The Knesset
Research and Information Center

Background Paper

THE ARRANGEMENTS LAW: ISSUES AND INTERNATIONAL COMPARISONS

Written in Hebrew and translated into English by
Dr. Susan Hattis Rolef
Head of the International Desk
The Knesset Research and Information Center

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1. INTRODUCTION

Much has been said and written about the Arrangements Law - which includes legislative additions and amendments in various spheres within the framework of a single law - since it was first passed in the Knesset in 1985 by means of emergency regulations, as a complementary measure to the economic plan for the stabilization of the economy.[1] "An anti-democratic law", say those who oppose it, and wish to see it abolished. "A necessity", argue those who support it, who turn a accusing finger toward the Knesset, who claim that its Members cannot be relied upon to act with national responsibility.

The myth has also taken root, that the Arrangements Law is an Israeli invention, which does not exist anywhere else in the democratic world. That is not the case. Legislation designed to amend or delete existing legislation, or to add new legislation so that it will be possible to execute the budget and/or a new economic plan in letter a spirit, which is embodied within one giant law, exists in other countries as well. In other countries, as well, such laws are passed in parliament by means of hasty procedures, which are problematic from a democratic point of view. The fourth chapter of this document will deal with this issue.

The main part of the document deals with the ways by means of which one may contend with the phenomenon of the Arrangements Law, in light of the experience in other countries, and in light of various efforts made in the Knesset to improve the annual process for dealing with the Bill.

We should like to thank all the bodies who helped prepare this document, including past and present Members of the Knesset, the Future Generations Commission, the Legal Department, the Directors of several Standing Committees in the Knesset, the State Attorney, staff members in some parliaments abroad, and several academics from countries where laws similar to the Arrangements Law exist.[2]

2. THE BACKGROUND TO THE ISRAELI ARRANGEMENT LAW, AND ITS DEVELOPMENT

Soon after the establishment of the National Unity Government in September 1984, Minister of Finance Yitzhak Modai (Likud), prepared in cooperation with Prime Minister Shimon

[1] comprehensive review of the essence of the Arrangements Law is to be found in the document: Prof. David Nahmias and Eran Klein, *Hok Hahesderim: Bein Kalakala Lepolitika* ("The Arrangements Law: Between Economics and Politics"), Position Paper No. 17, the Israel Democracy Institute, Jerusalem, November 1999.

[2] The names of those who assisted us are mentioned in the body of the document.

Peres, a plan for economic stabilization, in order to contend with the grave economic crisis in which the Israeli economy was immersed at that time. On July 1, 1985, emergency regulations were installed, which included 48 articles. The use of emergency regulations was approved by the then Attorney General, Prof. Yitzhak Zamir. Prof. Zamir, who appeared before the Finance Committee two days after the regulations were published, in order to explain his position regarding the utilization of emergency regulations, said that in his opinion one had to treat the regulations with restraint, and that "the Government must be convinced that we are in a state of economic emergency, and an economic state of emergency justifies emergency regulations. If the Government is thus convinced, it has the authority". He added: "I personally believe that the economy is on the verge of an economic catastrophe".[3] Several days before the regulations expired, the Knesset plenum passed the Arrangements Law for an Emergency in the State Economy 1985, in Second and Third readings. The law included most of the instructions of the regulations, with certain amendments. The debate on the Bill was relatively short and to the point. Some of the participants in the debate were angry that the Histadrut (the trade union federation) had agreed to accept the law, even though it approved the laying off of workers, and wage cuts. Others argued that the law increased the involvement of the Government in the economy instead of encouraging privatization. Nevertheless, the law was passed after a relatively short debate.[4]

In retrospect it became apparent that it would have been possible to pass the Arrangements Law without emergency regulations, since there is no legal hindrance to the enactment of such laws. The utilization of the regulations was apparently important for psychological reasons - in order to emphasize the gravity of the state of the economy, and to convince the Ministers to approve the draconian measures that the Minister of Finance and his advisors believed to be necessary in order to save the economy. According to former MK Moshe Shahal (Labor), who claims to be the father of the Arrangements Law, the decision to combine all the legislative amendments connected with the budget in a single law also resulted from a psychological reason. "There was a problem", he explained while appearing before the Finance Committee in January 1999: "A Minister of Finance from one party automatically leads to the other side voting against him,[5] so we discussed how to convince the members of the coalition to vote together. We said - if we shall bring the laws that derive from the budget all at once in a vote on the Budget Law, we shall oblige them, within the

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[3] Minutes of the Finance Committee meeting, July 3, 1985.

[4] *Divrei Haknesset* ("The Knesset Record"), Vol. 102, September 9, 1985 pp. 4000-22, and September 26, 1985, pp. 4049-57

[5] Former MK Shahal (Labor)was referring in his words to Minister of Finance Yitzhak Modai from the Likud on the one hand, and the Labor Party Ministers on the other.

framework of the arrangement that enforces coalition discipline, to vote together. But the connection and link were to the Budget Law itself - nothing else, and not for the attainment of other economic goals".[6]

It may be recalled, that the economic stabilization plan was successful in pulling the economy out of the state of emergency, even if the price paid by certain population groups in the Israeli society, and certain branches of the economy, was rather high. Nevertheless, the Arrangements Law remained, and by its means the amendments to existing legislation required for the implementation of the budget, were brought annually in a single separate law, instead of within the framework of the Budget Law itself, or in separate laws, as had been customary until 1985. As time went by, the separation of the legislation amendments from the Budget Law made it possible to include in the Arrangements Law also law amendments connected with the economic policy goals of the Government, but not directly connected with the budget. When private Members' legislation - involving budgetary expenditures - got out of control in the course of the 1990s, the Arrangements Law started to be utilized in order to cancel, even if temporarily, laws that the Ministry of Finance had objected to from the very start.

In 1997 the Ministry of Finance changed the name of the law for 1998, to "The Law for Enhancing the Growth and Employment for the Attainment of the Budget Goals", and after Binyamin Netanyahu (Likud) was appointed Minister of Finance, the law was renamed: "The Law of the Plan for Curing the Israeli Economy (Legislative Amendments to Attain the Budgetary and Economic Policy Goals)".

3. THE ISSUES

The legislative process of the Arrangements Law raises several issues: the question whether we are speaking of a law that "circumvents democracy", as many claim it to be; the topics included in it; the hastened legislation procedure; the distribution among the Knesset Committees of the deliberation on the Bill; reservations to the Bill in the Second Reading stage in the plenum; and the use made by the Ministry of Finance of the Law for the purpose of canceling private Members laws that the Knesset approved in a proper procedure. These issues will be discussed in this chapter.

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[6] Minutes of the Finance Committee meeting of January 4, 1999 (a deliberation on the reform in the water economy within the framework of the 1999 Arrangements Law). Shahal repeated what he had said in greater detail in an interview with the author of this document, on May 2, 2005.

3.1. Anti-democratic Legislation

One of the main arguments against the Arrangements Law is that it is passed in a procedure that "circumvents democracy". In debates in the Knesset plenum since 1986 concerning the Arrangements Law as a phenomenon, dozens of statements in this spirit were made by Members of the Knesset from all sections of the House. This is what MK Maxim Levy (Gesher) said on December 23, 1997: "For many years this law turned into an anti-democratic law, which empties the Knesset Committees of any content... The Government cancels laws that were legislated in the Knesset Committees after much toil - they heard various publics, listened to them, initiated by means of this House laws that gave solace to thousands of people, and here comes the Government one night and asks this coalition machine to erase and run over laws...".

In all the countries in which we found laws similar to the Arrangements Law (see below) we found similar statements regarding the anti-democratic procedure by which they are approved.

There is no doubt that the problem is especially grave when we are dealing with the Arrangements Law, and laws similar to it. But there is a general problem with the legislative process in all the democratic states, which is connected to the greater speed of life, and the vast number of issues in which the society is engaged at any given moment of time. The parliaments, which continue to function in accordance with procedures that were laid down dozens of years ago, and sometimes even more than a century ago, are simply unable to keep up with the pace.[7] As we shall see later on, a growing percentage of legislation in the United States is enacted by means that circumvent the procedures laid down in the House Rules.

The German philosopher Carl Schmitt called legislation enacted by enhanced procedures "Motorized legislation".[8] Already in the 1930s, Schmitt noted that liberal democracies are inclined to contend with economic crises by means of emergency regulations, that cancel or change in a single stroke laws that were enacted over many years. In Germany itself, during the last years of the Weimar Republic, before the rise of the Nazi regime, extensive use was made of emergency regulations to pass massive economic legislation.[9] Carl Schmitt's conclusion was that liberal democracies are simply unable to contend with the complex modern reality, in which everything happens with ever increasing speed.

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[7] See, for example, William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, Baltimore and London, the Johns Hopkins Press, 2004.

[8] See, Carl Schmitt, *Die Lage der europäischen Rechtswissenschaft* ("The Sitaution of European Jurisprudence), Tübingen, Universitäts-Verlag, 1950.

[9] See, for example, *Zweite Verordunung des Reichspreasidenten zur Sicherung von Wirtschaft und Finanzen, vom 5. Juni 1931, und Vierte Verordnung des Reichspraesidenten zur Sicherung von Wirtschaft and Finanzen und sum schutze des inneren Friedens, von 8. Dezember 1931.*

Many scholars, who deal today with the problem of diminishing legislative authority *vis-á-vis* the executive authority in liberal democracies, rely on Carl Schmitt's analysis, despite their reservations regarding his conclusions and way.[10] They ask how, in the liberal democracies, one can improve the system of relations between the legislative authority and the executive authority in general, and the legislative process in particular, so that the legislatures will not turn into rubber stamps, and the representatives will have real influence over the Government's policy, and the content of the laws it presents.[11]

It should be noted that even today many democratic states are inclined to use emergency regulations in order to deal with serious economic problems. Thus, on June 22, 2005, the French Government approved the use of emergency regulations, under article 38 of the French Constitution, in order to deal with employment problems, after, according to President Jacques Chiraq: "We went to the limits of traditional solutions". In the first stage the President's signature on the emergency regulations is sufficient, but after a while the National Assembly must ratify them, and at this stage massive objections were expressed in the National Assembly, especially among the supporters of the Left, to the use of emergency regulations in order to circumvent the parliament on an issue that ought to be settled by means of legislation.[12]

Nevertheless, in Israel there are those who reject the claim that the Arrangements Law is undemocratic, or that it is anti-parliamentary. The law is democratic, they argue, and the problem is the reaction of the Knesset. This argument is usually heard from officials in the Ministry of Justice,[13] but Member of Knesset Azmi Bishara (Balad)[14] worded it clearly: "Though much is said here about the Arrangements Law as an anti-democratic tool, the truth is that it is a parliamentary tool. It is a law like all other laws, and the Knesset Members can approve it or reject it... I do not understand why the Knesset accepts it. It isn't the People that bring it, but the Government, for convenience's sake. That is the way the Government must

[10] In the 1930s Schmitt adopted a Right wing ideology, to the extent of supporting the Nazi regime.

[11] For a discussion of the issue see: William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, Baltimore and London, The Johns Hopkins University Press, 2004, chapter 6. Scheuerman deals primarily with the United States, but both Prof. Luis González del Campo from Spain, who teaches at the University of Cantabria and is an official in the administration of the parliament of Cantabria, and Dr. Günther Schefbeck of the Austrian Nationalrat, mentioned Carl Schmitt's writings in their correspondence with us, stating that it accurately describes the situation in many parliaments in the Western world.

[12] Based on articles in *Le Monde* and *Le Figaro* on June 22, 2005.

[13] See, for example: the words of the vice Attorney General, Yehoshua Shifman, in the minutes of the meeting of the Knesset Constitution, Law and Justice Committee, on November 6, 2001.

[14] Bishara, an Arab Member of the Knesset, is a Professor of Philosophy.

operate. If the parliament considers this law to be an insult to parliamentarism - the parliamentarians should get up and do something against this law".[15]

3.2. What should the Arrangements Law include?

The first Arrangements Law, that was adopted by the Knesset in September 1985, was completely related to the 1986 budget. Over the years, and especially after the fall of the National Unity Government in March 1990, the Ministry of Finance started to incorporate in the Arrangement Law, or at least to try and incorporate in it, issues that were not directly related to the budget of the approaching financial year. The Knesset occasionally managed to separate certain topics from the Arrangements Bill, and thus ensure that they be treated as separate bills, that do not have to pass together with the budget in the same speedy procedure. In the years 1990-92, in the absence of Government backing for Minister of Finance Modai, only a small part of the Arrangements Law proposed by the Ministry of Finance was approved.[16] Also in the years 1999-2000 the Knesset managed to delete many articles from the Arrangements Law[17] after intensive negotiations held with the Ministry of Finance on this issue.

Several Ministers of Finance defended the broad content of the Arrangements Law. One of them was Minister of Finance Ya'acov Ne`eman, who appeared before the Knesset House Committee on July 20, 1998. "I should like to emphasize that the Budget Bill actually expresses the economic policy of the Government", he said, "and therefore there is room to present to the Knesset a broader spread of economic policy measures, which are part of a single system, a single unit, that influences the economic life in the course of the year... Therefore, there is no alternative to bringing amendments to other laws within the framework of the budget, even if they are not budgetary laws in the narrow sense, but deal with directing the activity of the economy, and influencing the level of prices. We have seen in recent years in several economic branches, that the moment we opened them to competition there was an immediate effect on the level of prices, or an immediate effect on investments in the economy".

Six years later, in June 2004, Minister of Finance Binyamin Netanyahu said in an appearance before the Knesset House Committee: "Regarding the scope of the Law, you say:

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[15] *Divrei Haknesset* ("The Knesset Record"), Vol. 172, October 27, 1998, p. 329.

[16] See speech by Minister of Finance Avraham Beiga Shohat in the Knesset plenum on December 31, 1992, in *Divrei Haknesset* ("The Knesset Record"), Vol. 128, p. 1916.

[17] See: State Comptroller's Office, *Doch Shnati* ("Annual Report") for 2002 and accounts of Financial Year 2001, April 30, 2003, p. 38.

we want the budget, and the laws that are meant to execute the budget. I differ with this approach... The budget is merely a function of the policy. The budget expresses a certain important aspect of the economic and social policy, but it is impossible to exhaust or implement this policy outside the general context of the laws, which also 'wraps' the budget, though not all of which necessarily lead to the budget. Therefore the laws that are required are the laws that express the sum total of the policy. Nevertheless, I agree: we must aspire to take out of the Law anything that is not included in the definition that I have just given..."[18]

The attempt to contend with the problem by means of a statement to the effect that a law that includes issues that are not connected to each other is not legal, was unsuccessful. In an opinion issued on December 30, 1998 (See appendix 1), the Legal Advisor to the Knesset, Zvi Inbar, pointed out that during the British Mandatory period in Palestine, it was stated in a Royal Instruction of January 1 1932 to the High Commissioner that "Each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relation to each other".[19] But this instruction does not constitute part of the Israeli law book. In the British law book today there is also no such instruction.[20]

In a ruling by the Israeli High Court of Justice on an appeal by the Organization of Poultry Raisers against the Government of Israel, issued on November 27, 2004, that dealt with the 2003 Arrangements Law, the Court criticized the inappropriate legislative procedure, which lacks a thorough and exhaustive deliberation on a complex and essential issue. However, it found no legal grounds to reject the law, and did not intervene.

Attempts to deal with the problem by means of clear criteria that determine what belongs and what does not belongs to the Arrangements Law, were no more successful. The problem in this case is that there is no agreement among the various bodies regarding the criteria, and even though various bodies have prepared tables that state - with regards to specific Arrangements Bills - what belongs and what does not belong in their opinion to the Bill, they did not enumerate the exact criteria for their decision.

The narrowest definition stipulates that one should put in the Arrangements Law only articles that are connected to specific articles in the Budget Bill, and affect the expenditures or

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[18] Minutes of the Knesset House Committee meeting, held on June 16, 2004.

[19] *The Laws of Palestine*, Revised Edition, Vol. III, London, Waterlow and Sons Ltd., 1934, Royal Instructions, January 1, 1932, Article XVI(3), p. 2664

[20] According to Mr. Frank Cranmer, the Clerk for Bills in the British House of Commons, the rule is that the content of a bill must correspond to its long title. However: "More generally, the *practice of the House* is that bills ought to be about a reasonably coherent policy area, which is much more difficult to define than whether or not a bill is covered by its long title". An e-mail communication dated May 10, 2005.

revenue for the given budget year only. The broadest definition stipulates that anything involving a budgetary expenditure, anything connected with the Ministry of Finance's budgetary goals, and anything connected with the economic policy of the Government, is suitable to be included in the law.

In the second half of the 1990s, the Economic Advisor to the Knesset Finance Committee, Ms. Smadar Elhanani, started preparing annually tables of the components of the Arrangements Law, and noted her position on the question which of them are directly connected to the budget, and which are not. The former Legal Advisor to the Knesset, Anna Schneider , started to prepare such tables at the request of the Knesset Speaker in October 2001, towards the deliberations in the Knesset House Committee on the issue of referring the Arrangements Bill to several Committees. In November 2001 the Knesset Research and Information Center also prepared such a list, which included an analysis of the link between various articles in the Bill to the proposed budget (direct, indirect or no link).

In his annual report for 2003 the State Comptroller, Eliezer Goldberg, quoted from a summary of a deliberation that had taken place in the bureau of the Attorney General in August 1998: "One should avoid including in the Arrangements Law provisions for which this law is not a proper accommodation. A joint team from the Ministry of Finance and Ministry of Justice should be set up. This team will consider proposals for the approval of the Government, and will reach conclusions - before the deliberation in the Ministerial Committee - regarding each proposal, by means of what procedures it ought to be deliberated: within the framework of the Arrangements Law, or in some other law".[21]

The Attorney General, Menni Mazuz, not only recommended, but also took action with regards to the Arrangements Law for 2005, and as a result of his action the length of the Bill was "only" 94 pages, compared to the length of the Arrangements Law for 2004 - 172 pages, and the length of two Arrangements Laws for 2003 - together 308 pages. The Attorney General actually rejected around half of the amendments, which the Ministry of Finance sought to introduce in the Law, on the basis of the test of the "essential link" to the budget and the economic policy that it represents.[22] The problem here is that as long as there is no single body, which is acceptable to both the Knesset and the Government as the body authorized to lay down the criteria, and apply them to the Arrangements Bill, all the tables and statements may serve as basic material in the Government bodies' deliberations amongst themselves, and

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[21] The State Comproller's Bureau, *Doh Shnati* ("Annual Report"), 53b, for 2002 and accounts of financial year 2001, 30 April 2003, p. 37.

[22] From the outline of a lecture delivered by the Attorney General at a Conference held in December 2004, in honor of the publication of Prof. Yosef 'Ardai on Basic-Law: the State Economy. In the document there is no definition of what the Attorney General means by "essential link". I should like to thank the Attorney General, Meni Mazuz for providing me with this document..

between them and the Knesset before (or after) the Bill is introduced, but they have no legal or executive force.

The process applied today for determining the content of the Arrangements Law, at least part of the time, is the implementation of a loose system of deliberations between the Knesset (by means of the Speaker, the Chairman of the House Committee and the Chairman of the Finance Committee) and representatives of the Ministry of Finance. More recently the Attorney General has also become involved in this process.[23]

In his first term as Minister of Finance in the Government of Yitzhak Rabin (1992-95), Avraham Beiga Shohat (Labor) initiated the holding of annual talks with the Knesset to limit the content of the Arrangments Bill to the necessary minimum (as he saw it).[24] Shohat repeated this experiment also in his second term as Minister of Finance, in the Government of Ehud Barak (1999-2001).[25] On this occasion, a parallel effort was made by the Speaker of the Knesset, Avraham Burg (Labor), to institutionalize this procedure.

The problem with such a procedure is that its success depends completely on the good will of the participants in the deliberations, rather than on objective criteria. It might be wise from a political point of view, but it is not always effective, and it frequently leads to a wasting of precious time. The Arrangements Law for 2002, for example, was approved at great delay because the deliberations came across subjective difficulties (See below).

If it is finally decided not to cancel the Arrangements Law, but only to limit it to reasonable dimensions, it will be necessary to lay down clear criteria in the Knesset Rules of Procedure and/or the law, that will determine what is connected and what is not connected to the attainment of the budget objectives. Neutral and efficient administrative instruments will also have to be established to ensure that these criteria are upheld. Regarding the rest of the legislation that is included today in the Arrangements Law, which does not have any direct

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[23] In the directive published by the former Attorney General, Eliakim Rubinstein, on December 31, 2003, regarding the Government's treatment of preparation of the Budget Law and the Arrangements Law, he expressed his displeasure with the way in which the Arrangements Law is formulated, but did not take any practical measures. (See Appendix 6)

[24] In the sitting of the Knesset plenum on December 29, 1998in which the Arrangements Law was debated, Shohat said: "Towards the end of my term the procedure regarding the Arrangements Law, the dimensions of which were I reduced from year to year was as follows. I would sit with the Chairmen of the Finance Committee and the House Committee, with the Speaker of the Knesset, with the legal advisors of the Ministry of finance, and we would delete item after item. The last Arrangements Bill that I presented was six pages long, not a book, and it did not include any structural changes in the economy... The Arrangements Law cannot serve as a platform for high level legislative distortions, but there are occasionally things – small things - that must get through by means of the Arrangements Law. In my opinion, there is need for a minimal Arrangements Law".

[25] See, for example, the words of MK Avraham Beiga Shohat (Labor), in the minutes of the joint meeting of the House Committee and the Finance Committee held on November 1, 1999.

link to attaining the budget objectives of the relevant year, but which the Ministry of Finance believes must pass urgently, an alternative procedure will have to be found.

As will be described below, in the United States the 1974 Congressional Budget Act was used to lay down limits regarding what the Senate is entitled to introduce in the Reconciliation Bill - the Bill, by means of which existing legislation is amended so that the goals of the budgetary balance will be upheld. In Italy law No. 362 of 1988, laid down reservations regarding the content that may be introduced into the Finance Law. In Belgium an amendment was introduced in the Rules of Procedure of the House of Representatives, under which any parliamentary group is entitled to demand a meeting of the Presidents' Committee (the Committee of all the parliamentary group heads) and to propose that a particular article in the *Loi Programme*, (the Belgian law equivalent to the Israeli Arrangements Law) should be deleted from it.

3.3. Which Knesset Committees ought to deal with the Arrangements Law?

In all the states that have laws similar to the Arrangements Law, at the stage in which the legislation is deliberated in committee, the bills are dealt with by numerous Subject Committees, and these pass on their conclusions to the Finance Committee or Budget Committee, which then presents them all as a single whole to the plenum. When the Arrangements Law came to the world in Israel in 1985, it was decided that the Budget Bill, the Arrangements Bill would be dealt with exclusively in the Finance Committee. Since the two Bills are presented to the Knesset by the Finance Ministry simultaneously, around two months before the two are supposed to pass Third Reading, a situation was created that made the thorough deliberation of both difficult.

Already at the end of the 1980s there were complaints on this issue. At the meeting of the House Committee held in January 1987 MK Ora Namir (Labor) said: "In the Economic Stabilization Law (various instructions) [one of the names of the Arrangements Law], Chapter (b): reducing labor costs, there is an amendment to the Social Security Law, which is a central legislative amendment. The Social Security Law, according to the Knesset regulations, belongs to the Labor and Welfare Committee only. Furthermore, the decision to refer this law to the House Committee and from here to the Finance Committee, was not an innocent act. We were told in the Labor and Welfare Committee, that the Ministry of Finance is tired of the arguments with the Committee regarding social security legislation... I was told by very senior people in the Ministry of Finance, that it is much easier for them to close deals and reach conclusions with the Chairman of the Finance Committee".[26] MK Namir added that since she considered this a harsh blow to the Knesset Rules of Procedure, and to the Knesset's

[26] Minutes of the House Committee meeting held on January 29, 1987.

independence, she was asking that the House Committee decide which Committees should deal with the various articles included in the Economic Stabilization Bill. MK Namir failed in her effort to convince the House Committee to distribute treatment of the Bill among several Committees. At the time, the opinion of the Legal Advisor to the Knesset, Zvi Inbar, was that the Rules of Procedure did not enable the House Committee to decide to divide the Bill among several Committees, and for this reason helped MK Namir prepare a proposal for the addition of article 117a to the Knesset Rules of Procedure, that would explicitly state that the House Committee is entitled to divide the Bill.[27]

The Rules of Procedure were not amended, but around ten years later Inbar changed his mind and reached the conclusion that even on the basis of the existing Rules of Procedure the House Committee is entitled to divide up the Arrangements Bill, and decide which Committees should deal with its various parts.[28] The Ministry of Finance was the main opponent of dividing the Arrangements Law up among several Committees, and its officials argued that treatment of the Law must be from an overall budgetary perspective, and that only the Finance Committee is able to do the job properly.[29]

It should be noted that there are several possible ways of dividing up the Arrangements Bill. One possible way is a complete division. In other words, whole sections in the Arrangements Bill should be turned into independent bills that will then be treated like ordinary Bills. In the meeting of the House Committee held on February 24, 1998, MK Hagai Merom (Labor) spoke of the Bill's division in this sense, as a means of doing away with the Arrangements Law altogether. Merom proposed that this should be done by means of the Knesset Rules of Procedure, and not by means of legislation that would totally forbid the legislation of laws such as the Arrangements Law, since any legislation that limits the right of the Knesset to legislate is problematic.

Another possible way of dividing up the Arrangements Bill is to divide the treatment of various articles among the Subject Committees, and then referring the Committees' conclusions to the Finance Committee, which would brings the complete Bill to the plenum towards Second Reading and Third Reading. A third possible way is to set up Joint

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[27] Minutes of the House Committee meeting held on December 1, 1992, and a conversation held by the author with Zvi Inbar on June 20, 2005.

[28] See the opinion on the questions "Is the House Committee authorized to divide up the Arrangements Law among various Committees?" referred by the Legal Advisor to the Knesset Zvi Inbar to Knesset Speaker Dan Tichon, and the Chairman of the House Committee Raphael Pinhasi on December 30, 1998 (See part of the document in Appendix No. 1). We thank the secretariat of the Knesset Legal Department for locating this document.

[29] See for example the words of Minister of Finance Ya'acov Ne1eman in the minutes of the House Committee meeting held on July 20, 1998.

Committees between the Finance Committee and the relevant Subject Committees (the running of such Committees is usually in the hands of the Finance Committee). Under this system it is invariably the Finance Committee that finally brings the whole Bill for Second Reading and Third Reading. A fourth way is that each of the Subject Committees prepares its share as a separate Bill for Second Reading and Third Reading, but is obliged to present its part simultaneously with the core of the Arrangements Law, that remains in the hands of the Finance Committee.

At the initiative of the Speaker of the 15th Knesset, Avraham Burg, several proposals were raised to improve the treatment of the Arrangements Law. One of these proposals dealt with division. In a deliberation that took place in the House Committee in November 2001, the Speaker and the Chairman of the House Committee, MK Yossi Katz (Labor), announced that after receiving the opinion of the Legal Advisor to the Knesset, Anna Schneider, and after holding discussions with the Chairman of the Finance Committee and the Chairmen of various Subject Committees, and despite the reservations of the Government and the Minister of Finance, Silvan Shalom, the Knesset had chosen three courses for dealing with the Arrangements Law:[30]

> "We are proposing three courses for dealing of the Arrangements Bill. The first course involves the Arrangements Law proper - articles that in our opinion and the opinion of the Ministry of Finance - on the basis of the professional opinion of the Knesset Legal Advisor,[31] and that of the Knesset Research and Information Center[32] - ... These will be referred by the House Committee to the Finance Committee for their preparation for Second Reading and Third Reading. Regarding the remainder of the articles, which are of great significance for the State Budget, and must pass by December 31, but are not part of the Arrangements Law that must be deliberated by the Finance Committee, and naturally fall within the frame of reference of the Labor, Welfare and Health Committee, or the Interior and Environment Committee, or the Constitution, Law and Justice Committee, or any other Committee - they will be referred to the relevant Committees... Let us call these articles "the Arrangements Law minus", or "the Arrangements Law - Committees"... We have agreed with the Chairmen of the relevant Committees that the articles referred by the House Committee to them will be prepared and presented by them as separate bills to the plenum by December 31 - this as an undertaking to me as Speaker of the Knesset, in the form of a gentleman's agreement. I do not care whether a Committee will vote in favor or against the proposed Bill... The third course concerns those articles that have nothing to do with the Arrangements Law proper, or with the Arrangements Law minus... These are articles that were included in the Arrangements Law when it went through First Reading, but are not being referred to the Committees to be dealt with

[30] From the words of Knesset Speaker Avraham Burg at the meeting of the House Committee, held on Novembe 26, 2001.

[31] What is meant is a table presented by the Legal Advisor of the Knesset, Anna Schneider, to the Knesset Speaker on October 21, 2002. and of the Knesset Research and Information Center

[32] What is meant is a document presented by the R.I.C. to the Knesset Speaker, the Secretary General of the Knesset, the Chairman of the Finance Committee, and the Chairman of the House Committee on November 4, 2001.

> as ordinary bills, in the usual procedure. The Committee will deliberate them whenever it chooses, as it sees fit, on the basis of its own time table, in accordance with the regulations... and need not make the December 31 deadline..."

The Minister of Finance, Silvan Shalom, objected to the new procedure, and on December 5 announced that he was withdrawing the Arrangements Bill for the budget year 2002. Only at the end of January was an agreement reached, on the basis of which the Government Secretary informed the Chairman of the House Committee that the Government was retracting its withdrawal of the Arrangements Bill on the basis of compromises reached regarding its division.

The following year the Knesset and the Ministry of Finance agreed to a slightly different procedure.[33] What was agreed was that parts of the Arrangements Bill would be referred to the Finance Committee, other parts would be referred to the Subject Committees or Joint Committees in which the Finance Committee and Subject Committees would be represented, but that in any case the Arrangements Bill would remain a single Bill, and be brought as such for Second Reading and Third Reading. At this stage the possibility of the House Committee taking articles out of the Arrangements Bill and turning them into independent Bills was no longer mentioned, and this option was left to deliberation procedures between the Knesset and the Ministry of Finance, before the Bill is brought to the House Committee.

In the 16th Knesset the procedure was further eroded, and greater use was made of Joint Committees in which the Finance Committee is usually dominant, at the expense of the Subject Committees, and most of the articles of the Bill [which changed its name to "the Program for Curing the Israeli Economy (Legislative Amendments to Attain the Budget and Economic Policy Goals) Bill"] were referred to the Finance Committee.[34]

Even though the division of the Arrangements Bill among several Committees is still prevalent today, the problem remains that in the short time that the Knesset has to debate the Bill it is impossible to discuss its articles thoroughly, Members of the Knesset generally do not know what they are voting for, and most of them vote in accordance with the instructions of the Coalition.[35]

In other countries that have similar laws it is also claimed that the treatment in the Committees is not exhaustive, but in other parliaments at least the number of Members of Parliament dealing with the Bills is larger than in the Knesset, both because the absolute

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[33] See minutes of the deliberation in the House Committee held on November 4, 2002, in the presence of the Knesset Speaker and the Minister of Finance.

[34] Ibid.

[35] Such views are frequently expressed by Members of the Knesset in debates in the plenum regarding the Arrangements Law.

number of Members of Parliament is usually larger, because in some of them Members of Parliament are not allowed to serve in the Government (in the United States, for example, the President and his Cabinet are *a priori* not Members of Congress, and Belgium has a "Norwegian Law", which requires acting Ministers to resign from the Parliament), and because in all the Parliaments that have laws similar to the Arrangements Law, the Parliament is made up of two Houses that engage in the legislative work.

3.4. The Problem of reservations to the Arrangements Law in the Plenum

Since there is no exhaustive debate in the Knesset regarding the Government's economic policy, since the debate on the budget itself is limited in time, and since the Arrangements Law does not enjoy appropriate deliberation in the Committee stage, a custom developed of numerous reservations and being presented, and filibusters being organized within the framework of the debate on the Arrangements Bill in the course of the Second Reading. In a deliberation in the House Committee in February 1998 the Speaker of the 14th Knesset, Dan Tichon, declared himself to have been the father of the "reservations science", explaining that the original goal of the reservations to the Arrangements Law was to enable Members of the Knesset to express their views, and hold a debate that would be as respectable as possible in the plenum. However, soon the science turned into a nightmare, since tens of thousands of reservations were tabled, only a few of which had any chance of being adopted, and most of the Members of the Knesset took advantage of the floor given them to read out pieces of poetry and to talk about all sorts of strange subjects, totally unconnected to the Arrangements Law. The longest filibuster in the course of a debate on the Arrangements Law was that of MK Michael Eitan (Likud), who on December 29, 1992 spoke for close to 11 hours (and would have continued to talk if the Knesset doctor had not expressed concern that he might cause irreversible damage to his vocal cords). "What is going on adds no dignity to the House", said MK Tichon (Likud). "Every time, after the budget is approved, we say to ourselves that something must be done, but nothing is ever done. Every year this business repeats itself".[36]

At the same deliberation the Legal Advisor to the Knesset, Zvi Inbar, said: "As everyone remembers, in accordance to what is customary in the case of these laws, the Finance Committee does not deliberate reservations, but Members of the Knesset attach them directly to what is laid on the Knesset table. To the present it was customary to retract the reservations at the last moment, or to refrain from voting for them, or they were rejected. But now, something has happened, and two complete laws, each with dozens of articles, were

[36] Minutes of the meeting in the Finance Committee on "The lessons from the deliberation on reservations to the Bill for Increasing Growth and Employment to Attain the Goals for the 1998 Budget", held on February 24, 1998.

adopted [within the framework of the Arrangements Law] without being deliberated in any of the Knesset Committees: the amendment to the National Parks and Nature Reservations Law, and the Galilee Law". According to him, the development of this practice was possible because the Knesset Rules of Procedure did not prevent the presentation of general reservations that are not connected to a specific article in the Arrangements Law, and in addition, the number of reservations that may be tabled was not limited, and there was no time limit to their being tabled.[37] Inbar proposed several amendments to the Knesset Rules of Procedure in order to limit the phenomenon. In November 1999 Inbar commented during a deliberation in a joint meeting of the House Committee and the Finance Committee on the Arrangements Law: "What I ask is that regarding everything concerning the reservations, strict rules should be laid down. Last year the Knesset progressed quite long way on this issue. There was an agreements committee. The Agreements Committee enabled us to remove reservations... These are not technical matters, because in previous years by means of the reservations whole laws that had not been deliberated in Committee were passed".[38]

The most distinguished example of a law passed in the plenum by means of a reservation was the National Parks, Nature Reserves, National Sites and Remembrance Sites Law of 1997.[39] On March 17, 1997, the Minister of the Environment, Raphael Eitan, brought the Bill, which called for merging the Nature Reserves Authority and the National Parks Authority, for First Reading. The Bill passed First Reading and was referred to the Committee of the Interior and the Environment, which was headed at the time by MK Salah Tarif (Labor). For nine months the Bill was stuck in the Interior and Environment Committee, and Tarif did not hide the fact that he was not pleased with the unification of the two authorities. The reason for this was tension that existed between the Druze Community and the Nature Reserves Authority against the background of differences of opinion regarding a Nature Reserve at the outskirts of the Druze village of Beit Jan in the Galilee. Towards the end of 1997 Minister Eitan played a trick, with the help of a member of his parliamentary group, MK Eliezer (Mudi) Sandberg (Tsomet), who managed to introduce the Bill *in toto* as a reservations to the Law for Enhancing the Growth and Employment for the Attainment of the Budget Goals for financial year 1998, which appeared in the law as chapter 12.

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[37] Ibid.

[38] Minutes of a joint meeting held by the House Committee and Finance Committee on November 1, 1999.

[39] I should like to thank Ms. Yaffa Shapira, Director of the Interior and Environment Committee, who brought this case to my attention. Much material on it is found in the minutes of the Interior and Environment Committee, and of the House Committee, as well as in the Knesset Record.

At a meeting of the House Committee held in February, 1998, the Legal Advisor to the Knesset, Zvi Inbar reported: "Immediately after this law was adopted by means of a reservation, we approached the Speaker of the Knesset, and in agreement with him it was decided that the House Committee would continue to deliberate the Bill as if the reservation had not been adopted. The Committee for the Interior and the Environment, to which the Bill was referred, did indeed continue to deliberate the Bill, with one meeting being cancelled when the Government withdrew the Bill at a certain stage, and only after the intervention of the Attorney General, with our full support, the support of the Speaker of the Knesset and the Legal Department, the Government retreated, and the Committee of the Interior continued to prepare this law for Second and Third reading".[40] Several days after Inbar's report, an appeal on this issue was to have been dealt with by the High Court of Justice. This appeal was finally withdrawn, and the Bill passed Second Reading and Third Reading on March 24, 1998.

As already mentioned, the Rules of Procedure were not amended, and the treatment of reservations, filibusters and additional issues connected to the procedures of debate on the Arrangements Law, was dealt with in the House Committee, after the application of informal apparatuses of prior discussion.[41]

3.5. Cancellation of existing legislation

Regarding the cancellation of existing legislation one cannot disregard the fact that extremely important social legislation, most of which initiated by Members of the Knesset, in the preparation and enactment of which months and even years had been invested, were cancelled out of hand, or their application delayed. This happened, for example, to an amendment to the Senior Citizens Law, that was passed by MK Nava Arad (Labor) in in 1995, and the Absorption of Demobilized Soldiers Law, passed by MK Ra'anan Cohen (Labor) in 1994.

Nevertheless, one cannot disregard the fact that at least in the past there existed a very serious problem concerning Private Members' legislation involving budgetary expenditure. As opposed to most of the Western democracies, in which parliament is not entitled to increase a budgetary allocation without decreasing another allocation, and is not entitled to decrease the Government's revenue without at the same time decreasing expenditure,[42] in

[40] Minutes of the House Committee held on February 24, 1998.

[41] The Knesset Research and Information Center, *Procedures of Debate and Voting in the Process for Approving the Annual Budget (Reservations, Length of Debate and Filibusters) - A Comparative View*, written by Yehudit Galili, December 9, 2003. This document was written (in Hebrew) at the request of the Legal Department of the Knesset.

[42] See, for example, the words of MK Amnon Rubinstein (Meretz) in the minutes of a joint meeting of the House Committee and the Finance Committee, held on November 1, 1999.

Israel, until several years ago, there was nothing to prevent the approval of laws whose annual cost could run into hundreds of millions, or even billions of Shekels, without any mention being made as to where the money would come from to cover the cost, or while stating that the money "should be taken from the reserve". Since such legislation was passed in the Knesset despite the opposition of the Government in general, and the Ministry of Finance in particular, it is difficult to blame the Ministry of Finance for trying - and frequently succeeding - to have it cancelled, at least temporarily, by means of the Arrangements Law.

Already within the framework of the Arrangements Bill for 1993, an article appeared entitled "legislation involving a budget", which stated that the Foundations of the Budget Law should stipulate that a Bill which included an instruction, the fulfillment of which involved an expenditure from the State budget of a sum above NIS 100,000 per annum, should not be tabled for Second Reading and for Third Reading, unless one of several conditions were fulfilled. The House Committee, headed by MK Hagai Merom, decided at its meeting of December 1, 1992, to reject this article. Only on July 17, 2002, within the framework of the efforts of Knesset Speaker Avraham Burg to make the treatment of the Arrangements Law more efficient, a temporary provision was approved in Basic Law: the State Economy (Bills and Reservations, the Implementation of which Involves a Budgetary Cost), stipulating that a budgetary bill whose cost is more than NIS 5 million, which is not supported by the Government, may not be adopted by the Knesset unless at least 50 Members of the Knesset supported it. This temporary provision turned into an amendment to the law at the beginning of the 16th Knesset, on May 26, 2003.

Nevertheless, even within the current limitations, Israel is an exception in the world parliamentary scene. In most democratic states the Government is the party wishing to increase its expenditure, and the job of parliament is to restrain it, and ensure that the goal of a balanced budget (or the maximal deficit) is preserved. In the State of Israel the situation is the opposite. One may assume that should the role and performance of the Knesset in dealing with the budget be changed so that it will have restraining responsibility, whether by means of the Foundations of the Budget Law and/or the Basic Law: the State Economy, the excuse of the Ministry of Finance to use the Arrangements Law in order to get rid of what it considers "licentious legislation", will disappear, or at least diminish.

Within this context it is also worth examining whether in Israel the rate of budgetary expenditure resulting from legislation is especially high, as stated by the Ministry of Finance, and whether this fact is one of the reasons why every time that the Government wishes to introduce a significant change in the budget, it is necessary to amend and even cancel a large quantity of existing legislation. In November 1999, the Director of the Budgets Department in the Ministry of Finance, Mr. David Milgrom, stated within the framework of a joint meeting of the House Committee and the Finance Committee, that: "I should like to inform

the Knesset Members, that around 60% of the State budget today, excluding interest payments and debt repayment, is based on legislation of some sort, be it the Social Security Law, the National Health Insurance Law, the Mandatory Education Law, and many other laws that the Knesset enacted over the years. Furthermore, the rate of budgetary expenditure based on legislation has increased over the years, and the Knesset is busy enacting laws and basing issues that have a budgetary aspect, in legislation... Now, the question is asked whether the Government, which meets once a year to lay down its priorities, should lay down its priorities only with regards to the 40% that is not based on legislation, or whether it should lay down its overall priorities, which is of value and certainly a vital event... Everyone with his hand on his heart, every economist that you might ask, will say: it is the duty of the Government to lay down priorities, while looking at the overall budgetary expenditures...".[43]

On the other hand, it is also worth checking whether in other states there are constraints on the ability of the Government to cancel legislation, which has been enacted by parliament in a democratic procedure. It might be possible to demand that a special majority be required to cancel a whole law, or a significant part of a law by means of the Arrangements Law.

3.6. Increasing the amount of time devoted to dealing with the Arrangements Law

A central criticism regarding the manner in which the Arrangements Law is passed, is the fact that the Bill goes through a hasty legislative process, in which deliberations at the committee stage are usually short and superficial, and most of the Second Reading is used by Members of the Knesset to express displeasure with the procedure by which the Budget Law and the Arrangement Law are enacted, with the help of various parliamentary tricks, and again - not for the purpose of a serious and deep debate.

It has been suggested that even if the intention is that the Arrangements Law and the Budget Law should pass simultaneously, it is worth starting the deliberation on the Arrangement Law several months earlier. The implementation of this suggestion is problematic: the Budget Law is brought to the Knesset after the Summer Recess (that begins at the end of July or the beginning of August and lasts until after the Jewish High Holidays – in the course of October). If the budget year would begin on April 1, as was the case in the past, it would be possible to devote more time to the Arrangements Law. But since 1992 the budgetary year begins on January 1.

The timetable raises another problem. At the meeting of the Constitution, Law and Justice Committee held in November 2001, during the deliberation of the Bill proposed by MK Haim Katz (‘Am `Ehad) to amend Basic Law: the State Economy (See details below), the Deputy

[43] Minutes of a joint meeting of the House Committee and the Finance Committee, held on November 1, 1999.

Head of the Budget's Department in the Ministry of Finance, Mr. Yo`el Naveh, mentioned the problem of the timetable: "It is not a coincidence that the budget process reaches the Knesset when it does. Even today there are complaints in the Knesset that the premises upon which the budget presented in October are based, are out of date, and they were adopted in July… if we would present the budget in July, we would have to lay down the premises in April, because there is a preparation process. We have to find a balance… between a legislative process, which must be extensive and detailed, and a legislative process that must be based on the reality within which the budget is brought, which keeps changing every day and every hour".[44] At the meeting of the State Control Committee held in May 2005, the Chairman of the Committee, MK Yuri Stern (Ha`ihud Hale`umi), asked Minister of Finance Binyamin Netanyahu: "And why can't the Arrangements Law be brought at least one month earlier?" Netanyahu's reply was: "Because in practical terms we are unable to do this".[45]

In a document they presented to the Caesarea Conference in 2005, Prof. Avi Ben-Bassat and Dr. Momi Dahan argued that the limitation of the time for passing the Arrangements Law was also influenced by the desire of the Ministry of Finance to weaken the opponents of the reforms that it was trying to pass by means of the Law.[46]

3.7. The clash between democracy and practice

All that has been said above, brings us back to the basic question regarding the role of the Knesset within the Israeli democratic system, and the role of the legislature in supervising the executive in general, and in the sphere of budgetary revenue and expenditure and laying down economic preferences, in particular. It is generally agreed that there is room for improving the way the Knesset functions in this sphere. As we shall be below (and as we have also shown at the beginning of this chapter), the situation with regards to the other parliaments we examined is not fundamentally different.

Minister of Finance Netanyahu referred to this argument in the meeting of the State Control Committee mentioned above, using examples from other countries. According to him: "It is true that the means in our decentralized political structure to pass decisions, is to pass them in a package. What does that require? It requires extremely difficult and concentrated work by the Knesset, but the alternative is that these laws will not come to be. The alternative that there should be no laws in order to go through a slower process, which is

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[44] Minutes of the meeting of the Constitution, Law and Justice Committee, held on November 6, 2001.

[45] Minutes of the meeting of the State Control Committee held on May 8, 2005.

[46] Prof. Avi Ben-Bassat and Dr. Momi Dahan, *Ma`azan Hakohot Betahalich Hatikzuv* ("The Balance of Forces in the Budgeting Process"), document presented at 13th Caesarea Conference, in June 2005, p. 41.

more pleasant for the Knesset, implies that there will be no growth, or that unemployment will not decrease from 11% to 9%, and soon 8%, but will remain and increase. In Berlin where there are extremely transparent and very good procedures - the parliament building itself is transparent, in more than one way - there is 20% unemployment. So they have transparent procedures, clean procedures, excellent procedures, but they are collapsing. Regarding transparency I have no argument... I am an admirer of transparency, but speed is sometimes necessary, especially in crisis situations. We are a state that is frequently in the clutches of several crises all at once. The speed in passing laws, the decisions and the reforms, require more rapid action - true, at the expense of slower deliberation. But if I must chose between the two, and let us assume that instead of 40 reforms we would pass three - which would also be a great achievement compared to previous years - nothing would happen; we would crash and we would, like a certain South American country, carry out barter on the streets for several years, until we would discover that we must make these changes".[47]

Prof. Avi Ben-Bassat and Dr. Momi Dahan point out in their document that this issue has an ideological aspect, that is connected to the level of the Government's involvement in the economy: "In the last three years there have been buds of a controversy on values with regards to the degree of involvement of the Government in the economy. It is clear that the price of the Arrangements Law in terms of striking a blow at democracy grows the sharper the ideological controversy regarding the degree of the Government's involvement in the economic activity of the state... the further the Israeli economy grows from unconventional levels of the public sector, and the degree of economic freedom rises, so the political controversy regarding the role of the Government sharpens. A fast legislative course, as in the case of the Arrangements Law, strikes a strong blow against the proper functioning of the Israeli democracy".[48]

4. LAWS IN OTHER COUNTRIES THAT ARE SIMILAR TO THE ARRANGEMENTS LAW IN ISRAEL

4.1. The myth that "there is no such law anywhere in the world"

The Arrangements Law evolved against the background of the special circumstances that developed in the Israeli economy following the economic liberalization after the political upheaval of 1977, of the political culture that developed in the country since the 1980s, and

[47] Minutes of the meeting of the State Control Committee held on May 8, 2005.

[48] Prof. Avi Ben-Bassat and Dr. Momi Dahan op.cit. pp. 42 & 47.

of the changing balance of power in Israel between the Executive Authority and the Legislative Authority, to the detriment of the latter.[49]

As stated above, despite the uniqueness of the situation in Israel, and despite the myth that developed within parliamentary circles in Israel that "there is no such law anywhere in the world",[50] similar laws to the Arrangements Law do exist in other states, and not necessarily in times of emergency. What we are speaking of are vast laws, that include many subjects that are not necessarily connected to each other. In the U.S. and Canada such laws are called "Omnibus Laws" (The Webster dictionary defines the adjective "omnibus" as: "relating to or containing several miscellaneous items"). In French speaking countries they are called "*lois mosaïques*" - mosaic laws.

What all these laws have in common is that because of their dimensions, their content, and frequently due to lack of time, the parliament is unable to deal with their enactment in a proper manner.[51] Evidence to this effect may be heard from those involved in the legislative process in the various countries.[52] The subject matter of these laws is not necessarily the state budget or the economic policy, even though it was found that most of the legislation in this category is connected with the amendment of existing laws, including the amendment of articles connected with the implementation of the budget and the economic policy, the cancellation of such articles, and the addition of others.

Since the state budget must be approved by a certain date, these laws must pass on the basis of hasty procedures, unless they are tabled a long time before the budget itself is presented. One of the functions of the parliament in a democracy is to pass all the legislation,

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[49] See for example: Prof. David Nahmias and Eran Klein, op. cit.

[50] A statement in this spirit was issued by Prof. Arik Carmon, Director of the Israel Democracy Institute, at a joint meeting of the Knesset House Committee and Finance Committee held on November 1, 1999, in which he participated upon the occasion of the publication of the IDI document on the Arrangements Law. According to him, "Taking a comparative look in the world, there is no such thing... a platform on which one loads laws and passes them. There are situations, similar to that in Israel in 1985, that are emergency situations. Emergency situations have occurred in other places, but what characterizes these emergency situations is that they come and go, and somehow one doesn't let this unreasonable situation continue". It should be noted that the document itself (Prof. David Nahmias and Eran Klein, op. cit.) did not deal with international comparisons.
In the document presented by Prof. Avi Ben-Bassat and Dr. Momi Dahan at the 13th Caesarea Conference in June 2005, they wrote, after discussing the matter with representatives of the OECD and senior officials in the Finance Ministries in Ireland, the Netherlands and Denmark: "Usually, the budget Law in industrialized countries does not include legislative amendments of direct budgetary significance. These legislative amendments are done in the usual legislative manner. Those states that attach to the Budgetary Law legislative amendments of direct budgetary ramifications, do so carefully".(Prof. Avi Ben-Bassat and Dr. Momi Dahan, op. cit.)

[51] What we mean by "proper manner" is that the law passes all the enactment stages, and a real and serious debate is held on all its articles.

[52] Regarding the situation in each state, see below.

whether Government or private, in an appropriate and regular procedure, unless we are talking of an emergency for a limited period. Therefore, from a democratic point of view, the approval of laws by means of a hasty and faulty procedure, as occurs in the case of these laws, could be problematic.

In many countries the tabling and passing of such laws is impossible. In Britain, for example, it is not possible to present a new budgetary clause, and Parliament cannot debate a new budgetary clause, unless the legislative amendments have been made in advance, in an ordinary legislative procedure. Only in emergency situations can one diverge from this rule.[53]

After we found a country in Western Europe that has a law similar to the Arrangements Law in Israel – Belgium - and we found out that its parliament is contending with the question of how to limit its dimensions, we joined the Legal Advisor of this parliament, Mr. Marc Van der Hulst, in the wording of a questionnaire for all the European parliaments on the issue of laws similar to the Belgian law and the Israeli law. The Belgian questionnaire was published on the ECPRD[54] website, and in this way we found additional countries in Europe that have laws that are similar to the Arrangements Law (See below Appendix 2).

While the system in the United States is different to that in all of the other countries reviewed – a Presidential system rather than a Parliamentary one, which results in many differences in the legislative process in general, and the procedures for passing the annual budget, in particular, we found that the American Omnibus legislation connected with the budget – especially the Appropriations Acts and Reconciliation Acts - are highly relevant to out survey.

4.2. Belgium[55]

In Belgium there has existed for dozens of years a law that is almost identical to the Arrangements Law in Israel. The intention of the law, that is called *loi programme* in Belgium, is to assist in the implementation of the budget, and it includes legislative

[53] This principle is considered in Britain to be a constitutional principle (despite the fact that Britain does not have a written constitution), and it is explained in: Erskine May, *Parliamentary Practice*, 23rd edition, Lexis Nexis UK & Butterworths, 2004, pp. 852–3.

[54]The ECPRD is an organization in which the research and information units in all the European parliaments are associated, and in which the Knesset Research and Information Center has observer status. The questionnaire was published on the ECPRD website on January 3, 2005.

[55] The section about Belgium is based on a prolonged correspondence with the Legal Advisor of the Belgian House of Representatives, Mr. Marc Van der Hulst, a visit to the parliament of Belgium on April 12, 2005, and on written material received in the course of this visit.

amendments and new legislation. The law itself covers 100-200 pages every year. The 2005 *loi programme* included 505 articles.[56]

As stated above, in French, which is one of the official languages in Belgium, these giant laws, in which many subjects are included, are called "*lois mosaïques*". According to the Legal Advisor of the Belgian Chamber of Representatives, Mr. Marc Van der Hulst, 20% of the content of the law was not connected in any way to the budget, and an additional 25% were connected to the budget only slightly. The Belgian Government includes in the Program Laws around a quarter of the total legislation passed in the parliament. In the Chamber of Representatives the Bill is dealt with in numerous Subject Committees, and in the last months of every year a large part of the parliament's work focuses on the Budget and the Program Law. It should be noted that Belgium applies the "Norwegian Law",[57] as a result of which all 150 Members of the House of Representatives are free for parliamentary work, in addition to the fact that subjects such as education and health are dealt with by the national parliaments, in other words, the Flemish and Walloon legislatures.

In the Belgian parliament there is a lot of criticism about the *Loi Programme*, due to its dimensions and content, yet apparently no one ever spoke of canceling it. On July 7, 2002, Members of the House of Representatives Paul Tant and Pieter de Krem of the Flemish Christian Democratic Party, tried to amend the Rules of Procedure of the House of Representatives, so that the House would have the ability to remove from the law articles that are not directly connected to the budget. They proposed to amend article 107, that deals with the procedure for approving the budget, adding to paragraph 4 in the article a clear stipulation forbidding the introduction into the *Loi Programme* of any subjects that are not directly connected to the implementation of the budget, and calling for their being included in a separate and independent bill, if the Government insists on the need to change the existing law regarding them. This proposal was not accepted, but on March 18, 2005, after a deliberation on the issue, it was agreed to add to article 72 in the Rules of Procedure an additional paragraph - No. 4 - according to which every parliamentary group is entitled to demand the convention of the "Presidents Conference" (a body in which the heads of all the parliamentary groups are members), to raise before them the argument that a certain article, or various articles in the *Loi Programme,* are not connected directly to the budget, and put a proposal to delete these articles from the *Loi Programme* to the vote. (The exact French

[56] We should like to thank Mr. Marc Van der Hulst, who is Head of the Legal Department in the Belgian Chamber of Representatives, for providing us with numerous documents connected with the *loi programme*, and answering all our questions on the issue.

[57] By "Norwegian Law", we mean a law that prohibits Ministers from continuing to serve in the parliament after being appointed as Ministers. The usage of the term "Norwegian Law" stems from the fact that article 62 of the Norwegian Constitution prohibits members of the State Council and State Secretaries to participate in the sittings of the Stortinget as Members.

wording of the amendment that was not adopted, and of the amendment that was adopted, is to be found in Appendix 3).

4.3. Spain[58]

Until 1993 the budget law in Spain included legislative amendments that *prima facie* were connected to the budget, but in fact were, in the words of the Spanish Constitutional Court "leftovers of the year's legislation". The court, that set a goal for itself to place limitations to the normative spillover of the budget law (called "the general state budgets"), ruled in a judgement in 1992 (case No. 76), that even if this practice is not contrary to article 134 in the Constitution, that deals with the budget, it is worthy of condemnation. In fact, the court set a rule, according to which the budgetary legislation must be coherent.[59]

In light of the court's ruling, legislative amendments were taken out of the Budget Law, and an accompanying law called in Spanish *Ley de Acompañamiento* was attached to the 1994 Budget Law. The content of this law was (according to its own definition) fiscal, administrative and social means to enable the implementation of the economic goals laid out in the Budget Law. This law, as opposed to the Budget Law, was an ordinary law, to which the Constitution did not relate, but since it was attached to the Budget Law, it was passed like the budget Law in haste, that prevented any deep treatment of the issues contained in it.

The first Accompanying Law included 43 articles. The following year the number of articles rose to 81; in the third year they rose to 150 (in addition to regulations and additional instructions, whose number also increased gradually). The law that was presented at the end of 2003, was 120 pages long. So even though the problematic articles were removed from the

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[58] We should like to thank Dr. Suzie Nevot of the College for Management (which has branches all over Israel), who brought to our attention the following article:
Luis González del Campo, "*Nuevos problemas en torno al ejercicio de la potestad presupuestaria por el parlamento*", in Francesc Pau I Vall (coord.), *Parlamento y Justicia Constitucional*, Aranzadi editorial, 1997, pp. 573–592.

Most of the section about Spain is based on this article and on information that we received directly from the two Houses of the Spanish parliaemnt - from the director Research and Documentation Department in the Senate, Mr. Fernando Santaolalla López, and the director of the Research and Documentation Department in the Congress, Mrs. Maria Rosa Ripolles Serrano .

Since the above mentioned article was published, the following book was published on the issue:
Saturnina Moreno González, ed, *Constitución y Leyes de "Acompañamiento" Presupuestario*, Pamplona, Thomson-Aranzadi, 2004.

[59] It should be noted that as was the case in Spain until 1993, so in France legislative amendments required for the implementation of the annual budget are included in the Budget Bill, and as in Spain, if the amendments, or a paragraph in the amendment, do not relate directly to the Budget Law, the Constitutional Court may cancel them (See: the Knesset Research and Information Center, *The Arrangements Law - a Comparative Survey,* written by Yudit Galili, November 5, 2001. This document was written at the request of the Knesset House Committee).

Budget Law itself, a new law was created, in which one could discern the same shortcomings, which the constitutional court had originally condemned in its ruling in 1993. There were those who pointed out that instead of a carriage carrying the remains of the previous year's legislation, now one had a train with many cars, performing the same task. Others used the image of "a tailor's drawer" (*cajón de sastre*), which contains all sorts of haberdashery. Not only did the Government put into the law everything that came to hand, but it was noted that the economic lobbies benefited as well.[60]

In the general elections held in Spain in 2004 the leader of the Socialist Party, José Luis Rodriguez Zapatero, promised that if elected he would cancel the *Ley de Acompañamiento*. And indeed, after he was elected, the law was canceled, in September 2004, and the Government accompanied this measure with a declaration, to the effect that the lost honor of the parliament had been restored to it.[61]

The cancellation of the law left a void, and the Government filled this void when it presented the budget for 2005, by returning to the Budget Law the articles that had been removed from it in 1994, while simultaneously presenting a tax law, that dealt with part of the issues which were included in the past in the Accompanying Law. The whole issue returned to the Constitutional Court, following an appeal by the Popular Party, that argued that the Government had reverted to the custom, which the court had condemned in 1993.[62]

According to the director of the Research and Documentation Department in the Spanish Senate "We need time to consider the outcome of all this mess".[63]

4.4. Italy[64]

Every year in June the Italian Government presents the economic and financial planning document (*Documento di programmazione economico-finanziaria*), which includes the goals for the coming three years regarding the budgetary balance, expenditures and revenues. The document is approved in both Houses - the Chamber of Deputies and the Senate - before the Summer recess begins at the end of July, or the beginning of August. By the end of

[60] The *Cinco Dias* news website, http://www.cincodias.com, article No. 20040513 May 13, 2004.

[61] Ibid. article No. 20040910, September 10, 2004.

[62] An e-mail from Mr. Fernando Santaolalla López, Director of the Research and Documentation Department in the Spanish Senate, dated April 28, 2005.

[63] An e-mail from Mr. López dated January 31, 2005.

[64] Unless otherwise stated, the section on Italy is based on the article:
Giuseppe Pisauro, "The Central State Budget Process in Italy", *International Forum for Macroeconomic Issues*, Tokyo, 17–19 February 2003. We thank Ms. Geordana Grego, who worked in the Knesset Future Generations Committee in 2004/5 for bringing this article to our attention.

September the Government presents two bills. The first is the Budget Bill (*Bilancio dello Stato a legislazione vigente*), that deals with the expenditures of the Ministries and government agencies, and is based on existing legislation. The second is the Financial Bill (*Disegno di legge finanziaria*), that covers a much broader range Public Administration, and includes new bills (including legislation amendments) required for the smooth implementation of the budget, and, since 1999, to ensure compliance with the EU Stability and Growth Pact that is directed towards the enforcement of fiscal discipline. The two bills are supposed to be approved by December 31.

According to article 81 of the Italian constitution and the Budgetary Procedure Law No. 468 of 1978, after the budgetary balance is set, on the basis of he Budget Law and the Financial Law, it is necessary to attach to each new bill that involves increasing the budgetary expenditure, or reducing revenues, complementary amendments in other expenditure and revenue items. For this reason, since the Financial Law is a law that "must pass", this law has reached vast dimensions. Towards the end of the 1980s it reached 100 articles, each containing dozens of paragraphs. An additional side effect was that the Financial Law used to increase the budgetary deficit beyond the Government's intention. It should be added that in that period the parliament frequently did not manage to approve the budget by the end of December.

As a result of this situation a new Budgetary Procedure Law - No. 362 - was passed in 1988. This law improved several aspects of the situation. The new law laid down that the budgetary balance (or budgetary deficit) goal should be decided before the parliament passed the Budget Law, and the Financial Law, by means of the economic and financial planning document (*Documneto di programmazione economico-finanziaria*). The new law also laid down reservations to the content that may be included in the Financial Law,[65] according to which complex policy changes would be included in accompanying laws, which would also be passed by the end of December. In addition, it stipulated that the Budget Law would be dealt with in the two Houses by the various Subject Committees, and not only the Economic Planning and Budget Committees. Finally, the law laid down rules to ensure that the budget would pass by December 31. Efforts to limit the dimensions of the Financial Law by means of the prior setting of the budgetary balance failed.

A few years later the accompanying laws were integrated into a single law, which in turn assumed huge dimension. In 1999 the procedures were once again changed, within the framework of Law No. 208, that expanded the Financial Law and cancelled the Accompanying Law.

[65] The list of reservations appears in the document prepared by the Economic Planning and Budget Committee of the Italian Senate (See Appendix 4).

From a procedural point of view, the Financial Bill is sometimes dealt with before the Budget Bill, and sometimes after it. There are several apparatuses for ensuring that the Financial Law is passed within a certain time framework. This is done by means of setting time limits on the deliberation stages in the Chamber of Deputies and in the Senate, and by setting strict limitations on the presentation of reservations. It is the Presidents of the two Houses who decide how the Financial Bill is to be divided among the Committees - each in his own House. Each of the Committees is supposed to complete the deliberation of the sections referred to it, and draft a report for the Economic Planning and Budget Committee in its own House, within ten days. The Economic Planning and Budget Committee is supposed to refer the Bill to the plenum within 25 days.[66]

Despite the various procedural changes described above, that partially resolved some of the problems connected with the Financial Bill, the problem of the Bill's dimensions has not been resolved. Part of the problem appears to be the non-implementation of rules, rather than their absence.

4.5. Austria[67]

Austria does not have a law that is attached annually to the Budget Law like the Arrangements Law in Israel, the Program Law in Belgium, the Financial Law in Italy, or the former Accompanying law in Spain. As a rule the Budget Law is accompanied by several legislative amendments or new laws, that have some sort of connection to the Budget, and each of them goes through an individual legislation procedure. However, from time to time, especially when there is a significant change in the policy (for example, after the formation of a new Government), all the amendments and new laws are introduced within the framework of a single Omnibus Bill. Dr. Günther Schefbeck, a lawyer, who heads the Documentation Department in the Austrian Nationalrat, pointed out two such laws, that were especially large: the Structural Adaptation Law (*Strukturanpassungsgesetz*) of 1996, that included 98 articles, and was 365 pages long,[68] and the Budget Accompanying Law (*Budgetbegleitgesetz*) of 2001, which included 87 articles.[69]

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[66] Giuseppe Pisauro op. cit, and information received from Mr. Riccardo Ercoli of the Economic Planning and Budget Committee in the Italian Senate on June 17, 2005.

[67] We should like to thank Dr. Günther Schefbeck, who is head of the Documentation Department in the Austrian Nationalrat, who provided us with all the information in this document regarding the Austrian law.

[68] See: http://www.parlament.gv.at/portal/page?_pageid=908,185176&_dad=portal&_schema=PORTAL, (last entered on 29.8.05).

[69] See: http://members.chello.at/hans-peter.hochmeister/steuer.pdf , (last entered on 29.8.05)

According to Dr. Schefbeck, the reason why such bills are not presented every year is that in Austria Government Laws are tabled on behalf of the whole Government, and not on behalf of individual Ministers, and the degree of coordination required to put together an Omnibus Law, in which every Ministry has a say, is enormous.

4.6. The United States

Giant laws that include different subjects that are frequently totally unconnected to each other, are a common phenomenon in the United States. Such laws, which first appeared after the Second World War, are called in the U.S. Omnibus Laws, and there is an extensive academic literature that explains and analyses the phenomenon.[70] The use of this form of legislation expanded to a large extent in 1980/81, at the beginning of the Reagan Administration. A significant proportion of the Omnibus Laws are connected with the process of passing the budget, within the framework of the Appropriation Acts,[71] or within the framework of the Reconciliation Legislation.[72]

Unlike such laws in parliamentary systems, in the U.S. the initiative for Omnibus Bills usually comes from Congress, and not from the President. The goal can be to pass bills that would not pass in Congress unless they were attached to a bill or bills for whose passage there is an promised majority, or to prevent the President from vetoing a bill, to some of the components of which he objects, because it includes components which he favors, and he is willing to compromise in order to get them through.

Like the Arrangements Law in Israel, and similar laws in other countries, so the Omnibus Bills in the U.S. are usually enacted by means of a hastened procedure in the Committees, and frequently Members of Congress are not familiar with their details. Senator Robert Byrd claimed, when asked in October 1998 about the content of the Appropriations Bill which came up for deliberation in the Senate: "Do I know what's in this bill? Are you kidding? No. Only God knows what's in this monstrosity".[73]

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[70] See for example: Barbara Sinclair, *Unorthodox Lawmaking, New legislative Processes in the U.S. Congress*, second edition, Washington D.C. CQ Press, A Division of Congressional Quarterly Inc., 2000; and Glen S. Krutz, *Hitching a Ride, Omnibus Legislating in the U.S. Congress,* Columbus, Ohio State University Press, 2001.

[71] See for example: Robert Keith, *Omnibus Appropriations Acts: Overview of Recent Practices*, Congressional Research Service, Updated October 5, 2004.
http://www.allhealth.org/recent/audio_02-11-05/RL32473%5B1%5D-CRS.pdf

[72] See for example: Bill Heniff Jr., *Budget Reconciliation Legislation: Development and Consideration*, Congressional Research Service, Updated July 17, 2003.
http://www.senate.gov/reference/resources/pdf/98-814.pdf

[73] Glen S. Krutz, *Hitching a Ride, Omnibus Legislating in the U.S. Congress,* Columbus, Ohio State University Press, 2001, p.2.

Side by side with complaints that the Omnibus Law system is not democratic, since while these laws are being passed Members of Congress cannot dutifully perform the legislative work, there is also an inclination to understand the phenomenon against the background of difficulties in the functioning of the American political system, both from the institutional and political points of view. These difficulties could cause the paralysis of the legislative system in the U.S., especially in periods in which the Majority in one or both Houses of Congress is not from the President's party.

The Omnibus Law system improves Congress's legislative ability. Especially since the mid-1970s alternative methods for passing laws developed, side by side with traditional legislation, and Omnibus Laws are one of these methods. Today it is not rare for vast bills to be referred to a large number of Committees (even more than ten Committees in each House), or that certain laws pass without going through Committees at all, by means of negotiations between the leaders of the parties in Congress, between them and Members of Congress, or between them and the President. Especially when we are speaking of Omnibus Laws, the proportion of bills of this type that get through, compared to ordinary bills, is especially high, apparently because of the thought and extensive work that go into compiling them.[74]

As mentioned above, a significant portion of the Omnibus Bills are connected with the budget, and those that interest us in particular in connection with the Arrangements Law are the Reconciliation Bills. It should be noted again, that the process for passing the budget in the U.S. is completely different from that in Israel. Congress is much more active than the Knesset is formulating the budget after it has been referred to it on behalf of the Administration.

The stages in passing the budget are: 1) The presentation of the budget on behalf of the President in the beginning of February; 2) The adoption of a resolution regarding the framework of the budget in the two Houses (the Budget Resolution); 3) The beginning of the debate on 13 budget bills in May. Frequently at this stage some of these bills are joined together into a single Omnibus law; 4) If the budget requires many legislative amendments, the two Houses of Congress prepare a reconciliation bill, or several reconciliation bills. In the case of a single law, it is usually an Omnibus law;[75] 5) The two Houses of Congress pass a variety of laws that approve specific allocations for specific programs.[76]

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[74] Barbara Sinclair deals extensively with this subject in her book *Unorthodox Lawmaking, New legislative Processes in the U.S. Congress*, second edition, Washington D.C. CQ Press, A Division of Congressional Quarterly Inc., 2000.

[75] Reconciliation bills are brought especially in times of budgetary cuts.

[76] "The Basic Stages of the Congressional Budget Process ", Parliamentary Outreach Program, U.S. House of Representatives Committee on Rules Majority Office (no date) http://www.rules.house.gov/archives/budget_stages.htm

Within the framework of the process for the preparation of a reconciliation bill, or reconciliation bills, committees in both Houses of Congress are supposed to prepare amendments to existing legislation, so that it will be possible to realize the budget goals - in terms of expenditure, revenue and deficit - as they appear in the Budget Resolution. Incidentally, the Committees are entitled to disregard specific recommendations in the Budget Resolution, as long as they maintain the saving goals presented in it. Though the Committees are entitled to produce a series of reconciliation laws, the temptation to prepare a single law, which almost invariably turns into an Omnibus law, is that within the framework of such a law it is possible to maneuver among various needs and wishes. Such a bill is usually dealt with by numerous Committees in each of the Houses, and each Committee deals with legislation amendments within the sphere for which it is responsible. In 1981 - the year in which President Reagan proposed his new economic policy - 15 Committees in the House of Representatives and 14 Committees in the Senate were engaged in preparing the Bill. In 1993 - the year in which President Clinton proposed his new economic policy - 13 Committees in the House of Representatives and 12 Committees in the Senate were engaged in preparing the Bill. The large number of committees engaged in preparing reconciliation bills certainly improves the treatment by Congress of these bills, but the work of the Committees is still done under severe time pressure, since they are supposed to complete their work by a certain date, and hand over their comments to the Budget Committees in the two Houses, that put together the final Bill.

Frequently attempts are made to use the reconciliation stage to add policy clauses that are not connected to the budget as presented in the Budget Resolution. In 1985 what is known as the Byrd Rule was passed. This Rule was added to article 313 of the 1974 Congressional Budget Act. The Byrd Rule intended to prevent the addition of subjects, that are extraneous to the content of the Reconciliation Bill,. The argument that a certain amendment to the bill is not connected to the budget is raised in the Senate Budget Committee as a motion for order. The Chairman of the meeting decides if the proposal is accepted or rejects, and only a vote of two thirds of the Senators (66 Senators) can cancel his decision. Clause 313(b)(1) in the Congressional budget Act lays down the conditions for the implementation of this Rule (see appendix No. 5). Despite what is written in the clause, it is not always easy to determine whether a particular amendment falls within the framework of its provisions.[77] In 1995 the Democrats in the Senate managed, with the help of the clause, to remove from the

[77] See for example Robert Keith, "The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures", *CRS Report for Congress*, Updated September 9, 1998; and U.S. House of Representatives Committee on Rules Majority Office, "Summary of the Byrd Rule", *Parliamentary Outreach Program*, (no date).
http://budget.senate.gov/democratic/crsbackground/byrdrule.html

Reconciliation Bill blocks of legislative articles in the sphere of welfare proposed by the Republicans.

It should be noted that in the whole legislation process of the Reconciliation Bills, the leaders of the parties in Congress and a large number of Congressmen are involved, since these laws are viewed not only as extremely important in budgetary terms, but also as something that can affect the chances of Congressmen to be reelected. As in the case of the putting together of many other Omnibus laws, so also in this case negotiations take place between the leaders of the parties in Congress and the President's senior staff. This whole process is not rooted in formal rules, and is based only on practicality and gentlemen agreements.[78]

5. VARIOUS APPROACHES FOR DEALING WITH THE ARRANGEMENTS LAW

There are three ways to deal with the Arrangements Law, or its like: to leave the situation as is; to try and get rid of the Law altogether; or to let it continue to exist, while limiting its dimensions and improving the ways of dealing with it.

5.1. Leaving the situation as is

As stated above in the discussion of the specific issues raised by the Arrangements Law, the Knesset adopted several measures in order to improve the treatment of the Arrangements Law. These included, among others, the decision to divide up treatment of the Arrangements Bill among the Knesset Finance Committee and the Subject Committees, the passing of a law that limits the tabling of Private Members' Bills involving an annual expenditure of more than NIS 5 million, and the introduction of an administrative instruments that limits the number of reservations that can be introduced to the Arrangements Bill.

Nevertheless, the annual ritual of speeches by Members of the Knesset in the plenum and in the Committees against the law persists, as do proposals to get rid of the law altogether, newspaper articles in this spirit, rulings by the High Court of Justice and declarations by senior officials such as the State Comptroller and the Attorney General, to the effect that the Law itself and the manner in which it is passed in the Knesset are unworthy.[79] So things are

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[78] Barabar Sinclair op. cit. pp. 77-79.

[79] In a ruling issued on December 31, 2003 the Attorney General, Elyakim Rubinstein, stated that "the inclusion of many amendments to various laws on various issues by means of a single law does not tally with a proper legal policy", and demanded that a limiting and restraining approach be taken in the use of the Arrangements Law (See Appendix No. 6).

said, statements are made, the world continues as usual, and very little in terms of carefully thought out and serious effort has been made to change the situation.

5.2 Eliminating the Arrangements Law altogether

Members of the Knesset from all the parliamentary groups in the House, some of the legal advisors in the Knesset Legal Department, senior officials in the Knesset, and others, continue to call for the elimination of the Law altogether.

Among the most consistent spokesmen for the elimination of the Arrangements Law was Member of the Knesset Dan Tichon. In December 1996, several months after being appointed Speaker of the Knesset, he said: "The Arrangements Law must be eliminated, and quickly. This is very bad legislation, it has no justification. I am not even sure that this legislation is worthy of being called legislation. There is no debate, there is nothing, there is no First Reading, there is no Second Reading, there is no Third Reading, everything goes through in an extremely short time, nobody knows what one gets at the end of the day. I hope I can do something positive in this sphere, and next year the Government will have difficulties with me on this issue… I know that all the Governments since 1985 like using the Arrangements Law, but I have been saying these things since it was presented to the Knesset for the first time, and I call upon the Members of the Knesset to take action... This legislation is neither fair, nor serious, and is unworthy of the parliament".[80]

All those who sought to cancel the law understood by the end of the 1990s, that the only way to do so, or to bring about a fundamental change in it, was for the Knesset to adopt a decision on the issue, that would come into effect only in the following Knesset. Such a procedure would neutralize some of the political difficulties, since one does not know in advance what the makeup of the next Knesset will be, nor which of the parliamentary groups will be members of the Government. This insight received backing from the Israel Democracy Institute document of 1999.[81]

At a meeting of the House Committee in May 1998 the Speaker of the Knesset, Dan Tichon, said: "We must 'kill' the Arrangements Law, and decide once and for all, that it should no longer exist… I propose that at present the Law be limited to an absolute minimum, and that it be laid down in the Rules of Procedure that as of the next Knesset it will no longer exist, no matter who is in power… I propose that a decision be taken on this matter today".[82] Despite these calls, no concrete steps have been taken in this direction to the present

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[80] *Divrei Haknesset* ("The Knesset Record"), Vol. 158, debate on the Arrangements Law, December 24, 1996, p. 2184.

[81] Prof. David Nahmias and Eran Klein, op. cit.

[82] Minutes of the House Committee meeting, held on May 12, 1998.

day. The reason could be that no one really believes that it is possible to bring about the cancellation of the Arrangements Law, since even the High Court of Justice, that has expressed its dislike of the Law, has never ruled that it is illegal, and has not found legal grounds to veto it.[83]

Of the examples we found abroad, only in Spain was a decision taken to cancel the Accompanying Law, and as things look at the moment, even there it is not the end of the story: no alternative instrument was offered to deal with the required legislative amendments in order to execute the budget, and the whole issue has been returned to the Constitutional Court.

In the opinion of the former Attorney General of the Knesset, Zvi Inbar, the Knesset should return to the situation that existed before 1985, in other words: to return the legislative amendments directly connected to specific budget articles into the Budget Bill, and deal with legislative amendments connected to policy changes separately and at greater leisure. However, it is not at all certain that the Knesset, as it currently operates, is able to cope efficiently and punctually with the task of individual legislative amendments.

In a debate that took place in the Knesset plenum on the Arrangements Law in December 1996, former Knesset Speaker Shevah Weiss (Labor), who opposed the cancellation of the Arrangements Law, enumerated a list of improvements in the Knesset procedures, to enable it to deal more efficiently and effectively with the State Budget and the Arrangement Law.[84] In honor of the Knesset's 49th anniversary, on February 10, 1998, a long debate took place in its plenum under the title: "the Knesset criticizes itself". Among the issues that were raised in this debate were ideas on how to improve the situation with regards to the Arrangements Law.[85]

To the present day there is awareness within the Knesset Presidium and the Knesset Administration, and among the Members of the Knesset, that there is room for improvement regarding the manner in which the Knesset deals with legislation, and from time to time ideas come up for debate on how to improve the situation on the level of the Committees' work, or on the level of the Members' work.

5.3. Leaving the Arrangements Law, while limiting its dimensions and improving the procedures for dealing with it

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[83] See outline for the lecture by Attorney General, Meni Mazuz, op. cit..

[84] *Divrei Haknesset* ("The Knesset Record"), Vol. 158, debate on the Arrangements Law, December 24, 1996, pp. 2192-93.

[85] *Divrei Haknesset* ("The Knesset Record"), Vol. 167, question hour, February 10,, 1998, pp. 5091-5114.

So far several attempts were made to bring about substantial changes in dealing with the Arrangements Law by procedural and legislative means, without canceling it. It appears that most everyone agrees that even if one can demand of the Ministry of Finance to improve its staff work in the sphere of presenting the Arrangements Bill (as the State Comptroller, Eliezer Goldberg, did in April 2003[86]), and to criticize the manner in which the Government's decisions are adopted within the framework of its deliberations on the Arrangements Law (as the Attorney General, Eliakim Rubinstein did in December 2003[87]), in the last resort it is the task of the Knesset to stop the Government misusing the Arrangements Law.

This is what the High Court of Justice had to say on the subject:

> "We dealt in detail with the problematic nature of the legislative instruments involved in the likes of the Arrangements Law, in terms of the appropriate democratic process, of the principle of the separations of powers, and of the democratic-representational regime in Israel. It is therefore befitting for the Knesset to consider the problematic nature of this legislative tool, and to ensure that its utilization, if it is utilized, should be made in a thoughtful and limited manner. According to our approach, described in detail above, the solution to the situation created due to the exaggerated use made of this legislative tool is not in the hands of the Court, but is first and foremost in the hands of the legislator. Indeed, a legislative tool such as the Arrangements Law harms the status of the Knesset as the legislature of the State, and the task of this court is to warn against it... However, the task of defending the status of the Knesset from legislative tools that enable the infringement of its boundaries by the executive branch, is found, first and foremost, in the hands of the Knesset itself. Indeed:
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> > 'The Knesset - and it alone - can change the rules of the game. The authority granted the executive branch and the judicial branch is the authority that the Knesset - under its cap as the founding authority (Basic Laws), or under its cap as the legislative authority (ordinary laws) - grants them... This aspect has special significance in the relations between the Knesset and the Government... Furthermore: the supremacy of the Knesset leads one to expect that the important and fundamental decisions regarding the essence of the regime, shall be taken by the Knesset, and not by the other authorities. This is a power that is unique to the Knesset. This power is accompanied by a duty. The Knesset must itself realize this power, and it cannot... hand this power over to another' (Aharon Barak, *The Parliament and the Court* (Hebrew), p. 7)
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> Therefore, we repeat the recommendation to the Knesset to consider the extent of the use made of the problematic legislative instruments of the Arrangements Law, and settle the issue by means of legislation..."[88]

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[86] The State Comptroller, *Annual Report*, 53b for 2002, and the accounts for FY 2001, April 30, 2003 (Hebrew).

[87] Instructions of the Attorney General, *The Government Decisions Within the Framework of the Deliberation on the Budget and Deliberations on Economic Plans*, December 31, 2003. We should like to thank the Attorney General, Meni Mazuz, for sending us a copy of this instruction.

[88] Ruling of the High Court of Justice given on November 27, 2004.

5.3.1. Amending the Rules of Procedures

The proposal of MK Ora Namir at the end of the 1980s, in the course of the 12th Knesset, to amend the Rules of Procedure so that they would enable the House Committee to divide the Bill among several Committees has already been mentioned. An additional attempt to amend the Rules of Procedure was made in July 1998, in the 14th Knesset.

On the latter occasion, after a series of deliberations on the Arrangements Law in the House Committee, the Chairman of the Committee, Raphael Pinhasi, with the backing of the Knesset Legal Advisor Zvi Inbar, presented a list of proposals for amending the Knesset Rules of Procedure in order to improve the Knesset's treatment of the Arrangements Law. The specific issues addressed by the proposals were to facilitate the splitting of the Arrangements Bill in the House Committee; to enable a change in the allocation of time for the debate on the Arrangements Bill in Second Reading so that it would no longer be necessary to table futile reservations in order to gain speaking time; and to strengthen the position of the Knesset Legal Advisor and the Committee legal advisors, so that they should be entitled to raise the argument regarding divergence from the subject matter of the bill.[89]

However, even though the Chairman of the Committee distributed the list of the said proposals among all the heads of the parliamentary groups in the House in May, and in June a reminder was sent out to them on the issue, by the end of July not a single reaction was received from the parliamentary groups, and finally the Rules of Procedure were not amendment. Instead, informal apparatuses for deliberation before the bill is raised for debate, were introduced, based on article 131 of the Rules of Procedure, which states: "For the debate on the State Budget, and in other exceptional cases, the House Committee is entitled to lay down special procedures".

In October 2003 the Commissioner for Future Generations, Shlomo Shoham, sent a letter to Prime Minister Ariel Sharon, Knesset Speaker Re`uven Rivlin, and the Chairman of the House Committee Ronnie Bar-On, in which he recommended respect for and the fortification of "the provisions of the Knesset Rules of Procedure, that lay down which bills are to be deliberate in each of the Knesset Committees, and that it be decided that:

1. The House Committee shall not be entitled to refer a bill for treatment by a committee, which is not authorized to deal with the issue, or when, according to the provisions of the Rules of Procedure, the issue is under the jurisdiction of another Committee, unless a different decision is adopted by a majority of three quarters of its members.

[89] Minutes of the deliberation in the House Committee, held on July 20, 1998.

2. Any change in a law, an amendment of a law or its abrogation, shall always be decided upon in the Committee that originally dealt with it, and prepared it for Second Reading and Third Reading".[90]

5.3.2. The amendment of the Budget Foundations Law, and/or the Knesset Law, and/or Basic Law: the State Economy[91]

In the 15th Knesset MK Haim Katz (*'Am `Ehad)* initiated a Bill (P/2434) to amend the Budget Foundations Law, dealing with the Arrangements Law. The proposed amendment was that the Arrangements Law should not change the validity of any right introduced in any law, or any article in a law; that the validity of the provisions of the Arrangements Law should be for a single financial year only, and that the Law should include only articles that affect the budget for the said financial year; and that a provision in the Arrangements Bill that contradicts the provisions of the proposed amendment shall be referred at the end of the First Reading in the plenum to one of the Knesset Permanent Committees, under whose jurisdiction the issues fall.

The Bill passed Preliminary Reading on October 24, 2001, and was referred to the Constitution, Law and Justice Committee. In the deliberation in this Committee held on November 6, 2001, several additions were proposed for the Bill. For example, the Chairman of the Committee, Ofir Pines-Paz, proposed that the Arrangements Law should not include more than 15 issues.

After Deputy Attorney General Yehoshua Shufman said that the Bill would not attain its goal, since the Budget Foundations Law is an ordinary law, and even the Arrangements Law itself could ward off the proposed amendment, it was decided to turn the Bill into a bill to amend Basic Law: the State Economy, in the status of a Private Members Bill on behalf of the Constitution, Law and Justice Committee. The amended Bill proposed that the Arrangements Law should remain in force until the end of the financial year to which the law relates; that the Arrangements Law should not include any provision that is not directly connected to the expenditures of the government, or the sources of financing for the budget; and that every provision in the Arrangements Bill that is intended to abrogate or amend a law,

[90] We should like to thank the Commissioner for Future Generations for giving us a copy of this document.

[91] The Budget Foundations Law of 1985, deals with a ragbag of provisions regarding the procedures for undertaking and implementing financial expenditures by the State. The Knesset Law of 1994, deals with a ragbag of provisions that supplement Basic Law: the Knesset (which is a constitutional law), and the Knesset Rules of Procedure with regards to the Knesset's procedures – including the work of Committees. Basic Law: the State Economy of 1975, which is a constitutional law, deals with the provision, that all State revenues and expenditures must be approved by law.

should be referred the Committee that originally prepared it for Second Reading and Third Reading.

This amended Bill (M/3050) was passed in the plenum in First Reading on December 31, 2001, despite the Government's opposition,[92] and was returned for deliberation in the Constitution, Law and Justice Committee held on January 23, 2002. *Inter alia* this Committee debated the possibility of limiting the amendment of the Basic Law, and of procedural amendments being introduced into the Rules of Procedure and/or the Knesset Law. The Legal Advisor to the Knesset, Anna Schneider, recommended that article (5a) be added to the Knesset Law, that would be entitled "legal arrangements regarding the Arrangements Law", and that it should be passed simultaneously with an amendment to the Basic Law. The Chairman of the Committee, Ofir Pines-Paz, announced that he was intending to bring the amendments to these two laws for Second Reading and Third Reading after the law for limiting Private Members legislation would be passed, even if only as an temporary order. However, since the treatment of these Bills did not end by the elections to the 16th Knesset on January 28, 2003, and the new Government that was formed after the elections refused to apply the Law of Continuity to them, they were abandoned.[93]

5.3.3. Dealing with the subject of the Arrangements Law within the framework of the Constitution

Within the framework of the deliberations of the Constitution, Law and Justice Committee on a 'Constitution By Agreement', MK Yuli Tamir (Labor) raised the issue of the Arrangement Law in deliberations held on January 13 and 20, 2004 regarding Basic Law: the State Economy. The Chairman of the Committee, Michael Eitan (Likud), agreed that this subject ought to be included in the Constitution, but not within the framework of Basic Law: the State

[92] Minister of Justice Me`ir Sheetrit said in this debate: "Indeed, I admit saying what you quote me as having said regarding the Arrangements Law, and I should like to repeat that I am not satisfied with the Arrangements Law and its scope, neither is this Government, nor in the previous Government, nor in the one before that. In accordance with my statement, I tried in the past to take measures... In the House Committee I proposed, as head of the Coalition during the premiership of Binyamin Netanyahu, to abrogate the Arrangements Law as of the next Knesset. I made this proposal as a member of the Coalition... Colleagues, I proposed at the time to abrogate the Arrangements Law as of the following Knesset, so that no one would say that we were acting against a particular Government. Unfortunately my proposal was defeated in the House Committee - it was defeated due to the objections of the then Members of the Opposition, the Labor Party. *Post factum*, when the Labor Party came to power, even though they too had fought the Arrangements Law with all their might, when they got into the Government, they too had no alternative, because they had to create a balance in the budget in order to avoid leading the State into a crisis... I should like to say to the Members of the Knesset and to Haim Katz - I think, gentlemen, that the economic situation in the country is much more serious than it appears, and I am affraid… that without an in-depth treatment of the budget, the State could enter a deep crisis..." (*Divrei Haknesset* (Knesset Record), Vol. 193, December 31, 2001, p. 2485)

[93] The deliberations regarding MK Haim Katz's Bill were held in the Constitution, Law and Justice Committee on November 6 and 7, 2001, on January 23, 2002, and on June 10, 2003, and in the plenum on December 31, 2001. In the beginning of 2005 MK Yuli Tamir (Labor) tabled another bill on the same subject, but it did not reach Preliminary Reading.

Economy[94]. He stated that it ought to be included in Basic Law: Legislation (a basic law that has not yet been enacted), in which it will be possible to lay down a special legislative procedure for laws such as the Arrangements Law, which include numerous issues. The Legal Advisor of the Committee, Attorney Sigal Kogut, agreed that should this subject be included in the Constitution, it should be in the chapter on legislation, and it was proposed that if it would be decided to institutionalize new procedures (such as prolonging the time for the debate on the budget and the accompanying laws) by law, this should be done by means of the Budget Foundations Law.

5.3.4. Improving the dialogue between the Knesset and the Ministry of Finance

Within the framework of the discussion on the content of the Arrangements Law, it was stated that a tradition of dialogue between the Knesset and the Ministry of Finance, with the purpose of reaching certain agreements regarding the Arrangements Bill before the Bill reaches the Knesset for deliberation, had started to develop.[95]

It should be noted that, as mentioned above, in the United States as well the practice of meetings between the leaders of the parties amongst themselves, and between them and the President's staff regarding the content of Omnibus Laws, to the point of circumventing the legislative procedures within the Committees, has taken root.

This practice, of advance discussions regarding the rules of the game, and even matters of essence, is undoubtedly positive, but it is important that the discussion apparatuses should be improved and institutionalized, and that the discussions should not be subject to the good will of the participants.

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[94] The Constitution is to be made up of basic laws.

[95] Regarding the talks that took place on the Arrangements Law for 2005 in the bureau of Knesset Speaker Reuven Rivlin, with the participation of Minister of Finance Binyamin Netanyahu, see: Yuval Yo'az and Zvi Zarhiya "The Attorney General Limited the Arrangements Bill: Rejected Around Half of the Amendments Requested by the Ministry of Finance", *Ha`aretz*, October 28, 2004.

6. APPENDICES

Appendix No. 1

Translation of an extract from the legal opinion of the Legal Advisor to the Knesset, Zvi Inbar, issued on December 30, 1998

Is the Knesset House Committee authorized to divide the Arrangements Law up among different Committees?

...

The jurisdiction of the House Committee

Even though the Knesset is "the legislative authority" (article 7 to the Law and Administration Ordinance, 5708-1948) and the "legislature"(article 1 of the Transition Law, 5709-1949), the legislation procedures are not laid down in a basic law, or in any other law. These procedures are laid down in the Knesset Rules of Procedure, in the decisions of the House Committee, as well in the custom and procedures accepted by it.

The House Committee, according to the Rules of Procedure, is the Committee responsible for "the Knesset Rules of Procedure, and matters stemming from it" and for "the delimitation and coordination of the Committees (article 12(a)(1) of the Rules of Procedure), and. *inter alia,* the following powers are entrusted to it:

- To determine the Committee to which the bill should be referred after First Reading (article 117 in the Rules of Procedure), a task in which the Committee is currently engaged;
- To determine in a debate on the state budget, and in other extraordinary situations, special debate procedures (article 131 in the Rules of Procedure);
- To decide in an issue related to the Knesset's deliberations, regarding which there is no provision in the Rules of Procedure (article 147 in the Rules of Procedure);
- To decide on a divergence from the provisions of the Rules of Procedure or precedence (article 148 in the Rules of Procedure);
- To enable the other Knesset Committee to split a bill into two or more bills (article 122(2) in the rules of Procedure).

By force of all these, the House Committee is authorized to decide on the splitting of a bill among several Committees, subject to such a splitting being legally possible.

Does the authority exist to split a bill among several Committees?

The central question in this connection is whether the authority of the House Committee to determine "the Committee" to which the bill should be referred, also includes the authority to determine "Committees" to which the bill should be referred. Article 5 to the Interpretations Law, 5741 - 1981, which according to article 1 in it applies to all legislation "if there is no other provision regarding the issue at hand, and if there is nothing in the issue at hand, or in connection with it, that does not tally with this law", states that "what is said in the singular, applies to the plural as well". The rule is, therefore, that the authority to determine "a committee", is also an authority to determine "committees", unless there is no other provision regarding this matter, and there is not in it, or in connection with it, something that does not tally with the provisions of the Interpretations Law. Is there in the Rules of Procedures another provision regarding this matter? Does this fail to tally with the provisions of the Interpretations Law? To the best of my understanding, the answer to these two questions is negative.

The mere ability to split a bill already exists today, and it is regulated in articles 121 and 122(2) in the Rules of Procedure, although these articles speak of the splitting of a bill that is being dealt with by one committee only. The Rules of Procedure do not deal explicitly with the question whether it is possible to split a single bill among several committees, and the answer could be one of the following:

- The authority to determine "a committee" entails also the authority to determine

"committees", on the basis of the principle laid down in the Interpretations Law;
- This is "an issue related to the Knesset's deliberations, regarding which there is no provision in the Rules of Procedure", in the words of article 147 in the Rules of Procedure;
- We are speaking of a negative arrangement, in other words - the legislator of the Rules of Procedure laid down a closed list of the possibility of splitting a bill, from which one may not diverge.

This is perhaps the place to say, that it is very possible that the legislator of the Rules of Procedure did not imagine a situation of having to confront the likes of the Arrangements Bill, since the procedure which was customary until the establishment of the state, by force of the Royal Instruction of 1.1.32 to the High Commissioner (The Laws of Palestine, volume III, p. 2659), is that "Each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relations to each other" (Article XVI(3), Ibid, p. 2664)...

To sum up

The power of the House Committee should be examined, not only in face of the provisions of the Rules of Procedure which I enumerated above, but also on the basis of the purpose of the provisions of the Rules of Procedure, relating to the legislative procedures. This purpose is: the maintenance of appropriate legislation procedures, and the House Committee must use its powers in order to realize this purpose. The House Committee is not required to stick to the Bill as presented by the Government, since it is the Knesset, and not the Government, that is the legislative authority. The Knesset is not, as some mistakenly believe, the legislative arm of the Government. Therefore, it appears to me that the House Committee has the authority to divide the Bill according to its subject matter, and distribute the various laws that are included in the Arrangements Bill to the Committees within whose jurisdiction these laws lie.

Appendix No. 2

Questionnaire placed by the Belgian House of Representatives on the ECPRD website on the subject of the *Loi Programme* on January 3, 2005 (English original):

Dear Colleagues,

Just after the Belgian Parliament has adopted the yearly State Budget in November or December, or the adjustment of the State Budget in spring, the Government submits to it a bill that is supposed to contain only the provisions which are necessary to implement that Budget or that adjustment.
As such bills are consequently supposed to introduce a whole series of miscellaneous measures converging to reach the global budgetary target in the medium or long run, the laws deriving from them are called "programme laws".

For a couple of years now, these programme laws tend to be ragbag laws the Government uses on purpose to make the Parliament pass all kinds of legal measures having only a flimsy relation or no relation at all with the implementation of the Budget (up to 25 % of the whole 2002-2003 legislation was passed through programme laws).
Though the number of such laws does not increase, their volume is constantly expanding (latest programme law = approx. 500 articles).

This growing practice raises several grievances:

- the Council of State, which has to give its advisory opinion on whether a Government bill is compatible with higher norms, adapted to existing legislation and legible, has no time to do its job thoroughly;
- the Parliament itself is not given the time it needs to discuss those bills in depth;
- the Government seizes the opportunity offered by the hurried examination of those bills to table (sometimes huge) amendments introducing hunks of new and autonomous legislation which do not have even the tiniest relation with the implementation of the Budget.

MPs from opposition parties, and now MPs from majority parties too, show themselves more and more reluctant to accept such a misuse of programme laws.

That is why a round-table discussion will take place in the Belgian Parliament during the second half of January in order to search ways of putting an end to this practice.

With a view to having an as wide as possible range of data at our disposal when that discussion will start, we would very much appreciate your answering the following questions not later than January 17.

Questionnaire:

1. Does your country's Government implement the State Budget by means of a 'programme law' as described above (and if yes how do you call that type of law)?

2. If it does, does your country's Constitution, do your Parliament's Rules of procedure or does any law or regulation in force in your country provide

- that such a law may not comprise provisions which have no direct relation with the implementation of the State Budget,
- or/and that no amendment comprising such provisions may be tabled to such a bill ?

3. a) *If so,* does any legal or regulatory text provide for some means to discard non-budget-related provisions from the "programme bills" or/and to block amendments comprising such provisions ?

b) *If not,* does any unwritten rule exist which enables your Parliament to discard such provisions or/and to block amendments comprising such provisions?

4. If your Parliament does not have any mechanism making it possible to discard such provisions or to block such amendments before they are passed, does any downstream body or institution have the power to nullify them merely because they are not budget-related ?

5. If your country's Government does not implement the State Budget by means of a programme law, how is this Budget implemented ?

I thank you very much in advance for accepting to help me with my inquiry.

Yours sincerely,

Marc Van der Hulst
ECPRD correspondent
Head of the Legal Department

Appendix No. 3

Proposal for an addition to paragraph 4 in article 107 in the Belgian House of Representatives Rules of Procedure, of July 7, 2002 (was not adopted):

Les projets de loi-programme ainsi que les projets de loi contenant diverses dispositions d'exécution du budget (ou de contrôle budgétaire) ne peuvent comporter que des dispositions qui concernent directement l'exécution de ce budget. Les dispositions qui règlent d'autres questions sont disjointes du projet de loi et peuvent faire l'objet d'un projet ou d'une proposition de loi distinct.

Addition to pagaraph 4 in article 72 in the Belgian House of Representatives Rules of Procedure, adopted on March 18, 2005:

"4◦ Les projects de loi-programme our les autres projets de loi contenant diverses dispositions d'exécution du budget ou d'ajustements de celui-ci ne peuvent comporter que des dispositions présentant un lien manifeste avec l'objectif budgétaire. Si un groupe politique estime que, pour certains articles, le lien avec l'objectif budgétaire fait défaut, il peut demander à la Conférence des présidents de statuer avant le renvoi en commission.

La Conférence des présidents désigne, s'il y échet, les articles qu'elle estime devoir disjoindre du projet pour être examinés sous la forme d'un ou de plusieurs projets distincts. En l'absence de consensus au sein de la Conférence des présidents, c'est l'Assemblée plénière qui statue. Outre le gouvernement, un orateur par groupe politique peut prendre la parole dans les limites fixées à l'article 48, N◦ 1, 5◦, a)."

Appendix No. 4

Part of a document prepared by the Economic Planning and Budget Committee in the Italian Senate, regarding the content of the Financial Law (English original):

Unlike the Budget, the Finance Act introduces new legislation. Together with its annexes, it accounts for the main document setting the Government's national and sectoral economic policy.

The Finance Act may not contain enabling provisions or regulatory or oranisational provisions. It may only contain rules having financial effects as of the first year of the multi-year budget, including:

1. The maximum level of borrowing and the net balance to finance yearly, for every year of the multi-year plan, including any adjustments from previous years, as shall be specifically shown;
2. The changes in rates, deductions and income brackets; other measures having an effect on the amount of the revenues, and concerning indirect taxes, fees, rates, tariffs, and contributions to be introduced after 1st January of the reference year;
3. The maximum total amount p.a. earmarked for civil service salaries, under Section 15 of Law 29 March 1983, no. 93, and for wage and regulatory changes of civil service contracts which are not part of collective bargaining agreements;
4. Other merely quantitative adjustments that the laws in force vests into the Finance Act;
5. Provisions entailing revenue increases or spending reductions excluding regulatory or organizational provisions, unless they considerably improve the balance;
6. Provisions increasing spending or decreasing revenues, and aiming at supporting or boosting the economy, save for locally or sectorally-aimed provisions;
7. The amounts of current and capital special funds… earmarked for spending laws, to be passed during the fiscal year; a determination of the annual amount for laws entailing both capital and current permanent spending, the exact amount of which shall be established by the Finance Act…; the amounts earmarked both for laws entailing capital expenditure and for provisions in force to support the economy, and the list of laws to which funds shall cease to be appropriated…; a determination of the annual spending entitled by laws the effects of which span over several years.

Appendix No. 5

Article 313(a) and (b) of the American Congressional Budget Act:

Sec. 313
(a) IN GENERAL. –
When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310 (whether that bill or resolution originated in the senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.
(b) EXTRANOUS PROVISIONS. –
(1)(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenue, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph);
(B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;
(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous;
(D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision;
(E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and
(F) a provision shall be considered extraneous if it violates section 310(g).
(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:
(A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenue and both provisions together produce a net reduction in the deficit;
(B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution;
(C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or
(D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient date, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or
(B) the provision states an exception o, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

Appendix No. 6

Translation of extracts from the instruction issued by the Israeli Attorney General, Eliakim Rubinstein, on December 31, 2003

8. "The Arrangements Law"

8.1. The Government is in the habit in recent years to table with every Budget Bill an "Arrangements Bill", which goes under all sorts of names, and includes scores of legislation amendments. "Arrangements Bills" were also passed, that were not attached to the State Budget, but were part of the Government's economic plan. Despite the widespread criticism regarding the manner in which the law was passed, the use made of this instrument has grown with the years.

8.2. The Arrangements Bill is an ordinary Government bill, which is dealt with in the Knesset on the basis of the Knesset Rules of Procedure, and the decisions of the House Committee. After first reading the Knesset is entitled to refer it for deliberation to one Committee, or to refer various part of it to several Committees. It can also split the bill, and refer only part of it for debate towards Second Reading and Third Reading, and to hold the debates on other parts at later dates. There is no legal limitation to the number of topics that can be included in a single bill.

8.3. Nevertheless, the inclusion of many amendments to different laws on various subjects in a single bill does not tally - as we have already written in the past - with appropriate legal policy. It might be appropriate to present to the Knesset accompanying legislative amendments to the Budget Law, that shall be debated as a single unit in First Reading, when there is a direct and necessary link between a certain budgetary article and the legislative amendment proposed. But amendments whose budgetary effect is long term, or which change basic principles in the legislation, must be dealt with in accordance with the customary legislative procedures (which can be hasty, when required).

8.4. When the Government seeks to present to the Knesset a comprehensive economic plan, made up, *inter alia*, of structural changes, there is, of course, nothing to prevent its doing so. However, this does not require the tabling of a single "Arrangements Bill". The Government can decide on several bills that will be presented to the Knesset simultaneously, and bring them to the Knesset while making a comprehensive presentation of the plan. There is no contradiction between the desire to formulate and present an economic plan, and being strict with regards to proper and acceptable legislative procedures.