indirectly benefit the Association, and to acquire, hold and deal with shares or other interests in any such company, or in any other

company carrying on, or about to carry on, any business capable of being conducted so as directly or indirectly to benefit the Association.

(15) To enter into any arrangement for sharing profits, union of interests, joint adventure or co-operation with any person or company carrying on, or about to carry on any business which the Association is authorised to carry on.

(16) To take such steps as may be necessary to give the Association the same rights and privileges in the prescribed region or any part thereof as are possessed by local companies or partnerships of a similar nature.

(17) To invest and deal with any moneys of the Association not immediately required for any of the purposes of the Association in such a manner as the Association may deem fit.

(18) To make advances to any Jews in the prescribed region upon any security which may be thought fit.

(19) To receive donations or subscriptions in cash or other assets, and either upon trust to apply the same for any of the objects of the Association or without any such trust, and to give stamps or other tokens as receipts to any donors or subscribers to the funds of the Association.

(20) To make appeals from time to time for donations and subscriptions to the funds of the Association, and for that purpose to hold public meetings in any part of the world, and to prepare, print and publish any circulars, periodicals or pamphlets which may be expedient for any such purpose as aforesaid.

(21) To do all or any of the above things, either as principals or by or through agents, and either alone or in conjunction with others.

(22) To do all such other things as are or may be deemed by the Association in General Meeting to be incidental or conducive to the attainment of the above objects.

Provided always that in construing this Memorandum the word "company" shall be deemed to include any partnership or any other association of persons, whether incorporated or not, and whether domiciled in the United Kingdom or elsewhere.

Provided also that the primary object of the Association shall be and is hereby declared to be the object specified in sub-clause 1 of this clause, and the powers conferred by the succeeding sub-clauses of this clause shall 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. And provided also that in relation to the acquisition of immovable property in the prescribed region the Association shall in all cases have regard to the question whether

or not such property can in view of the local laws be acquired with sufficient security of tenure, and no such property shall be acquired by the Association otherwise than with the previous sanction of the Association in General Meeting, unless the Association in General Meeting shall have passed a resolution to the effect that it has been proved to the satisfaction of the Association that effective measures have been publicly taken which will ensure to the Association adequate political security of tenure for its immovable property.

4. The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association, as set forth in this Memorandum of Association, and no part thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the Association.

   Provided that nothing herein contained shall prevent the payment in good faith of (A) any travelling or hotel expenses of any Member of the Association, so far as the same shall be incurred by him whilst engaged on the business of the Association, or (B) of remuneration to any Directors, officers or servants of the Association or other persons in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding £5 per cent. per annum on money borrowed from or lawfully due to any Member of the Association, nor the payment to any Member of the Association for occasional service.

   And provided also that nothing herein contained shall prevent any payment to any railway, gas, electric lighting, water, cable or telephone company of which a Member of the Association may be a member or any other company in which such Member shall not hold more than one-hundredth part of the capital, or prevent such Member of the Association from receiving in the capacity of a member of such company a share of the profits made by such company in respect of such payment.

5. Every Member of the Association undertakes to contribute to the assets of the Association in the event of the same being wound up during the time that he is a Member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a Member, and of the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding £1.

6. If upon the winding up or dissolution of the Association there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the Members of the Association,

but shall be given or transferred to some other Jewish institution or institutions having objects similar to the objects of the Association, to be determined by the Members of the Association in General Meeting at or before the time of dissolution, or in default thereof by such judge of the High Court of Justice as may have or acquire jurisdiction in the matter.

7. Unless and until an Order shall have been made or an effective resolution shall have been passed for the winding up of the Jewish Colonial Trust (Juedische Colonial Bank), Limited, no person shall be capable of becoming a Member of the Association who is not a holder, either solely or as one of two or more joint holders, of Founders' Shares or a Founder's Share in the said Jewish Colonial Trust. After an Order shall have been made or an effective resolution passed for the winding up of the said Jewish Colonial Trust no person shall be capable of becoming a Member of the Association who in not a member of some body which shall for the time being be carrying on an undertaking similar to and in succession to the undertaking of the said Jewish Colonial Trust or of some other body designated by Special Resolution of the Association.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS

David Wolffsohn,
Cologne, 26, Sachsen Ring (Germany),
Merchant

Otto Warburg,
Charlottenburg, 175, Uhlandstrasse (Germany),
Professor of Botany

Alexander Marmorek,
Paris, 6, Rue Freycinet,
Doctor of Medicine

Max Isidor Bodenheimer,
Cologne, Richmodstr. 6 (Germany),
Counsellor-at-Law

Michail Ussischkin,
Odessa, Russian, 46, Chersonskaia,
Engineer

Leopold Jacob Greenberg,
82, Fordwych Rd., Brondesbury, N.W. London,
Man: Director of Company

Jacob Moser, J.P.,
10, Oak Villas, Bradford, Yorkshire,
Retired Merchant

Dated the Twenty-eighth day of March, 1907.

Witness to the Signatures of the above-named –
Hermann Neumann,
166, Upland Road, E. Dulwich, London,
Secretary to a Public Company

Source: CZA, file KKL5/17293

Appendix 2: **"The future status of Keren Kayemeth Leisrael Ltd.," memorandum by Aaron Wright and A. Saville Cohen, July 28, 1948**

July 28, 1948

The future status of Keren Kayemeth Leisrael Ltd.

by Aaron Wright and A. Saville Cohen

Note

Disadvantages of Present Status of Keren Kayemeth Leisrael Ltd.

1. With the setting up of the State of Israel, it has become necessary to review the present status of Keren Kayemeth Leisrael Ltd. (hereinafter referred to as "K.K.L."). K.K.L. is a company incorporated in England, limited by guarantee, and no part of its income or property may be distributed among its members. It is widely felt that the fact that K.K.L. is incorporated in England now has a number of serious disadvantages:
   (a) It is considered inappropriate that K.K.L. as the national instrument for the acquisition of land in Israel and the largest owner of land in the country should be a foreign corporation incorporated outside Israel.
   (b) K.K.L. receives the greater part of its income from contributors in countries outside the British Commonwealth. A considerable proportion of these contributors, now that the State of Israel has been set up, would regard it as inappropriate that they should continue to send their contributions to a company incorporated outside Israel.
   (c) It may be inconvenient in a number of ways for K.K.L. to be subject to English company law and regulations made thereunder. For example, the new Companies Act, 1948, which came into force on 1st July, 1948, introduces new provisions in regard to the form of company accounts and the information to be given in connection therewith. The said Act, for example, contains elaborate provisions in regard to the form of consolidated group accounts which are to be drawn up in respect of a company and all its subsidiaries. It may well be that K.K.L. would prefer not to be subject to these provisions.
   (d) It may be inconvenient for K.K.L. to continue to be subject to certain restrictions under English Law for example, in connection with living legacies and the grant of annuities. It may also be inconvenient from the point of view of tax liability in England.
   (e) K.K.L. has in the past entered into a variety of financial transactions. It is probable that in future persons both in Israel and many other countries who desire to enter into contracts with the Keren Kayemeth would

prefer to deal with an Israeli corporation rather than with a company incorporated outside Israel.

Question of setting up new Keren Kayemeth

2. In view of the disadvantages mentioned above resulting from the fact that K.K.L. is incorporated in England, it would appear to be desirable, provided that the legal and practical problems involved can be satisfactorily dealt with, to set up a new Keren Kayemeth, to be incorporated under Israeli law, and with such powers and privileges as may be considered appropriate.

Problem of transferring Lands of K.K.L. to new Keren Kayemeth

3. One of the first problems to be dealt with is how to transfer the lands owned by K.K.L. to the new Keren Kayemeth, assuming such new body is set up. The question arises whether it is desirable to wind up K.K.L. in order to transfer its property to the new Keren Kayemeth under Clause 6 of the Memorandum of Association of K.K.L. (hereinafter referred to as "the Memorandum"). The said Clause 6 provides as follows:

    6. If upon the winding up or dissolution of the Association there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the Members of the Association but shall be given or transferred to some other Jewish institution or institutions having objects similar to the objects of the Association, to be determined by the Members of the Association in General Meeting at or before the time of dissolution, or in default thereof by such judge of the High Court of Justice as may have or acquire jurisdiction in the matter.

4. What is the meaning of the word "similar" in the said Clause 6 of the Memorandum? Would it be necessary for the new Keren Kayemeth to have objects which were precisely the same as those of K.K.L. to enable the surplus property of K.K.L. to be transferred to the new Keren Kayemeth under the said Clause 6? The word "similar" is defined in Murray's English Dictionary as "Having a marked resemblance or likeness; of a like nature or kind". It may be useful also to refer to a number of judicial decisions which throw light on the meaning of the word "similar".

5. In Drew v Guy (1894) 3 Ch. 25, a case where there was a restrictive covenant not to carry on a similar business, it was held by the Court of Appeal "that

the test whether the Defendant's business was similar to that of R. was whether it was sufficiently like it to compete with it, and that, judging by this rule, **although there were considerable differences between R's business and that of the Defendant, the Defendant's business was similar to that of R.**, and that an injunction must be granted in the terms of the covenant".

6. In Western Power Company of Canada Ltd. v Corporation of the District of Matsqui, 1934 (A.C.) 312, the meaning of "similar services" in a contract between an electric power company and a municipality was considered. Lord Wright said (at the bottom of p. 330): "What, therefore, the appellant was agreeing to in 1913 was that its schedule of rates should not be higher than the schedule of rates of any other such company in British Columbia for 'similar service' – that is, on a comparison of the detailed charges of one with the other... '**Similar service' is service which is not indeed identical**, but corresponds in similarity in accordance with classifications adopted in a schedule such as the rates schedule".

7. An Australian case, Mays v Roberts (1928) S.A.S.R. 217, may be cited. By a building contract it was agreed that a house was to be erected "similar" to H's house. Argas Parsons J. said (at p. 219): "The word 'similar' is an ambiguous word... It would be absurd to hold in such a contract that 'similar' means exactly like, because that would involve a slavish copy of all defects latent and patent in the house with which the comparison is made".

8. It is clear from the above cases that "similar" does not mean "identical". In our view, the Jewish institution or institutions to which the surplus property of K.K.L. may be transferred under the said Clause 6 of the Memorandum need not have objects precisely the same as those of K.K.L.

9. One of the points raised by Mr. Ussishkin which has to be considered is in connection with sub-clause (1) of Clause 3 of the Memorandum. The said sub-clause (1) provides that K.K.L. may purchase lands etc. "in the prescribed region (which expression shall in this Memorandum mean Palestine, Syria, any other parts of Turkey in Asia and the Peninsula of Sinai) or any part thereof..." K.K.L. was incorporated in 1907 and at that time the expression "Turkey in Asia" referred to the vast area in Asia which was then part of the Ottoman Empire, a great part of which has since been replaced by a number of independent states. If the objects of the new Keren Kayemeth provided for a more restricted definition of the "prescribed region" in which

it was permissible to purchase land; if such "prescribed region" were confined, say, to the area comprised in the League of Nations Mandate for Palestine (which included Transjordan), with or without any other portion of the present "prescribed region", then in our view such alteration in the definition of the "prescribed region" would not of itself make the objects of the new Keren Kayemeth dissimilar from those of K.K.L. We are strengthened in this view having regard to the many territorial changes which have taken place since 1907 in the present "prescribed region".

10. A further point raised by Mr. Ussishkin is in connection with sub-clause (3) of Clause 3 of the Memorandum. The said sub-clause (3) provides (putting it shortly) that K.K.L. may let land to Jews or companies under Jewish control. In this connection it is important to bear in mind that the primary object of K.K.L. (vide the second Proviso at the end of Clause 3 of the Memorandum) is that set out in sub-clause (1) of Clause 3 of the Memorandum, namely, "To purchase... or otherwise acquire any lands... in the prescribed region... for the purpose of settling Jews on such lands". In our view, having regard to the said primary object, the provision that K.K.L. shall let its lands only to Jews or companies under Jewish control is one of the fundamental provisions of the present constitution of K.K.L. If K.K.L. land were let to non-Jews, that would seem to run counter to the said primary object that K.K.L. should acquire land for the purpose of settling Jews thereon. Is it desirable that this fundamental provision that land should not be let to non-Jews should be omitted in drawing up the objects of the new Keren Kayemeth, and if so, what legal consequences in connection with the problem we are at present considering, would follow?

11. There appear to be strong reasons in favour of not including a prohibition against letting land to non-Jews in drawing up the objects of the new Keren Kayemeth. It would be widely regarded as very undesirable if in the State of Israel the national corporation owning an important part of the land of the country provided by its constitution that its lands could not be let to non-Jews. This would undoubtedly be considered by many to constitute a serious discrimination against the non-Jewish citizen of the State.

12. The problem would become all the more acute if under various development schemes considerable areas were taken over by the new Keren Kayemeth from their non-Jewish owners. In such an event, it would be desirable, and in many cases for all practical purposes obligatory, for the new Keren Kayemeth to lease part of the areas taken over to the previous non-Jewish

owners, but this would be rendered impossible if the existing provisions prohibiting letting to non-Jews were followed in drawing up the objects of the new Keren Kayemeth.

13. It is well known that the fact that K.K.L. restricts the letting of its land to Jews and companies under Jewish control has been made the subject of adverse comment on innumerable occasions. It will be borne in mind that the Anglo-America Committee of Inquiry on the Palestine Problem recommended in Recommendation No. 7 "that the Land Transfers Regulations of 1940 be rescinded and replaced by regulations based on a policy of freedom in the sale, lease or use of land, irrespective of race, community or creed..." The Committee expressed itself as being "opposed to any legislation or restrictions discriminating against Jew or Arab".

14. It will also be borne in mind that some of the lands of K.K.L. are situated outside the boundaries of the Jewish State as laid down under the United Nations' decision of November 1947. Some of these lands are in the area allotted to the Arab State under this decision. The authorities in this Arab State area might take steps to penalise K.K.L. on the ground that it was discriminating against Arabs. If the said prohibition in the Memorandum against letting land to non-Jews came to be construed by the Courts in this Arab State area, they might hold that such prohibition was void as being against public policy. We are of the opinion that greater elasticity in the Memorandum is required to enable K.K.L. to make satisfactory arrangements with the Arab State authorities (when constituted) in regard to the land of K.K.L. in this Arab State area.

15. The reasons why the fundamental provision that K.K.L. lands should be let only to Jews and companies under Jewish control was made part of the constitution of K.K.L. are appreciated. This provision was considered an essential safeguard of the Jewish position in Palestine at the time of the incorporation of K.K.L. over forty years ago. But with the setting up of the State of Israel the case of this safeguard has lost much of its force. It would appear therefore to be desirable that this prohibition against letting land to non-Jews should not be included in the constitution of the new Keren Kayemeth.

16. If it is decided that in the constitution of the new Keren Kayemeth provision should be made to enable it to let land to non-Jews as well as to Jews, would this of itself render the objects of the new Keren Kayemeth dissimilar

from the present objects of K.K.L.? In this connection we must bear in mind the primary object of K.K.L. in sub-clause (1) of Clause 3 of the Memorandum already referred to above, that land is to be acquired for the purpose of settling Jews thereon. The matter is not free from doubt, but on the whole we are of the opinion that if the objects of the new Keren Kayemeth provide that land can be let to non-Jews, then such objects would **not** be similar to the present objects of K.K.L. If this is correct, there would be no power on a winding up of K.K.L. to give or transfer the property of K.K.L., under Clause 6 of the Memorandum, to the new Keren Kayemeth, if the latter were empowered to let its land to non-Jews as well as Jews.

17. If any point of doubt arises as to whether another Jewish institution selected by the members of K.K.L. in General Meeting as a body to which the property of K.K.L. shall be given or transferred under Clause 6 of the Memorandum has similar objects to those of K.K.L., the liquidator could if necessary apply for directions to the Chancery Division of the High Court of Justice in England, and the directions of the Court would be binding on the liquidator.

Question of transferring undertaking as a whole

18. Mr. Ussishkin has raised the question of transferring the "undertaking as a whole" in connection with sub-clause (11) of Clause 3 of the Memorandum. This is as follows:

> To sell, mortgage, grant licences, easements and other rights in respect of and over, and in any other manner deal with or dispose of, or turn to account the undertaking, and all or any of the property and assets for the time being of the Association, but so that nothing in this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil of the prescribed region which it may from time to time acquire, save only that the Association may (on the occasion of a transfer of its undertaking as a whole to a body having similar objects to the Association) transfer to such body as part of such undertaking the paramount ownership of the soil aforesaid.

19. Any body to which it was proposed that the undertaking as a whole should be transferred under the said sub-clause (11) would have to be a body having objects similar to those of K.K.L., and the observations made above in regard to "similar" objects would apply. The said sub-clause (11) contemplates the transfer of the undertaking as a whole to such a body. Assuming that it was

desired to transfer the undertaking as a whole to the new Keren Kayemeth, we doubt whether it would be practicable unless K.K.L. were wound up. The liabilities and obligations of K.K.L. could not be transferred to the new Keren Kayemeth except with the consent of the innumerable persons and companies concerned, and it would hardly be feasible to obtain such consent. We doubt whether a transfer of the assets only of K.K.L. to the new Keren Kayemeth would constitute a transfer of the undertaking as a whole.

20. Moreover, for the reasons stated in paragraph 31 below, it might not be feasible to transfer the lands of K.K.L. within the Arab State area (as determined by the United Nations' decision of November 1947) to the new Keren Kayemeth; if so, this also would prevent the transfer of the undertaking as a whole.

21. Mr. Ussishkin has made reference to Section 234 of the Companies Act, 1929. This is now replaced by Section 287 of the Companies Act, 1948, which is in the same terms. The said Section 287 deals with the procedure whereby a liquidator in a winding up of a company may dispose of its assets to another company and accept in exchange shares and other consideration. The said Section 287 provides that:

    (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transferor sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company...

    The said Section 287 gives certain rights to a dissentient member of "the transferor company", the assets of which are being disposed of, whereby the interests of the dissentient member can be valued. The said Section 287 does not give any rights to debenture holders.

22. In the case of K.K.L., however, it is laid down in Clause 4 and Clause 6 of the Memorandum that no part of the income or property of K.K.L. is to be paid or distributed to members of K.K.L. The machinery of the said Section

287 in regard to a distribution among the members of "the transferor company", the assets of which are being disposed of, would not apply in the case of K.K.L. as members of K.K.L. would have no beneficial interest whatever in the surplus assets of K.K.L. The whole purpose of the said Section 287 is to ensure that those members of a company who do not agree to the transfer of the property of the company shall not be deprived of the value of their holdings in the company. Clearly the said Section 287 would not apply to members of K.K.L.

Question whether it is desirable to wind up K.K.L.

23. We have now to consider the problems which may arise in connection with a proposal to wind up K.K.L. In this connection it should be observed that a number of changes in the law have been effected by the Companies Act, 1948.

24. Section 283 of the Companies Act, 1948 (replacing Section 230 of the Companies Act, 1929), deals with the "Declaration of Solvency" and provides inter alia that:
    (1) Where it is proposed to wind up a company voluntarily... the majority of the director may, at a meeting of the directors, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.
    (2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless –
        (a) It is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company... and
        (b) It embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
    (3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

25. It will be observed that for the purposes of a voluntary winding up it would be necessary for the Directors of K.K.L. to make a statutory declaration that they have formed the opinion that K.K.L. would be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up. The Balance Sheet of K.K.L. as at 30th September, 1946, is the last Balance Sheet of K.K.L. available to us. This shows, apart from the items "Donation Capital Account and other Funds" and "Tree Donation Fund", very substantial liabilities. We understand that since 30th September, 1946, K.K.L. has contracted additional large liabilities, including certain guarantees in connection with the recent Israel National Loan. Would the Directors of K.K.L. be in a position to make the required statutory declaration? We doubt it. And if within a maximum period of twelve months from the commencement of the winding up the debts of K.K.L. were not paid or provided for in full, it will prima facie be presumed that the Directors did not have reasonable ground for their opinion, and the Directors might be liable to imprisonment and fine. In these circumstances we doubt whether the Directors of K.K.L. would be willing to make the required statutory declaration.

26. It should be borne in mind that in regard to the contingent liabilities of K.K.L. it would be necessary for the liquidator to make full provision for them. Would liquid funds be available to enable the liquidator to do so? No liquidator would part with the assets without ensuring that all debts and contingent liabilities had been discharged or provided for, and under Clause 6 of the Memorandum it is only "**after** the satisfaction of all its debts and liabilities" that the assets of K.K.L. could be transferred to another Jewish institution having objects similar to the objects of K.K.L.

27. Moreover, if after the commencement of the winding up it appears that the liquidator was not likely to be able to pay or provide for the debts of K.K.L. in full within the maximum period of twelve months, it is quite possible that some of the creditors of K.K.L. might apply to the Court in England to have K.K.L. wound up by the Court. Obviously, it would be an intolerable state of affairs if the voluntary winding up of K.K.L. were superseded by a compulsory liquidation.

<u>Position in regard to K.K.L. Debentures</u>

28. We should point out the position in regard to the debentures issued by K.K.L. Reference is made in the said Balance Sheet as at 30th September,

1946, to the following debentures, "Secured by a floating charge on all the Undertakings and Assets of the Association".
"1) 2½% Debentures: Redeemable 1934–53";
(These debentures do not contain a condition similar to that contained in other debentures mentioned below.)
"2) 2½% Debentures: Redeemable 1936–55";
(Condition 11 of these debentures provides that "The principal moneys hereby secured shall immediately become payable if... a resolution is passed for the winding up of the Company".)
"3) 4% Debentures: Redeemable 1939–58";
(Condition 12 of Series "A", Series "B", Series "C", and Series "D" of these debentures provides that "The principal moneys hereby secured shall immediately become payable if... a resolution is passed for the winding up of the Company".
Series "I" of these debentures contains a similar provision in Condition 14. We do not appear to have copies of any series of debentures between Series "D" and Series "I" mentioned above, but presumably they contain a similar condition.)
"4) 4% Debentures: Redeemable 1943–58";
(A copy of these debentures does not appear to be available, but we presume that they contain a similar condition that the principal moneys secured would immediately become payable if a resolution were passed for the winding up of K.K.L.)
It is therefore important to bear in mind that if an effective resolution were passed to wind up K.K.L., a substantial sum would immediately become payable in respect of the debentures outstanding, and the passing of such resolution would give the debenture holders the right to apply to the Court for the appointment of a Receiver.

29. This danger might be avoided if the debenture holders were to agree to a modification of their rights, say, by accepting a guarantee or a debenture issued by the new Keren Kayemeth in lieu of their rights under their existing debentures. The first debentures mentioned above, namely, "1) 2½% Debentures: Redeemable 1934–53" do not appear to contain any condition providing for a modification of the rights of the debenture holders. The second and third debentures mentioned above, namely, "2) 2½% Debentures: Redeemable 1936–55" and "3) 4% Debentures: Redeemable 1939–58" do contain a condition providing for a modification of the rights of the debenture holders. The said second debentures in condition 20 provides as follows:

20. The holders of three-fourths in value of the Debentures of this series for the time being outstanding may by writing under their hands sanction any modification of the rights of the Debenture Holders of this series which shall be proposed by the Company and any compromise or arrangement proposed to be made between the Company and the holders of the Debentures of this series and any modification, compromise or arrangement so sanctioned shall be binding on all the holders of the Debentures of this series and notice thereof shall be given to them accordingly and each holder shall be bound thereupon to produce his Debentures to the Company and to permit a note of such modification compromise or arrangement to be placed thereon.

The said third debentures contain a similar condition, vide condition 18 in Series "A" to "D" inclusive, and Condition 19 in Series "I". We presume that the other K.K.L. debentures outstanding contain a similar condition. It might be difficult to obtain the consent in writing of the holders of three-fourths in value of the debentures of each series to a modification of the rights of such debenture holders, but if such consent were obtained such modification would be binding on all the holders of such series.

Problem of Bequests to K.K.L. if K.K.L. were wound up

30. The next important matter which must be dealt with is that of bequests. There is no doubt a large number of cases in which K.K.L. is a beneficiary under wills which have been made and have not yet come into operation. Many of these wills in the ordinary course of things are not likely to come into operation for many years to come. The advice which has been given in Great Britain to would-be testators desiring to benefit K.K.L. under their wills is to provide that the legacies should be payable to K.K.L. and not to the local Jewish National Fund organisation. It is possible that this practice is also followed in other countries. If K.K.L. is wound up, it is likely that many of these legacies will be lost, as many of the persons who have left legacies to K.K.L. in their wills will probably not take the trouble to amend their wills, in order to provide that the legacies should be payable to the new Keren Kayemeth. It is not possible to estimate the amount of money which may be lost in this way, but it may be very considerable.

Problem of K.K.L. lands in the Arab State area

31. The next point to be considered is that raised by Mr. Ussishkin in regard to the lands of K.K.L. which are situated in the area allotted to the Arab State under the United Nations' decision of November 1947. Mr. Ussishkin

points out that the Arab State authorities may for political reasons put obstacles in the way of the transfer of the ownership of lands of K.K.L. within the boundaries of the Arab State to the new Keren Kayemeth. It may will be that the Arab State authorities might refuse consent to such transfer, or might make it subject to heavy penalties, or might insist that neighbouring Arab cultivators should be given rights of pre-emption. If such difficulties are likely to arise, it is a further argument against the winding up of K.K.L.

Complexities of a Winding Up of K.K.L.

32. Generally, it may be pointed out that if it were decided to wind up K.K.L., the task of the liquidator would be extraordinarily complex. K.K.L. has entered into innumerable contractual arrangements, including loans, living legacies, Joint Land Purchase contracts, options to grant leases under the Farm City Scheme, various agreements in regard to the administration of Trust Funds, and many other arrangements. There are large future and contingent liabilities, which it may not be possible to meet or provide for within twelve months of the commencement of the winding up. Even if the "Declaration of Solvency" could properly be made, it would probably be highly inconvenient to provide the resources to meet all liabilities within a period of twelve months from the commencement of the winding up. We foresee also that in the course of the winding up many points of difficulty may arise and the liquidator would be likely to make frequent applications to the Court in England for directions rather than take any risks. Apart from the expense and delay, the Directors of K.K.L. may not welcome the prospect of such points being settled by a Court in England.

Practical Objections to winding up K.K.L.

33. It appears to us therefore that the practical objections to winding up K.K.L. at present and for a considerable time to come are very great indeed and we therefore advise against a winding up of K.K.L.

Suggested Alternative Method of Procedure

34. We are of the opinion that while not winding up K.K.L., two steps should be taken:
    (1) We suggest the setting up of a new Keren Kayemeth, with a view to overcoming the disadvantages set out in paragraph 1 above, which result from the fact that K.K.L. is incorporated in England.
    (2) We suggest that the Memorandum of K.K.L. should be altered as soon as possible on the lines discussed below.

35. We suggest that the new Keren Kayemeth should incorporate the following provisions:
    (1) A more up-to-date definition of the "prescribed region".
    (2) A power to enable the new Keren Kayemeth to settle non-Jews as well as Jews on its lands.
    (3) A power to enable the new Keren Kayemeth to let its land to non-Jews as well as to Jews.

36. When it has been decided that the objects of the new Keren Kayemeth are to be, we suggest that as soon as possible thereafter steps should be taken to alter the present objects of K.K.L. to make them as similar as possible to the objects of the new Keren Kayemeth. If the suggestions in the preceding paragraph are acceptable, then we suggest the following alterations in the present objects of K.K.L.:
    (1) A more up-to-date definition of the "prescribed region" in sub-clause (1) of Clause 3 of the Memorandum.
    (2) The extension of the provision "for the purpose of settling Jews on such lands" in the said sub-clause (1) to include non-Jews.
    (3) The elimination of the prohibition in sub-clause (3) of Clause 3 of the Memorandum against letting land to non-Jews.

    In addition, we suggest the following alteration:
    (4) An alteration of sub-clause (11) of Clause 3 of the Memorandum to enable K.K.L. during its lifetime to transfer the paramount ownership of all or part of its lands to another body having objects similar to K.K.L.

37. The suggested first alteration in the preceding paragraph is desirable because the present definition of the "prescribed region" is out of date. The suggested second and third alterations in the preceding paragraph are desirable in order to conciliate world opinion in general and Arab opinion in particular, and also in order to ease the position of K.K.L. vis-à-vis the authorities in the Arab State area. The suggested fourth alteration is of great importance because it is intended to enable K.K.L. to transfer its land within the State of Israel to the new Keren Kayemeth (provided the objects of the latter are similar to the objects of the K.K.L. as altered) without having to wind up K.K.L. It would be necessary therefore that the present objects of K.K.L. should be so altered as to make them as similar as possible to the objects of the new Keren Kayemeth.

38. The position in regard to altering the Memorandum of Association of a company is now easier than it was previously. The relevant provisions are contained in Sections 4 and 5 of the Companies Act, 1948, replacing

Sections 4 and 5 of the Companies Act, 1929. Section 4 of the Companies Act, 1948, is as follows:

> 4. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Section 5 of the Companies Act, 1948, provides inter alia as follows:

> (1) A Company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it –
>
> (a) to carry on its business more economically or more efficiently; or
>
> (b) to attain its main purpose by new or improved means; or
>
> (c) to enlarge or change the local area of its operations; or
>
> (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
>
> (e) to restrict or abandon any of the objects specified in the memorandum; or
>
> (f) to sell or dispose of the whole or any part of the undertaking of the company; or
>
> (g) to amalgamate with any other company or body of persons:
>
> Provided that if an application is made to the Court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

The last-mentioned proviso is a new one and replaces Section 5 (2) of the Companies Act, 1929, which provided that an "alteration shall not take effect until, and except in so far as it is confirmed on petition by the court." Under the Companies Act, 1948, it is not necessary, however, to apply to the Court for confirmation of an alteration in the Memorandum of a company.

39. Section 5 of the Companies Act, 1948, further provides:

> (2) An application under this section may be made
>
> (a) by... not less than fifteen percent of the company's members; or
>
> (b) by the holders of not less than fifteen percent of the company's debentures...

This provision has been put in to protect the interests of a minority of members who may oppose the alteration of the objects, and also to protect the interests of the debenture holders.

40. If the objects of K.K.L. are altered as suggested above, presumably we need not anticipate difficulties with the members of K.K.L., but there may be difficulties with the debenture holders. The latter may object to an alteration in the objects of K.K.L. which would enable K.K.L. to transfer the whole or part of its land to another body with similar objects on the ground that K.K.L. would thereby be enabled to part with its principal assets and so put the security of the debenture holders in jeopardy. If not less than fifteen percent of the K.K.L. debenture holders made an application to the Court for such an alteration of objects to be cancelled, we would not like to prophesy whether or not the Court would confirm such alteration.

41. Further, assuming such alteration went unchallenged or, if challenged, were confirmed by the Court, difficulties might arise when K.K.L. subsequently took steps to transfer its lands in the State of Israel to the new Keren Kayemeth. K.K.L. debenture holders might apply to the Court for the appointment of a receiver on the ground that their security was in jeopardy in that K.K.L. was proposing to part with its principal assets.

42. We think it would be very necessary to make every effort to satisfy the debenture holders of K.K.L. They should be offered either debentures in the new Keren Kayemeth in place of their present debentures, or a guarantee by the new Keren Kayemeth and a floating charge on the assets of the new Keren Kayemeth in addition to their floating charge on the assets of K.K.L. As pointed out above, most of the K.K.L. debentures contain machinery whereby the conditions of the particular series of debentures may be modified with the consent of the holders of three-fourths in value of such series. Every effort would need to be made to secure the consent of the debenture holders to appropriate modifications of their rights so as to protect K.K.L. from attack.

43. If, in accordance with our suggestion, the objects of K.K.L. were altered to enable K.K.L. to transfer all or any of its lands to a body with similar objects during the lifetime of K.K.L., and without it being necessary to wind up K.K.L., and if care were taken to ensure that the objects of the new Keren Kayemeth, then K.K.L. could proceed to transfer its lands in the State of Israel to the new Keren Kayemeth.

44. Every care should be taken, as stated above, to satisfy the debenture holders, and this applied also to the creditors of K.K.L. There is the possibility that if K.K.L. transferred the bulk of its lands to the new Keren Kayemeth, creditors might apply to the Court for a winding up order against K.K.L. on the ground

that the substratume of K.K.L. was gone. In order to reduce the danger of attacks by creditors, and in justice to them, we suggest that the new Keren Kayemeth should guarantee the payment of all debts of K.K.L. and the performance of all its obligations. If that were done, the position of creditors and persons who have contracted with K.K.L. would not be adversely affected, and they would have no reasonable ground for complaint.

Another Alternative Method of Procedure: Suggested Ordinance by Israeli Legislature

45. We would suggest for consideration an alternative method of procedure so that neither the debenture holders nor other creditors of K.K.L. nor the Court would be able to prevent the transfer of lands of K.K.L. in the State of Israel to the new Keren Kayemeth. It may be desirable for an Ordinance to be enacted by the Israeli Legislature declaring that all lands and other immovable property within the State of Israel belonging to K.K.L. shall be deemed to be the property of the new Keren Kayemeth; and that all leases granted by K.K.L. in respect of land within the State of Israel shall be deemed to have been granted by the new Keren Kayemeth, and that all rights of K.K.L. under such leases shall be deemed to be vested in the new Keren Kayemeth. Possibly it should be provided that agreements for the grant by K.K.L. of leases or concessions in respect of land within the State of Israel should also be deemed to have been entered into by the new Keren Kayemeth, but this is a matter which would require more detailed consideration. Such an Ordinance, we suggest, should provide that the new Keren Kayemeth should guarantee the due performance of all the obligations of K.K.L. and possibly also that K.K.L. debenture holders should be secured by a floating charge on the assets of the new Keren Kayemeth. The Ordinance might also provide that any aggrieved person could have recourse to the Courts in the State of Israel.

46. In English law, the general rule is that the lex situs is the governing law for all questions that arise with regard to immovable property. This is also the rule in most European countries and in the United States. An English Court has no jurisdiction to adjudicate upon the right of property in, or the right of possession to, immovable property in a foreign state, even though the parties may be resident or domiciled in England. (Companhia de Mocambique v British South Africa Co. (1893) A.C.602.) The rule derives its strength from the fact that the Courts of the situs are alone able to make an effective decree with regard to land. The Courts of Israel would be bound by Israeli law. The Israeli Legislature would not regard itself as bound and indeed in our opinion is not bound by the terms of the Memorandum of Association of a foreign

company owning land within and operating within its boundaries. If in the national interest of the State of Israel its Legislature were to pass an Ordinance providing that the national lands of K.K.L. shall be deemed to be owned by the new Keren Kayemeth incorporated under Israeli law; if such Ordinance were made with the concurrence of the Directors and the members of K.K.L.; and if the interests of the creditors of K.K.L. and others who have entered into contractual arrangement with K.K.L. were fully protected, as suggested above, then it is difficult to see on what legal or moral grounds such an Ordinance of the Israeli Legislature could be validly attacked.

47. If either of the above alternative procedures were adopted, K.K.L. would continue to exist, but most of its present assets would be transferred to the new Keren Kayemeth. Revenues of Jewish National Fund organisations all over the world would in future go to the new Keren Kayemeth. All future leases in respect of national land within the State of Israel would be granted not by K.K.L. but by the new Keren Kayemeth. In future also the great bulk of the necessary financial transactions and contractual arrangements would be entered into by the new Keren Kayemeth. With regard to Trust Funds administered by K.K.L., arrangements could be made, so far as it is convenient, for the obligations of K.K.L. to be taken over by the new Keren Kayemeth with the agreement of the parties concerned. In regard to the funds received from the J.N.F. Charitable Trust, this would require separate consideration. In many cases, where convenient, agreements with K.K.L. could be transferred to the new Keren Kayemeth with the concurrence of the parties concerned.

48. Gradually, the contractual arrangements and agreements entered into by K.K.L. which were not transferred to the new Keren Kayemeth, would work themselves out. Outstanding debentures would in due course be redeemed. The effect of all this would be that as time went on K.K.L., to an increasing extent, would become a “shell”, while the operative organisation and the owner of the great bulk of the present assets of K.K.L. and the assets which would be acquired with future revenues for Keren Kayemeth purposes would be owned by the new Keren Kayemeth.

49. K.K.L. as a legal entity would remain. Legacies of K.K.L. would not fail as would be the case if K.K.L. were wound up. K.K.L. could, if considered desirable, until finality was arrived at between the State of Israel and the authorities in the Arab State area, remain the owner of lands of K.K.L. situated in the Arab State area. The innumerable difficulties and complexities which would be involved in a winding up of K.K.L. would be avoided.

Safeguarding of K.K.L. assets outside Palestine

50. Mr. Ussishkin has raised the point whether, in view of the present situation, it is necessary to take any measures to safeguard the rights and properties of K.K.L. in England or elsewhere outside Palestine. It does not appear to us that such rights and properties are in jeopardy arising out of the present situation, and special measures for their protection do not appear to be necessary at this stage, but we should like Mr. Ussishkin to develop what he has in mind on this question so that we can further consider it.

Consideration of Status of the new Keren Kayemeth

51. The status of the new Keren Kayemeth is obviously a matter of the greatest importance and will require the most careful study and consideration. We hope to make a number of detailed suggestions in due course. Meantime we shall confine ourselves to a discussion of some of the fundamental principles involved.

52. The new Keren Kayemeth should be son [soon?] constituted as to be, on the one hand, an effective instrument for carrying out its vital national tasks in Israel, and on the other hand to command the continued loyal and enthusiastic support of Jewish National Fund workers and contributors and Zionists generally throughout the world. The new Keren Kayemeth should be incorporated under the law of Israel. Jewish National Fund organisations throughout the world should then be requested to send their revenues in future to the new Keren Kayemeth, and all lands and assets acquired with such revenues would become the property of the new Keren Kayemeth. This would meet the serious difficulty that Jewish National Fund contributors in many countries would not desire to send their donations to a non-Israel corporation. This would also help to meet the objection that national land in Israel should not be owned by a non-Israeli corporation. In future also, all would-be testators desiring to assist the work of K.K.L. should be urged to leave their legacies to the new Keren Kayemeth.

53. It has been suggested in some quarters that the new Keren Kayemeth should become part of the government machinery of the State of Israel. This would have a number of serious disadvantages. Political conditions vary from country to country, but in most countries it would be embarrassing for Jews to collect moneys on behalf of a foreign government; in some countries it would not be feasible at all. We think that it is important that the new Keren Kayemeth should not be merely a state agency under the Government of Israel.

54. In view of the immense programme of the Keren Kayemeth recently outlined by Dr. Granovsky in his review of the position entitled "Land for the Jewish State", and the many other vital constructive developments that will require to be carried out in Israel, it is of the essence that fund-raising in the Diaspora for these purposes should be continued with unabated vigour, and indeed expanded to the maximum possible extent. With this end in view it is desirable that Jewish National Fund and Zionist workers generally should be given as close an interest as possible in the work of the new Keren Kayemeth. The suggestion that the new Keren Kayemeth should be an institution connected with the World Zionist Organisation, reporting and responsible to the Zionist Congress or such body as becomes the governing body of the World Zionist Organisation, and that the new Keren Kayemeth should constitutionally not be part of the Israeli state machinery or subject to the Israeli government would strongly appeal to Jewish National Fund and Zionist workers throughout the world. Obviously, the new Keren Kayemeth would be subject to the enactments of the Israeli Legislature. The new Keren Kayemeth would no doubt adapt its activities and policies so that they should be in harmony with the broad policies of the Israeli government. But this is very different from making the new Keren Kayemeth a state agency subject to the direction and control of a Government Department in all its decisions and activities.

55. It is important also that the new Keren Kayemeth should have a distinct identity and not be merged with other Zionist funds. If it were so merged, a great deal of the distinctive appeal of the Keren Kayemeth would be lost. This would be particularly damaging in regard to bequest work. The separate identity of the new Keren Kayemeth is also important in regard to "living legacies", annuities, and the administration of Trust Funds.

56. The constitution of the new Keren Kayemeth would require much detailed consideration. Many of the provisions of the Articles of Association of K.K.L. might not be suitable for incorporation in the constitution of the new Keren Kayemeth, for example, the provisions in Articles 4, 5, 5A, 25, 27, 31, 33, and 43.

57. It is of the utmost importance that the Board of the new Keren Kayemeth should have full power to make rapid decisions and to take all necessary action to ensure the vigorous conduct of Keren Kayemeth activities. Without in any way infringing on the prerogatives of the Board, it seems desirable to consider the setting up of a Keren Kayemeth Advisory World Council

on which Jewish National fund organisations in various countries could be represented. Such an Advisory Council would provide a convenient channel whereby the Board of the new Keren Kayemeth could communicate its policies and aims to leading Jewish National Fund workers and give them the necessary lead and inspiration. The Council would give leading Jewish National fund workers valuable opportunities for exchanging ideas and experience on fund-raising methods and activities. Such a Council should prove a source of great strength to the Board of the new Keren Kayemeth.

58. We are attracted by the suggestion that the new Keren Kayemeth should not be incorporated as an ordinary company but should be set up by special Ordinance with special powers and privileges. The definition of the functions of the new Keren Kayemeth will require the most careful thought.

59. Care should be taken to provide a convenient procedure whereby the constitution of K.K.L. may be altered from time to time to meet changing conditions. Nothing remains static in this changing world.

60. It is most important that any final decisions that are taken in regard to the future status of the Keren Kayemeth should be such as to preserve its freedom and effectiveness of action, and maintain and if possible enhance the loyalty and affection with which the Keren Kayemeth is regarded throughout the Jewish world.

Summary

61. We give below a brief summary of our conclusions:
    (A) We are of the opinion that considerable disadvantages arise from the fact that K.K.L. is a company incorporated in England (paragraph 1).
    (B) It appears to us to be desirable, if the legal and practical problems involved can be satisfactorily dealt with, that a new Keren Kayemeth should be set up (paragraph 2).
    (C) One of the most important problems would be how to transfer the lands of K.K.L. to the new Keren Kayemeth. We have given consideration to the difficulties involved (paragraph 3 et sq.).
    (D) We have considered the practical objections to winding up K.K.L. and we are of the opinion that these objections at present and for a considerable time to come are so great that we advise against a winding up of K.K.L. (paragraphs 23 to 33).

(E) We consider it desirable that a new Keren Kayemeth should be set up while not winding up K.K.L. We therefore suggest the following procedures:
  (1) The setting up of a new Keren Kayemeth; and
  (2) Appropriate alterations of the Memorandum of K.K.L. By so doing, K.K.L. would be enabled to transfer its land in Israel to the new Keren Kayemeth without the necessity of winding up K.K.L. (paragraphs 34 to 44).

(F) We suggest an alternative method of procedure whereby the lands in Israel of K.K.L. would be transferred to the new Keren Kayemeth by Ordinance of the Israeli Legislature, which should also provide that the due performance of all the obligations of K.K.L. should be guaranteed by the new Keren Kayemeth (paragraphs 45 and 46).

(G) The new Keren Kayemeth should become the operative organisation, while K.K.L. would as time went on increasingly become a "shell". We are of the opinion that the continuation of K.K.L. as a "shell" would have a number of advantages (paragraphs 47 to 49).

(H) We have considered some of the fundamental principles which should, in our view, govern the status of the new Keren Kayemeth. We are of the opinion that the new Keren Kayemeth should not be a state Agency under the government of Israel but should be linked with the supreme body of the World Zionist Organisation. It seems desirable to consider the setting up of a Keren Kayemeth Advisory World Council which, we believe, might be a source of strength to the Board of the new Keren Kayemeth (paragraphs 51 to 59).

(I) We consider it most important that the future status of the new Keren Kayemeth should be such as to preserve its freedom and effectiveness of action (paragraph 60).

Source: SIA, file C/15/3132

Appendix 3: **Keren Kayemet Le-Israel Law, 1953**

Keren Kayemet Le-Israel Law, 1953

Definitions

1. In this Law –
- "the existing company" means the Keren Kayemet Le-Israel B.M.;
- "the new company" means the company established under this Law;
- the terms "assets and "liabilities" have the same meaning as in section 119A of the Companies Ordinance(1).

Memorandum and articles for the incorporation of the existing company in Israel

2. The Minister of Justice may approve a memorandum of association and articles of a company limited by guarantee, submitted to him by the existing company, for the purpose of establishing a body incorporated in Israel to continue the activities of the existing company, which was founded and incorporated in the Diaspora.

Establishment of the new company

3. Upon the memorandum and articles being approved –
- (1) notice of the approval (hereinafter: "the notice"), and the approved memorandum, shall be published in *Reshumot*;
- (2) a copy of the memorandum of association and articles, as approved, shall be forwarded to the Registrar of Companies;
- (3) the Company, including its memorandum of association and articles, shall, as from the day of publication of the notice, be deemed to be a company registered under the Companies Ordinance and licensed under section 23 (1) thereof.

Identity as to rights and powers

4. Every right or power vested by law in the existing company shall also be vested in the new company.

Inapplicability of certain sections of companies Ordinance

5. Section 112 and the second and third paragraphs of section 121 (1) of the Companies Ordinance shall not apply to the new company.

Power under Land (Acquisition for Public Purposes) Ordinance, 1943

6. For the purposes of section 22 of the Land (Acquisition for Public Purposes) Ordinance, 1943(2), the new company shall have the same status as a local authority.

Living legacy business

7. The Insurance Business (Superintendence) Law, 5711-1951(3), shall not apply to living legacy business of the existing company and the new company even if it involves insurance business.

Transfer of assets of existing company under business transfer arrangement

8. If the existing company reaches an agreement with the new company for the handing-over of the whole or a particular class of the business, assets and liabilities of the existing company to the new company, the provisions of section 119A of the Companies Ordinance shall apply to such agreement with the following modifications:

- (1) subsection (5), paragraphs (a) and (b), and subsection (8) shall not apply;
- (2) if the arrangement concerns a particular class of business, assets or liabilities, the provisions of subsection (7) shall not apply to an order of the Court confirming the arrangement save in respect of that class of business, assets or liabilities.

Transfer of assets in other manner

9. Where the transfer of particular assets of the existing company to the new company is agreed upon otherwise than in the manner referred to in section 8, then –

- (1) the new company shall publish a notice of the agreement in Reshumot, in one daily newspaper in Israel and in one daily newspaper circulating in the country in which the existing company is incorporated ;
- (2) as from the day of the transfer as aforesaid –
  - (a) the new company and the existing company shall be jointly and severally responsible for any liability which existed on the part of the existing company immediately before the transfer, or the cause of which existed at that time, other than a liability with which the transferred assets only are charged;
  - (b) any liability which, immediately before the transfer, constituted a floating charge on the assets of the existing company shall be treated as a liability constituting such a charge also on the assets of the new company.

Exemption from transfer dues

10. Any transfer of assets or liabilities, any amendment of a registration and any other act done in consequence of a transfer as referred to in section 8 or in carrying out an agreement as referred to in section 9 are exempt from any tax, fee or other charge payable to the State or a local authority.

Yitzchak Ben-Zvi	David Ben-Gurion	Pinchas Rosen
President of the State	*Prime Minister*	*Minister of Labor*

Source: Sefer Ha-Chukkim, No. 138, 3.12.1953, p. 34 (in Hebrew); *Laws of the State of Israel: Authorized Translation from the Hebrew*, Vol. 8, Government Printer, Jerusalem, Israel (1948–1987), pp. 35–37

Appendix 4: **Keren Kayemeth Leisrael: Memorandum of Association, 1953**

Keren Kayemeth Leisrael: Memorandum of Association, 1953

1. The name of the Association is "Keren Kayemeth Leisrael".
2. The registered office of the Association will be situated in Israel.
3. The objects for which the Association is established are, subject to the provisions hereinafter contained, as follows:
   (a) To purchase, acquire on lease or in exchange, or receive on lease or otherwise, lands, forests, rights of possession, easements and any similar rights as well as immovable properties of any class, in the prescribed region (which expression shall in this Memorandum mean the State of Israel in any area within the jurisdiction of the Government of Israel) or in any part thereof, for the purpose of settling Jews on such lands and properties.
   (b) To acquire and receive the transfer of the lands and properties belonging to Keren Kayemeth Leisrael Limited and situate in the prescribed region, including immovable properties subject to rights granted therein (in any manner of grant) to different holders; and to acquire and take over the affairs of Keren Kayemeth Leisrael Limited including all or any of its rights and liabilities; and for such purpose to enter into and sign contracts and agreements and carry them into effect as originally made or subsequently amended.
   (c) To receive from time to time from the J.N.F. Charitable Trust or any like body moneys on trust and employ and use the same to promote within the prescribed region any object which shall be charitable and shall in the opinion of the Association be directly or indirectly beneficial to persons of Jewish religion, race or origin, and, without prejudice to the generality of the foregoing objects, to use and employ such trust moneys and all income derived therefrom for purchasing lands in the prescribed region with the object of such lands being used for the settlement of poor Jews, promoting and improving agriculture, the building of Synagogues, the building of Schools or Universities, the building of Hospitals, the provision of Recreation Grounds and other charitable purposes.
   (d) To clear, prepare, cultivate, irrigate or otherwise improve any of the lands of the Association, and to erect, maintain, better, alter or repair on any such lands any buildings which may be required for the purposes of the Association.
   (e) To let any part of the immovable properties of the Association on such terms and in such manner as it may deem fit, provided that no lessee

shall be entitled to effect any sublease or transfer, whether by way of sale or in any other manner such as by way of mortgage or charge of any interest in immovable properties, save by virtue of the express written authority of the Association. Such authority may be given by the Association in its absolute discretion and as part of the terms of the lease or otherwise, and subject to such conditions (if any) as the Association may think fit and proper to impose either generally or with reference to any particular transaction or class of transactions.

(f) To acquire, carry out, establish, construct, pave, alter, repair, better, administer and superintend and to maintain in a fit and proper condition in the prescribed region, any roads, ways, tramways, railways, bridges, viaducts, aqueducts, harbours, docks, wharves, reservoirs, watercourses, waterworks, embankments, hydraulic works, telegraphs, telephones, electrical works for power or lighting purposes, saw-mills, factories, workshops, markets, storehouses, granaries, dams, cellars and shelters.

(g) To make donations, either in cash or in other assets, and to provide means, conducive to any of the objects of the Association or likely to promote the interests of the Jews in the prescribed region.

(h) To purchase or otherwise acquire, to sell, dispose of, maintain in a fit and proper condition, lease, develop, deal with, and turn into account, mines, mining rights and property supposed to contain minerals or precious stones of any kinds, as well as undertakings connected therewith, in the prescribed region or any part thereof, and to carry on the business of mining and metallurgy in any part of the prescribed region, but so that nothing in this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil acquired or from time to time to be acquired by it in the prescribed region.

(i) To purchase or otherwise acquire, sell or transfer movable properties of all kinds, or to do with them such transactions or business as it may deem fit.

(j) To collect rents and debts.

(k) To purchase or otherwise acquire and undertake all or any part of the business, property or liabilities of any person or company carrying on any business which this Association is authorised to carry on, or possessed of rights or assets which may seem suitable for the purposes of the Association.

(l) To acquire from any government or other authority any concessions, grants, decrees, rights, powers or privileges in the prescribed region or any part thereof and to enter into and carry out any arrangements with any government or any supreme, municipal, local or other authorities which may seem conducive to the Association's objects or any of them.

(m) To sell, mortgage, grant licenses, easements or other rights in respect of the undertaking of the Association or its property; to transact, deal with, turn to account or otherwise dispose of all or any of the property, undertaking and rights of the Association, but so that nothing in this sub-clause contained shall enable the Association to divest itself of the paramount ownership of any of the soil acquired or from time to time to be acquired in the prescribed region, save that the provision aforesaid shall not derogate from the right of the Association to carry out any exchange of lands as more particularly set out in sub-clause (n) hereinafter, and similarly in the event of the Association transferring its undertaking as a whole to a body having objects identical with its own, it may transfer to such body the paramount ownership of its soil.

(n) To exchange lands held by the Association in the prescribed region for other lands (which for the purpose of this sub-clause shall not include a leasehold interest in land) in the prescribed region, if no part of the consideration receivable by the Association is receivable otherwise than in land, and if the Board of Directors of the Association, at a meeting of which seven days' notice shall have been given specifying the resolution to be proposed, shall have previously passed a resolution to the effect that the Board is satisfied that the exchange will be conducive to the carrying out of the object of the Association, and that the lands to be acquired by way of exchange are at least equal in value to the lands to be given in exchange therefor.

(o) To carry on Living-Legacies-transactions and for that purpose to enter into agreements providing for the payment of moneys during the lifetime of the legator and of members of his family or during any other period, and also for other payments customary in Living-Legacies-transactions, and to lay down the conditions concerning the rates and dates of such payments, as well as other particulars, as the Association may deem fit and proper.

(p) To act as trustees, with or without remuneration, on such terms as the Association may deem fit.

(q) To borrow or raise money on such terms as the Association may deem fit, and in particular by the issue of debentures and debenture stock, redeemable or irredeemable and charged or not charged upon all or any of the property and rights of the Association, both present and future, but so that nothing in this sub-clause shall enable the Association to divest itself of the paramount ownership of any of the soil acquired or to be acquired by it from time to time in the prescribed region.

(r) To make, accept, endorse and execute promissory notes, bills of exchange and other negotiable instruments.

(s) To promote and operate any companies for any purpose which may seem likely to directly or indirectly benefit, or be advantageous to, the Association; to acquire, hold and deal with shares or other interests in any such company, or in any other company carrying on or about to carry on any business capable of being conducted so as directly or indirectly to benefit the Association.

(t) To enter into any arrangement for sharing profits, union of interests, joint adventure or co-operation with any person or company carrying on or about to carry on any business which the Association is authorized to carry on.

(u) To take such steps as may be necessary to give the Association the same rights and privileges in the prescribed region or any part thereof as are possessed by local companies or partnerships of a similar nature.

(v) To invest in any useful matter any moneys of the Association not immediately required for any of its purposes, and to deal with such moneys in such manner as the Association may consider reasonable.

(w) To lend moneys, grant credit to, or to guarantee monetary and contractual obligations of, persons, companies or other bodies on such terms and securities as the Association may consider proper.

(x) To receive donations or subscriptions, in cash or in properties, and either upon trust to apply the same for any of the objects of the Association or without any such trust; and to give receipts, in the form of stamps or other tokens, to any donor or subscriber to the funds of the Association.

(y) To make appeals from time to time to the public for donations and subscriptions to the funds of the Association, and for that purpose to hold public meetings in any part of the world, and to prepare, print and publish any circulars, periodicals, pamphlets, books and other printed matter which may seem expedient for any such purpose.

(z) To do all or any of the above things either themselves or through agents, and either alone or in conjunction with others.

(aa) To do all such other various things conducive to or expedient for any one of the objects of the Association as the Association will think proper or decide in General Meeting.

Provided always that in construing this Memorandum the word "company" shall be deemed to include any partnership or any other association of persons, whether incorporated or not, and whether domiciled in the State of Israel or elsewhere.

Provided also that the primary object of the Association shall be deemed to be the object specified in sub-clause (a) of this clause, and the powers

conferred by the succeeding sub-clauses of this clause shall be exercised in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object.

4. The income and property of the Association, whencesoever derived, shall be applied solely towards the objects of the Association as set forth in this Memorandum, and no part thereof shall be paid or transferred to the members of the Association, directly or indirectly, by way of dividends, bonus, or otherwise howsoever by way of profit, provided that nothing herein contained shall prevent the payment in good faith –
   (a) of any travelling or hotel expenses of any Member of the Association, so far as the same shall be incurred by him whilst engaged on the business of the Association;
   (b) of remuneration to any Directors, officers or servants of the Association or other persons in return for any services actually rendered to the Association;
   (c) of interest at a rate not exceeding five per centum per annum on money borrowed from or lawfully due to any Member of the Association;
   (d) to any Member of the Association for occasional service.

5. Every Member of the Association undertakes to contribute to the assets of the Association, in the event of the same being wound up during the time that he is a Member or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a Member, and of the legal costs and the expenses connected with such winding up, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding one pound.
6. If upon the winding up or dissolution of the Association, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, such property shall be transferred to the Government of Israel.
7. The members of the General Council of the World Zionist Organization or the members of such other institutions as may replace such General Council shall be deemed to be members of the Association so long as they shall hold that office. After an effective resolution shall have been passed for the dissolution of the World Zionist Organization, the future conditions of membership of the Association shall be determined in an Extraordinary General Meeting of the Association.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

NAMES, ADDRESSES AND DESCRIPTION OF SUBSCRIBERS

1. Judith G. Epstein,
   c/o Hadassah, 1819 Broadway, New York 23, N.Y., U.S.A.
2. Bar-Yehuda,
   Rehov Yarkon 11, Tel Aviv, Israel
3. J. K. Goldbloom,
   40, Teignmouth Road, London N.W. 2, U.K.
4. Nahum Goldmann,
   c/o Jewish Agency for Palestine, 16 East 66th Street, New York, N.Y. U.S.A.
5. Granott,
   c/o Keren Kayemeth Leisrael, Jerusalem, Israel
6. G. Halpern,
   Rehov Ussishkin 11, Jerusalem, Israel
7. Hantke,
   c/o Keren Hayessod, Jerusalem, Israel
8. S. Younitchman,
   Rehov Ibn-Gabirol 134, Tel Aviv, Israel
9. B. Locker,
   c/o Jewish Agency for Palestine, Jerusalem, Israel
10. E. Neufeld,
    Rehov Ahad-Haam 118, Tel Aviv, Israel
11. N. Namir,
    c/o Histadruth Ha'ovdim Haklalit, Rehov Arlosoroff, Tel Aviv, Israel
12. L. Segal,
    c/o Jewish National Workers Alliance, 45 East 17th Street, New York 3, N.Y., U.S.A.
13. A. Roedelheim,
    5118-17th Avenue, Brooklyn 19, N.Y., U.S.A.
14. Reiss,
    Rehov Ben-Ami 10, Tel Aviv, Israel
15. Rachel Shazar,
    Beth Bazil, Rehov Balfour, Jerusalem, Israel
16. Joseph Sprinzak,
    c/o HaKnesseth, Jerusalem, Israel

Jerusalem, dated 30th December, 1953

Paul J. Jacobi
Witness to the above signatures

Source: *Keren Kayemeth Leisrael, Memorandum and Articles of Association (Approved by the Minister of Justice, 20th May 1954)*, Jerusalem 1954

Appendix 5: **Deed of Transfer between Keren Kayemeth Leisrael Limited, and Keren Kayemeth Leisrael, August 11, 1954**

August 11, 1954

Deed of Transfer between Keren Kayemeth Leisrael Limited, and Keren Kayemeth Leisrael

This deed of transfer is made the day of August 1954 between Keren Kayemeth Leisrael Limited whose Head Office is in Jerusalem and its Registered Office is at 65 Southampton Row, London, W. C. 1 (hereinafter called "the English Association") of the one part and Keren Kayemeth Leisrael, a Company established in Israel and limited by guarantee and not having a capital divided into shares whose Registered Office is situated at Keren Kayemeth Leisrael Road, Jerusalem (hereinafter called "the Israeli Association") of the other part.

WHEREAS

(a) The English Association was incorporated in England under the Companies Acts 1862 to 1900 on the 8th April 1907 as an Association limited by guarantee and not having a capital divided into shares
(b) The English Association's activities are carried on in Israel and the direction and control of the English Association is in Israel
(c) The English Association (inter alia) was formed to acquire land in Israel for the purpose of settling Jews on such land and for the other purposes set out in its Memorandum of Association
(d) The English Association is the holder of considerable lands and other immovable property in Israel acquired out of its own resources and other land and immovable property acquired from Trust moneys received from the J.N.F. Charitable Trust, a Company incorporated in England on the 21st July 1939 as a Company limited by guarantee and not having a share capital
(e) Under and by virtue of Sub-clause (11) of Clause 3 of the Memorandum of Association of the English Association it was (inter alia) provided that the English Association was prohibited of divesting itself of the paramount ownership of any of the soil of the properties owned by the English Association but nevertheless the English Association could sell mortgage grant licences easements and other rights in respect of and over and in any other manner deal with or dispose of or turn to account the undertaking and all or any of the property and assets for the time being of the English Association but so that nothing in the said sub-clause contained should enable the Association

to divest itself of the paramount ownership of any of the soil save only on the occasion of a transfer of the undertaking as a whole to a body having similar objects to the English Association

(f) By a Special Resolution of the English Association passed on the 3rd day of June 1954 Sub-clause (11) of Clause 3 of the Memorandum of Association of the English Association was altered so that the English Association was permitted from time to time to transfer the paramount ownership of its lands as it might deem necessary to a Corporation in Israel having the primary objects similar to the primary objects of the English Association and thus to enable the English Association to be able to transfer only part of its undertaking and the paramount ownership of the soil to a body having similar objects to the English Association

(g) The Israeli Association was incorporated in Israel on the 10th day of June 1954 in pursuance of special legislation passed by the Knesset as an Association limited by guarantee and not having a capital divided into shares and having objects similar to those of the English Association and with a view to continuing the activities in Israel of the English Association that had been founded and incorporated in England

(h) The English Association (as it hereby testifies) has seen and approved the Memorandum and Articles of Association of the Israeli Association and is satisfied that its objects are similar to those of the English Association

(i) The Israeli Association has seen and is aware of the terms and conditions of the Trust Deed entered into by the English Association referred to in Clause 6 of this Deed

(j) The English Association from time to time created a Series of Debentures constituting a charge upon its undertaking and assets and with the exception of 133 debentures the whole of the debentures issued by the English Association have been repaid and discharged and there are now outstanding only 133 debentures amounting to £1,034 the holders whereof are either missing or dead or have not claimed either the interest or the capital moneys secured under such debentures

NOW THIS DEED WITNESSETH AS FOLLOWS

1. The English Association hereby cedes transfers assigns and makes over to the Israeli Association all its immovable and movable property situated in the State of Israel in any area within the jurisdiction of the Government of Israel, including therein all immovable property acquired from Trust monies referred to in recital (d) hereof.

2. In consideration of such transfer as aforesaid the Israeli Association shall:
   (i) Indemnify and hold harmless the English Association against any claim for principal or interest in respect of any of the debentures referred to in recital (j) hereof
   (ii) Indemnify and hold harmless the English Association against any liabilities claims under any mortgage charge or lien registered against the undertaking and assets of the English Association in England and Israel and in addition any guarantees given by the English Association now in force and the Israeli Association shall discharge any such liabilities mortgage charge or lien in accordance with the terms and conditions thereof and assume the responsibility for any guarantee by the English Association now in force at the date hereof.
3. All costs charges and expenses of and relating to the transfer of the assets of the English Association to the Israeli Association shall be discharged by the Israeli Association.
4. In regard to all moneys which in the future may from time to time be remitted by the English Association received from the J.N.F. Charitable Trust the Israeli Association shall on the signing of this Deed enter into a Deed of Trust the form of which has already been prepared and approved and is made between the J.N.F. Charitable Trust of the one part and the Israeli Association of the other part and for the purposes of identification has been initialed by both of the parties hereto.
5. The Israeli Association hereby covenants with the English Association to duly perform and carry out all the terms and conditions of the said Deed of Trust referred to in the last preceding clause hereof.
6. The Israeli Association in consideration of the transfer aforesaid hereby further covenants with the English Association to observe and perform all the covenants and conditions contained in the Deed of Trust dated the 4th day of September 1941 and made between the J.N.F. Charitable Trust of the one part and the English Association of the other part so far as the same are still in force and capable of taking effect and which have not been substituted by the new Trust Deed referred to in Clause 4 hereof and hereby agree to indemnify and hold harmless the English Association against any claims arising out of or in connection with the said Deed of Trust.
7. The English Association hereby agrees to sign execute and affix the Seal of the English Association to all deeds and documents which are or may be requisite or proper for the vesting of all the said properties referred to in Clause 1 hereof into the names of the Israeli Association or its duly appointed nominees.
8. This Deed is executed both in English and in Hebrew, but in the event of any discrepancy between the two versions, the English version shall prevail.

In witness whereof the English Association and the Israeli Association have hereunto caused their respective Common Seals to be affixed the day and year first above written

The common seal of the Keren Kayemeth Leisrael Limited was hereunto affixed in the presence of

_____ Directors

_____ a/Secretary

The common seal of Keren Kayemeth Leisrael was hereunto affixed in the presence of

_____ Directors

_____ a/Secretary

Source: CZA, file KKL10

Appendix 6: **Basic Law: Israel Lands**

Basic Law: Israel Lands

Prohibition of transfer of ownership	1. The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel, shall not be transferred either by sale or in any other manner.
Permission by Law	2. Section 1 shall not apply to classes of lands and classes of transactions determined for that purpose by Law.
Definition	3. In this Law, "lands" means land, houses, buildings and anything permanently fixed to land.

Itzhak Ben Tzvi	David Ben Gurion
President	*Prime Minister*

Source: Sefer Ha-Chukkim, No. 312, 29.7.1960, p. 56 (in Hebrew); *Laws of the State of Israel: Authorized Translation from the Hebrew*, Vol. 14, Government Printer, Jerusalem, Israel (1948–1987), p. 48

Appendix 7: **Selected Sections of the Israel Lands Law, 1960, applicable in the present, 2015**

Selected Sections of the Israel Lands Law, 1960, applicable in the present, 2015

Exclusions from the Basic Law: Israel Lands

2. Section 1 of the Basic Law shall not apply to the following classes of transactions:
   (1) acts of the Development Authority under the Land Acquisition (Validation of Acts and Compensation) Law, 5713–1953;
   (2) the transfer of the ownership of Israel lands, in accordance with rules to be prescribed by regulations with the approval of the Finance Committee of the Knesset, to absentees, or heirs of absentees, who are in Israel, in substitution for lands vested in the Custodian of Absentees' Property by virtue of the Absentees' Property Law, 5710–1950;
   (3) the transfer of the ownership of Israel lands in fulfilment of an undertaking validly entered into or a liability validly created, in respect of those lands before the coming into force of the Basic Law;
   (4) the transfer of the ownership of Israel lands in exchange for, or as compensation for, lands, other than Israel lands, expropriated by virtue of any Law: Provided that agricultural land shall not be exchanged for urban land except under special circumstances and with the approval of the Minister of Agriculture;
   (5) the transfer of the ownership of Israel lands in so far as necessary for the rectification of boundaries or the rounding off of properties: Provided that the area of the lands shall not in any one instance exceed one hundred dunams; where the transfer is without consideration, it shall require the approval of the Finance Committee of the Knesset;
   (6) the transfer of the ownership of Israel lands between the State, the Development Authority and the Keren Kayemet LeIsrael; however, the transfer of the ownership of lands of the State or lands of the Development Authority to the Keren Kayemet Le-Israel, of an area exceeding 16 dunams, shall require the approval of the Economic Affairs Committee of the Knesset;
   (7) the transfer of the ownership of lands of the State or lands of the Development Authority that are urban land: Provided that the area of all the transfers under this paragraph shall not in the aggregate exceed four hundred thousand dunams – in the period from September 1, 2009 until August 31, 2014 (hereinafter referred to as "the first period"), and additional four hundred thousand dunams over the five years beginning at the end of the first period;

Provided that a transfer of the ownership of lands of the Keren Kayemet Le-Israel shall not be made save with the approval thereof.

Restricting the purchase or transfer of land rights to foreigners

2A. (A) In this section –

"Foreign" – Any of the following:

(1) An individual who is not one of the following:

(A) An Israeli citizen or Israeli resident;

(B) A person who is entitled to immigrate to Israel under the Law of Return, 5710–1950;

(2) A corporation controlled by one person or more who is not one of those stipulated in paragraph (1);

(3) A person who acts on behalf of an individual or corporation as stated in paragraphs (1) or (2);

(B) (1) A person may not grant or transfer rights to Israel lands to a foreigner, whether in exchange or not in exchange, except in accordance with the directives of this law.

(2) A person wishing to grant or transfer rights to Israel lands to a foreigner will submit a request for approval for granting or transferring to the Chairman of the Israel Lands Council.

(3) The Chairman of the Israel Lands Council is entitled to issue an approval for granting or transferring rights to lands in Israel to a foreigner in accordance with a recommendation by a subcommittee of the Israel Lands Council, and after consulting with the Minister of Defense and Minister of Foreign Affairs, and in accordance with the designation of the land and the identity of the applicant – also with additional entities as defined in regulations, as stated in Section 4(B).

(4) When deciding whether to grant an approval as stipulated in paragraph (3), the Chairman of the Israel Lands Council will take into account, inter alia, the following considerations:

(A) The welfare and security of the public;

(B) The foreigner's connection to Israel, including his personal information, the periods of his residence in Israel, and his family relationship with someone who is not a foreigner;

(C) The objective for which the foreigner seeks to have the lands granted or transferred to him;

(D) The scope of the lands purchased by the foreigner or transferred to him prior to the date of the request;

(E) The features of the desired land, including the size of the desired territory, the location of the lands, and their designation.

(5) Notwithstanding the stipulations of paragraphs (1) and (3), the Director of the Israel Lands Authority or someone he duly authorizes among the Authority's employees, is entitled to approve the granting or transferring of rights to Israel lands to one of the following:

(A) A foreigner who is not a corporation, who seeks to acquire one residential unit on lands designated for residence according to a plan, provided that he does not own rights to lands in another residential unit; for this matter, "plan" – as stipulated in the Planning and Construction Law, 5725–1965;

(B) A foreigner for whom the Administration of the Investments Center approved a grant under the Encouragement of Capital Investments Law, for the purpose of implementing a plan for which the grant was approved; for this matter –
"Encouragement of Capital Investments Law" – Encouragement of Capital Investments Law, 5719–1959;
"Administration of the Investments Center" – as defined in the Encouragement of Capital Investments Law;

(C) A state, in accordance with a commitment of the State of Israel in an international agreement, for the purpose of managing the affairs of that state in Israel within the framework of the commitment that was given.

Source: http://www.nevo.co.il/law_html/Law01/286_041.htm (in Hebrew)

Appendix 8: **Selected Sections of the Israel Land Administration Law, 1960, applicable in the present, 2015**

Selected Sections of the Israel Land Administration Law, 1960, applicable in the present, 2015

1A. The Israel Land Authority will act, in the frame of its functions, for –
   (1) Managing Israeli lands as a resource for development of the State of Israel in the interest of the public, the environment and the future generations, leaving sufficient land reserves for the needs and the development of the State in the future, with a proper balance between the needs for conservation and the needs for development, and between the marketing of land and maintenance of land reserves for public purposes;
   (2) Promoting competition in the land market and preventing concentration of land holdings.

2A. The Authority's functions are as follows:
   (1) Allocation of land for housing, affordable housing, public housing, employment, open space allotments and for other purposes in locations and amounts required for the needs of economy, society and environment, including future needs;
   (2) Land acquisition and land expropriation for the state according to the law, primarily for environmental purposes;
   (3) Protection of rights of land owners in Israel;
   (4) Promotion of registration of real estate rights in the Land books of Israel;
   (5) Provision of services to the landholders in Israel as required for management and implementation of their rights;
   (6) Publication of information about Israel lands, including details on agreements made by the Authority regarding lands it manages, and data on the availability of planned Israel lands for development and maintenance of open space territory;
   (7) Any other function related to the Israel land management imposed upon it by law or by any governmental resolution.

3. The Government shall appoint an Israel Lands Council, which shall lay down the land policy in accordance with which the Authority will act, shall supervise the activities of the Authority and shall approve the draft of its budget, which will be fixed by Law.

Source: http://www.nevo.co.il/law_html/Law01/286_043.htm (in Hebrew)

Appendix 9: **Covenant Between the State of Israel and Keren Kayemeth Leisrael, November 28, 1961**

Covenant Between the State of Israel and Keren Kayemeth Leisrael

This is the covenant made this day in Jerusalem between the State of Israel, represented for this purpose by the Minister of Finance, and Keren Kayemeth Leisrael – with the sanction of the World Zionist Organization – represented for this purpose by the Chairman of the Board of Directors of Keren Kayemeth Leisrael.

A. Since its inception more than half a century ago, Keren Kayemeth Leisrael has been engaged in acquiring land in Palestine and transferring it to the ownership of the people, reclaiming and afforesting land, leasing out land for settlement and housing, and administering its lands. The fundamental principle of Keren Kayemeth Leisrael is that its land shall not be sold, but shall remain the property of the people and shall be given on lease only.

B. After the establishment of the State, the volume of the acquisition of land by Keren Kayemeth Leisrael from non-Jewish owners has decreased, while the extent of the redemption of land from desolation has steadily increased. The State has become the owner of most of the land in Israel, and the Government administers and develops these domains.

C. The Government of Israel and Keren Kayemeth Leisrael have resolved to end the duplication resulting from the administration of their lands by different agencies, to concentrate the administration, conservation and care of these lands in the hands of the State, and to strengthen the hands of Keren Kayemeth Leisrael in fulfilling its mission of redeeming land from desolation.

The parties to this Covenant have therefore agreed as follows:

1. Upon the coming into force of the Basic Law: Israel Lands (hereinafter referred to as “the Law”), the administration of the lands which are State land or land of the Development Authority or land of Keren Kayemeth Leisrael, whether acquired in the past or to be acquired in the future, shall be concentrated in the hands of the State.

2. The Government shall establish an "Israel Lands Administration" (hereinafter referred to as "the Administration") and shall, after consultation with Keren Kayemeth Leisrael, appoint a Director to head the Administration. The Director shall be subordinate to the Minister charged by the Government with the implementation of this Covenant (hereinafter referred to as "the Minister").

3. Notwithstanding the provision of clause 1, there shall be no change in the ownership of the lands as registered in the Land Registry, save to the extent that the parties to this Covenant agree, in respect of particular lands, to register them in the name of the State or in the name of Keren Kayemeth Leisrael, either by way of exchange or in any other manner.

4. Israel lands shall be administered in accordance with the law, that is to say, on the principle that the land is not sold, but only given on lease, and in accordance with the land policy laid down by the Board established under clause 9. The Board shall lay down a land policy with a view to increasing the absorptive capacity of the land and preventing the concentration of lands in the hands of individuals. The lands of Keren Kayemeth Leisrael shall, moreover, be administered subject to the Memorandum and Articles of Association of Keren Kayemeth Leisrael.

5. Where the Administration, in respect of a particular transaction, deems it necessary to deviate, in one or the other detail, from the principles of the land policy referred to in clause 4, such transaction shall only be made with the approval of the Board established under clause 9 and, where land registered in the name of Keren Kayemeth is concerned, with the consent of Keren Kayemeth Leisrael or, where other Israel land is concerned, with the consent of the Minister.

6. Any transaction in respect of Israel land shall be entered into by the Administration on behalf of and as the agent of the registered owner of such land, and any proceeds of Israel land shall be the property of the registered owner; and the State accepts, in consideration of this Covenant, to bear the expenses of the Administration.

7. The Administration shall deliver to the registered owners of Israel land, once every three months (and for the first time at the expiration of six months from the day of the coming into force of the Law), a report of the income and expenditure of the administration of their land. The expenditure shall include a fixed amount determined by the Administration, either as a certain percentage of the income or as a quota on a certain unit of measurement of the land.

Upon the delivery of such a report, any balance appearing therein to the credit of Keren Kayemeth Leisrael shall be regarded as a debt due to it and payable by the State, and any balance appearing therein to the debit of Keren Kayemeth Leisrael shall be regarded as a debt due from it and payable to the State.

8. The Administration shall deliver to the Government and to Keren Kayemeth Leisrael, once a year, a report of all its activities.

9. The Government shall establish a Board, under the chairmanship of the Minister, which shall lay down the land policy, approve the budget proposal of the Administration and supervise the activities of the Administration and the manner in which this Covenant is carried into effect. The number of the members of the Board shall be thirteen; half of them, less one, shall be appointed upon the proposal of Keren Kayemeth Leisrael. The members of the Board may be replaced in the same way as they were appointed. Notice of the appointment of the Board and of the names of its members, as appointed from time to time, shall be published in Reshumot.

10. The reclamation and afforestation of Israel lands shall be concentrated in the hands of Keren Kayemeth Leisrael, which shall establish a "Land Development Administration" (hereinafter referred to as "the Development Administration") for that purpose. Keren Kayemeth Leisrael shall, after consultation with the Minister, appoint a Director to head the Development Administration, who shall be subordinate to Keren Kayemeth Leisrael.

11. The Development Administration shall draw up once a year (and for the first time at the expiration of three months from the day of the coming into force of the Law) a scheme for the development and afforestation of Israel lands, and shall submit that scheme to the Government and the Keren Kayemeth Leisrael. The scheme shall be drawn up in complete coordination with the Minister of Agriculture.

12. The Afforestation Section of the Ministry of Agriculture shall henceforth engage in afforestation research only. However, the Minister of Agriculture shall continue to be charged with the implementation of the Forestry Ordinance, 1926, through the Development Administration.

13. The Development Administration shall engage in operations of reclamation, development and afforestation of Israel lands as the agent of the registered

owners; and Keren Kayemeth accepts in consideration of this Covenant, to bear the administrative expenses of the Development Administration.

14. The expenditure involved in operations of reclamation, development and afforestation of Israel lands shall fall on the registered owners of the lands on which the operation is carried out; and the Development Administration shall deliver once every six months (and for the first time at the expiration of nine months from the day of the coming into force of the Law) a report to the registered owners of expenditure as aforesaid incurred in respect of their lands. Upon the delivery of a report as aforesaid, any balance appearing therein to the debit of the State or the Development Authority shall be regarded as a debt due from them and payable to Keren Kayemeth Leisrael. Where the Government requests the Development Administration to carry out operations of reclamation, development or afforestation of land registered in the name of Keren Kayemeth Leisrael, and Keren Kayemeth Leisrael notifies the Government, in writing, before carrying out the operation, that it is unable to carry it out at its expense, the State shall bear the expenditure involved in the operation, and the amount thereof shall be paid to Keren Kayemeth either by a grant, loan or exchange of property or in any other manner, as may be agreed upon between the Government and Keren Kayemeth Leisrael.

15. The Board for Land Reclamation and Development attached to Keren Kayemeth Leisrael shall lay down the development policy in accordance with the agricultural development scheme of the Minister of Agriculture, shall approve the budget proposal of the Development Administration, and shall supervise the activities of the Development Administration and the manner in which it carries this Covenant into effect. The number of the members of the Board shall be thirteen; half of them, less one, shall be appointed by the Government. The members of the Board may be replaced in the same way as they were appointed. The Board shall be headed by the Chairman of the Board of Directors of Keren Kayemeth Leisrael or a person appointed in that behalf by Keren Kayemeth Leisrael.

16. Keren Kayemeth Leisrael shall continue to operate, as an independent agency of the World Zionist Organization, among the Jewish public in Israel and the Diaspora, raising funds for the redemption of land from desolation and conducting informational and Zionist-Israel educational activities; and the Government shall extend assistance to Keren Kayemeth Leisrael in informational and propaganda activities in Israel and abroad.

17. This Covenant shall come into force on the day of the coming into force of the Law and shall remain in force for five years. Unless one of the parties to this Covenant, at least six months before the expiration of the five years, announces its intention not to renew it, its validity shall be automatically extended for another five years; and so on indefinitely from five-year-period to five-year-period.

18. If the Law is repealed or amended, Keren Kayemeth Leisrael may withdraw from this Covenant by giving notice of withdrawal, in writing, to the Government; however, Kayemeth Leisrael may not withdraw from this Covenant if the Government notified it in advance, in writing, of the proposed amendment or repeal, and Keren Kayemeth Leisrael did not express opposition.

19. If this Covenant becomes void, whether by virtue of clause 17 or by virtue of clause 18, the position which existed immediately before the coming into force of the Law shall be restored; the Government undertakes to propose the necessary legislation to the Knesset.

20. If one of the parties to this Covenant considers that a change should be made therein, it shall give written notice to the other party, which shall reply to the proposal, favourably or unfavourably, within six months from the day on which notice is given. If the reply is favourable, the Covenant shall be deemed amended, in accordance with the proposal received, from the day on which the reply is given.

21. From the day of the signing of this Covenant, the parties thereto shall do everything necessary and expedient for the implementation thereof and shall be bound by it in all respects.

In witness whereof there have hereunto set their signatures, on behalf of the State of Israel, the Minister of Finance, Mr. Levi Eshkol, and on behalf of Keren Kayemeth Leisrael, the Chairman of the Board of Directors thereof, Mr. Jacob Tsur, in Jerusalem, this 28th November, 1961.

Source: *The Palestine Yearbook of International Law,* vol. II (1985), pp. 221-223

Bibliography

Archives

CZA = Central Zionist Archives, Jerusalem
KA = Knesset Archives, Jerusalem
SIA = State of Israel Archives, Jerusalem

Books, Articles, Newspapers and Oral Testimonies

Actions of the Jewish National Fund in 1948. 1949. Jerusalem: The Jewish National Fund [in Hebrew].

Albeck, Plia, and Ran Fleischer. 2005. *Land Law in Israel*. Jerusalem: Authors' press [in Hebrew].

Alexander, Gabriel. 1988. "Land transactions in Haifa between Germans and the Jewish National Fund, 1936–1937." *Cathedra*, 48, pp. 164–184 [in Hebrew].

Alexander, Gabriel. 1993. "The foundation of Himanuta Company Ltd. and its first tasks (1938–1940)." *Cathedra*, 68, pp. 80–97 [in Hebrew].

Bar-Gal, Yoram. 1999. *Israeli Propaganda Agent: The Jewish National Fund 1924–1947*. Haifa: University of Haifa [in Hebrew].

Ben-Shemesh, Aharon. 1953. *Land Law in the State of Israel*. Tel Aviv: Massada [in Hebrew].

Berger, Ayal, and Aviad Huminer. 2009. "The privatization of the dream." *ynet*, 3.8.2009, http://www.ynet.co.il/articles/0,7340,L-3756128,00.html (accessed 2.9.2014) [in Hebrew].

Bin-Nun, Yoel. 2009. "The rabbis became confused, danger is hovering." *ynet*, 21.6.2009, http://www.ynet.co.il/articles/0,7340,L-3734317,00.html (accessed 2.9.2014) [in Hebrew].

Bistritzky, Nathan, ed. 1951. *In the Path of the Initiators: In Memory of M. Bodenheimer*. Jerusalem: The Jewish National Fund [in Hebrew].

Bodenheimer, Max Isidor. 1952. *My Way to Zion: Memoirs of One of the Veterans of Political Zionism and First Initiators*. Jerusalem: The Jewish Agency [in Hebrew; trans. by Meir Mohar].

Chudi, Uri. 2010. "A petition to the High Court of Justice against the reform in Israel Land Administration: The expansion of the permission to transfer lands – unproportional." *Calcalist*, 28.1.2010, http://www.calcalist.co.il/real_estate/articles/0,7340,L-3389789,00.html (accessed 2.9.2014) [in Hebrew].

Cohen, Shimeon. 2009. "Tycoons from the Gulf are taking control of lands." *Arutz Sheva*, 15.9.2009, http://www.inn.co.il/News/News.aspx/194331 (accessed 2.9.2014) [in Hebrew].

Cohn, Haim Herman. 1996. *The Law*. Jerusalem: The Bialik Institute [in Hebrew].

Cole, George Douglas Howard. 1958. *A History of Socialist Thought*. London: Macmillan.

The Committee for Reforms in Israel Land Policy (the Ronen Committee), submitted to the Minister of National Infrastructures, April 7, 1997 [in Hebrew].

Dabush, Avi. 2009. "The Insanity of Land Privatization." nrg, 12.7.2009, http://www.nrg.co.il/online/1/ART1/915/434.html (accessed 2.9.2014) [in Hebrew].

Damaschke, Adolf. 1922. *Die Bodenreform*. Jena: G. Fischer.

Denesh, Liran. 2009. "Reservations regarding the reform in Israel Land Administration were rejected – the discussion in the plenum will start today." nrg, 20.7.2009, http://www.nrg.co.il/online/16/ART1/918/894.html (accessed 2.9.2014) [in Hebrew].

Doukhan, Moshe. 1925. *Land Laws in Eretz Israel*. Jerusalem: Hapoalim [in Hebrew].

Doukhan-Landau, Leah. 1980. *The Zionist Companies for Land Purchase in Eretz Israel*, 1897–1914. Jerusalem: Yad Yitzhak Ben-Zvi [in Hebrew].

The Economist. 2009. "Buying farmland abroad, Outsourcing's third wave." *The Economist*, 21.5.2009, http://www.economist.com/node/13692889 (accessed 2.9.2014).

Efrati, Ido. 2010. "The land reform reaches the High Court of Justice." nrg, 13.7.2010, http://www.nrg.co.il/online/1/ART2/131/982.html (accessed 2.9.2014) [in Hebrew].

Eisenstein, Arie. 1995. *The Principles and Law of Real Property*, 1–3. Tel Aviv: Bursi [in Hebrew].

The First Zionist Congress, August 29–31, 1897: Stenographic Report. 1978. Tel Aviv: World Zionist Organization [in Hebrew].

Friedman, Arieh. 1999. Oral interview, Jerusalem, August 3.

Gideon, Robert, ed. 1953–1957. *The Laws of the State of Israel*. Tel Aviv: Gideon.

Glickman, Aviad. 2010. "The High Court of Justice hints: The land privatization – an ideological debate." *ynet*, 14.7.2010, http://www.ynet.co.il/articles/0,7340,L-3919853,00.html (accessed 2.9.2014) [in Hebrew].

Golan, Avirama. 2009. "The big land robbery." *Haaretz*, 8.7.2009, http://www.haaretz.co.il/opinions/1.1269946 (accessed 2.9.2014) [in Hebrew].

Goldstein, Tani. 2009a. "The JNF confirmed the exchange of lands with the Administration." *ynet*, 2.6.2009, http://www.ynet.co.il/articles/0,7340,L-3724847,00.html (accessed 2.9.2014) [in Hebrew].

Goldstein, Tani. 2009b. "The court issued a restraining order against the voting on land exchange in the JNF." *ynet*, 23.6.2009, http://www.ynet.co.il/articles/0,7340,L-3735529,00.html (accessed 2.9.2014) [in Hebrew].

Goldstein, Tani. 2009c. "The deal in the JNF was confirmed. The objectors: We will appeal against it." *ynet*, 23.6.2009, http://www.ynet.co.il/articles/0,7340,L-3735407,00.html (accessed 2.9.2014) [in Hebrew].

Goldstein, Tani. 2009d. "The farce continues: The court has frozen the JNF deal." *ynet*, 24.6.2009, http://www.ynet.co.il/articles/0,7340,L-3736179,00.html (accessed 2.9.2014) [in Hebrew].

Goldstein, Tani. 2009e. "The objectors to the reform in the Administration demonstrated in front of the Knesset." *ynet*, 19.7.2009, http://www.ynet.co.il/articles/0,7340,L-3748921,00.html (accessed 2.9.2014) [in Hebrew].

Granot, Avraham. 1950. "The movement and the state." *Kama: The JNF Yearbook on Issues of the Nation and the Land*, pp. 1–16 [in Hebrew].

Granot, Avraham. 1951. *The Settlement of a People*. Jerusalem: The Jewish National Fund [in Hebrew].

Granot, Avraham. 1952. "Towards a Second Jubilee Period." *Kama: The JNF Yearbook on Issues of the Nation and the Land*, pp. 9–20 [in Hebrew].

Granot, Avraham. 1954. *Agrarian Changes in Israel and the World*. Tel Aviv: Dvir [in Hebrew].

Granot, Avraham. 1960. "Herman (Zvi) Shapira." *Bitzaron*, 41, 3 (214), pp. 123–130 [in Hebrew].

Granovsky, Abraham. 1926. "The Jewish National Fund: The Social Instrument for the Upbuilding of Palestine." *Land Problems in Palestine*. London: George Routledge & Sons Ltd., pp. 1–6.

Greenberg, Michal. 2009. "'There is a wall-to-wall coalition against the State lands' privatization.'" nrg, 24.5.2009, http://www.nrg.co.il/online/1/ART1/894/795.html (accessed 2.9.2014) [in Hebrew].

Hamaisi, Rasem. 2011. "The reform in land policy: Environmental implications." *Ecology and Environment*, 1, pp. 30–37 [in Hebrew].

Hananel, Ravit, and Rachelle Alterman. 2015. *National Land Ownership and Policy in Israel*. Tel Aviv: Hakibbutz Hameuchad [in Hebrew].

Hasson, Ayala. 2010. Television report about selling lands to Arabs in the Galilee, 7.5.2010; part 1, https://www.youtube.com/watch?v=N3p7ysvP03 E (accessed 2.9.2014); part 2, https://www.youtube.com/watch?v=WPDlkeBT4-w (accessed 2.9.2014); part 3, https://www.youtube.com/watch?v=HSj-jeHP198 (accessed 2.9.2014) [in Hebrew].

Holzman-Gazit, Yifat. 2002. "Law as a status symbol: The Jewish National Fund Law of 1953 and the struggle of the fund to maintain its status after Israel's independence." *Tel-Aviv University Law Review*, 26, 2, pp. 601–644 [in Hebrew].

Jewish National Fund, Activities and Achievements, 1940–1946: Report Submitted to the 22nd Zionist Congress. 1947. Jerusalem [in Hebrew].

Jewish National Fund, Memorandum and Regulations. 2007. Jerusalem: The Jewish National Fund [in Hebrew].

Johnston, William M. 1971. *The Austrian Mind: An Intellectual and Social History 1848–1938*. Berkeley and Los Angeles: University of California Press.

Katz, Yossi. 2000. "The land shall not be sold in perpetuity: The National land principle in the legislation process and in the law." *Karka* 48, pp. 46–79 [in Hebrew].

Katz, Yossi. 2002. *Vehaaretz Lo Timacher Lizmitut (The Land Shall Not Be Sold in Perpetuity): The Legacy and Principles of Keren Kayemeth Leisrael (Jewish National Fund) in the Israeli Legislation*. Jerusalem and Ramat Gan: Magnes and Bar-Ilan University [in Hebrew].

Katz, Yossi. 2005. *The Battle for the Land: The History of the Jewish National Fund (KKL) Before the Establishment of the State of Israel*. Jerusalem: Magnes.

Katz, Yossi. 2009. "Netanyahu, do you want scorched earth?" *Makor Rishon*, 624, 24.7.2009 [in Hebrew].

Katz, Yossi. 2010. "Which heritage, Bibi?" *Maariv*, 11.3.2010 [in Hebrew].

Katz, Yossi. 2012. *From Dream to Deed: The History of the Jewish National Fund (KKL) Land Lease Contracts in the Land of Israel 1901–1960*. Ramat Gan: Bar-Ilan University [in Hebrew].

Katz, Yossi, and Sandy Kedar. 2009. "Our hope is not lost yet." nrg, 1.8.2009, http://www.nrg.co.il/online/1/ART1/923/932.html (accessed 2.9.2014) [in Hebrew].

Klausner, Israel. 1966. *Land and Spirit: The Life and Achievements of Professor Zvi Herman Shapira*. Jerusalem: The Jewish National Fund [in Hebrew].

"The Knesset approved: The land reform has begun." nrg, 3.8.2009, http://www.nrg.co.il/online/1/ART1/925/184.html (accessed 2.9.2014) [in Hebrew].

Knesset Protocols: 1948–1961 [in Hebrew].

Kotler, Zalman. 1925. *The Jewish National Fund: Its Principles, Activities, Goals in the Near Future*. Jerusalem: The Jewish National Fund [in Hebrew].

Kressel, Gezel. 1951. *Charter of the Land, I: Events*. Jerusalem: The Jewish National Fund [in Hebrew].

Lavi, Zvi. 2009a. "The Minister of Housing: We will toughen the filtering of land purchasers." *ynet* – economy, 20.7.2009, http://www.ynet.co.il/articles/0,7340,L-3749494,00.html (accessed 2.9.2014) [in Hebrew].

Lavi, Zvi. 2009b. "Reform in the Administration: The Minister of Housing will limit land allocations." *ynet*, 21.7.2009, http://www.ynet.co.il/articles/0,7340,L-3749749,00.html (accessed 2.9.2014) [in Hebrew].

Liberman, Guy. 2009a. "A historic agreement: The JNF waived State lands." *Haaretz*, 3.6.2009, http://www.haaretz.co.il/news/law/1.1264014 (accessed 2.9.2014) [in Hebrew].

Liberman, Guy. 2009b. "Silvan Shalom: The public does not understand the reform in the Administration; Gideon Saar: Introductory leaflets should be handed out." TheMarker, 20.7.2009, http://www.themarker.com/realestate/1.553802 (accessed 2.9.2014) [in Hebrew].

Marenda, Amnon, and Attila Somfalvi. 2009. "The Prime Minister did not achieve a majority and delayed the confirmation of the land privatization." *ynet*, 22.7.2009, http://www.ynet.co.il/articles/0,7340,L-3750677,00.html (accessed 2.9.2014) [in Hebrew].

Mitelman, Shmuel. 2009. "A prohibitive order against the transfer of lands from the JNF to the State." nrg, 26.7.2009, http://www.nrg.co.il/online/1/ART1/921/708.html (accessed 2.9.2014) [in Hebrew].

Mitelman, Shmuel. 2010. "Beinisch on the land reform: 'Ideological debate'." nrg, 15.7.2010, http://www.nrg.co.il/online/16/ART2/133/170.html (accessed 2.9.2014) [in Hebrew].

Mualem, Mazal. 2009. "A compromise has been reached between Benjamin Netanyahu and Moshe Ya'alon about the reform in Israel Land Administration." *Haaretz*, 27.7.2009, http://www.haaretz.co.il/news/politics/1.1273163 (accessed 2.9.2014) [in Hebrew].

Nachum-Halevi, Ranit. 2010a. "Beinisch: The problem with the land reform is the centralization – I am not sure that it is clear where the reform is going." TheMarker, 14.7.2010, http://www.themarker.com/realestate/1.556707 (accessed 2.9.2014) [in Hebrew].

Nachum-Halevi, Ranit. 2010b. "The High Court of Justice examines: Does the transfer of 800, 000 dunam to private hands hinder the Basic Law?" TheMarker, 9.8.2010, http://www.themarker.com/realestate/1.560149 (accessed 2.9.2014) [in Hebrew].

Nachum-Halevi, Ranit. 2010c. "Yaron Bibi: The Administration will prevent the concentration of numerous lands in the hands of individuals." TheMarker, 7.10.2010, http://www.themarker.com/realestate/1.591767 (accessed 2.9.2014) [in Hebrew].

Reshumot (Official Government Gazette): Legislative Proposals [in Hebrew].

Reshumot (Official Government Gazette): The Statute Book [in Hebrew].

Oppenheimer, Franz. 1918. *Public Property and Private Property in Lands*. The Hague: The Jewish National Fund [in Hebrew; trans. by A. Robinson].

Oppenheimer, Franz. 1945. "The Jewish National Fund: True Democracy." *Kama: The JNF Yearbook on Issues of the Nation and the Land*, pp. 175–185 [in Hebrew].

Penslar, Derek Jonathan. 1997. *Engineering Utopia: The World Zionist Organization and the Settlement of Palestine, 1897–1914*. Ann Arbor, Mich.: UMI.

Ravid, Barak, Zvi Zerahia, and Jacky Huri. 2009. "Prime Minister Benjamin Netanyahu: Each minister and deputy minister who will not vote in favor of the land reform – will be fired." *Haaretz*, 22.7.2009, http://www.haaretz.co.il/news/politics/1.1272457 (accessed 2.9.2014) [in Hebrew].

Raviv, Ran. 2009. "Privatization of lands: Technical revision or a revolutionary step?" nrg, 13.7.2009, http://www.nrg.co.il/online/1/ART1/916/022.html (accessed 2.9.2014) [in Hebrew].

Redemption and Settlement. 1947. Jerusalem: [n.p.].

Rinat, Zafrir. 2009. "The pattern of his homeland scenery privatized." *Haaretz*, 3.5.2009, http://www.haaretz.co.il/opinions/1.1258602 (accessed 2.9.2014) [in Hebrew].

Shauli, Alfi. 2014. "The State will waive assets worth billions." *ynet*, 31.3.2014, http://www.ynet.co.il/articles/0,7340,L-4505285,00.html (accessed 2.9.2014) [in Hebrew].

Shiloni, Zvi. 1990. *The Jewish National Fund and the Zionist Settlement 1903–1914*. Jerusalem: Yad Yitzhak Ben-Zvi [in Hebrew].

Somfalvi, Attila. 2009. "Humiliation in the privatization." *ynet*, 23.7.2009, http://www.ynet.co.il/articles/0,7340,L-3750955,00.html (accessed 2.9.2014) [in Hebrew].

Tarchitsky, Yair. 2009. "Intermediate result: Netanyahu lost, values won." nrg, 23.7.2009, http://www.nrg.co.il/online/1/ART1/920/418.html (accessed 2.9.2014) [in Hebrew].

Troan, Yehuda, and Roy Goldschmidt. 2009. "Restrictions on sale of private land to foreigners." The Knesset Research and Information Center, 26.10.2009 [in Hebrew].

Weisman, Joshua. 1993. *Law of Property, I: General*. Jerusalem: The Hebrew University of Jerusalem [in Hebrew].

Weitz, Yosef. 1960a. *In My Path: The Settlement of the Land*. Jerusalem: Nir [in Hebrew].

Weitz, Yosef. 1960b. *On the History of the Covenant between the Government of Israel and the Jewish National Fund*. Jerusalem: The Jewish National Fund [in Hebrew].

Weitz, Yosef. 1965. *My Diary and Letters to the Children*, V. Ramat Gan: Massada [in Hebrew].

What is the Hebrew National Fund, and What is Its Purpose? 1907. Vilna: The Zionist Organization in Russia [in Hebrew].

Wolfsberg, Yeshayahu, and Moshe David Gross. 1946. *The Redemption of the Land*. Jerusalem: The Jewish National Fund [in Hebrew].

Zerahia, Zvi, Barak Ravid, and Jacky Huri. 2009. "The vote on the reform in Israel Land Administration – in about 10 days; Netanyahu: Each minister who will not vote in favor – will be fired." TheMarker, 22.7.2009, http://www.themarker.com/realestate/1.542316 (accessed 2.9.2014) [in Hebrew].

Zisling, Aharon. 1950. "Ways to develop the settlement in the state of Israel." *Kama: The JNF Yearbook on Issues of the Nation and the Land*, pp. 93–120 [in Hebrew].

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