

# JUSTICE

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הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים (ע"ר)  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

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## President's Message

As I write this President's Message, we stand at the threshold of the New Year and I would therefore like to take this opportunity to extend to each and every one of our readers our best wishes for a healthy, happy and prosperous New Year. It is my hope that the coming year will see our Association continuing to increase its membership and achieve its two paramount goals, protecting human rights and defending the Jewish people, both of which are unfortunately in great need today. It is in pursuit of these aims that we have devoted our upcoming annual conference in Lausanne to the theme of "Religion in a Multi-Cultural Society". I am pleased to report that a significant number of members are expected to attend the conference.



This past year, unfortunately we lost our Honorary Deputy-President and greatly esteemed long-time member, Advocate Yitzhak Nener. Yitzhak was very active in the Association and over the years offered me and our leadership invaluable advice. He will be sorely missed.

In my previous President's Message I expressed the hope that the massacre in Syria would quickly come to an end; instead the bloodshed has multiplied and it has recently become apparent that the number of refugees has exceeded 290,000 with more people fleeing the country every day. Prof. Shlomo Avneri's recent article in *Ha'arets* suggests that the Syrian uprising is not only directed against the Assad regime but has metamorphosed into a religion and ethnic-based conflict. The strengthening of radical Islamists among the opposition forces, often supported by Saudi Arabia, points toward a radical fundamentalist regime replacing President Assad.

For too long the Iranian leadership has threatened to destroy Israel and both the mullahs and the political leaders exploit every opportunity to repeat this message. This incitement to genocide takes on realistic proportions when one considers how it could be implemented through Iran's development of nuclear weapons and arming of Hezbollah and Hamas. World leaders, apart from the UN Secretary General, have failed to condemn these threats and even the Secretary General attended the recent Conference of Non-Aligned Nations in Teheran, disregarding Israel's protests and our own Association's letter asking him to stay away. Accordingly, our Association approached the UN Security Council urging it to ask the ICC to open an investigation against the Iranian regime's incitement to genocide. At this point, the transformation of the *Arab Spring* into the *Winter of Discontent* has left

Israel an island in a sea of extremist Islamic regimes.

Amongst our recent activities, I can note our efforts to gain the release of Auda Sueliman Tarabin, an Israeli Bedouin arrested almost thirteen years ago by Egyptian authorities on charges of spying for Israel. His trial was a farce. No evidence was produced and he was not represented by counsel. In fact the court merely notified him that he was being sentenced to 15 years in prison. After unsuccessfully approaching President Mubarak we wrote to the Geneva based Human Rights Council subcommittee dealing with arbitrary detentions. The subcommittee decided that the arrest had been unlawful and that Tarabin should be released at once. This decision, given three months ago, was forwarded to the new President of the Arab Republic of Egypt, Mohamed Morsi. In the absence of a response, we raised the matter before the current Egyptian Minister of Justice, Mr. Ahmed Mekki. We have also requested a meeting with the newly arrived Egyptian Ambassador to Israel. Hopefully the New Year will bring new hope and a new beginning for Auda Tarabin (see also at p. 45).

A number of members have asked the Association to debate the growing conflict between secular and ultra-religious Jewish groups. Accordingly, we decided to hold a one-day seminar entitled *Religion and State-Orthodox, Price Tags, and Exclusion of Women* in collaboration with the Schechter Institute of Jewish Studies in Jerusalem. For further details of the activities and policy statements of the Association, members are invited to visit our website at [www.intjewishlawyers.org](http://www.intjewishlawyers.org).

Finally, I would like to congratulate two board members for awards they recently received: in June Mr. Joseph Roubache, IAJLJ's Honorary Vice-President, was promoted to the rank of Commander of the Legion of Honour; Mr. Michael H. Traison was accorded the Polish Heritage Award. This award, also known as the Cavalier's Cross, was bestowed by the President of Poland in recognition of Mr. Traison's deep commitment and many years of work on behalf of preserving Jewish Heritage in Poland and promoting positive relations between the Polish and Jewish people.

Again I reiterate my best wishes for the forthcoming year and I look forward to seeing you in Lausanne at the end of October, 2012.

**Irit Kohn**  
IAJLJ President

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# The Peripeties of Modern Muslim Antisemitism

Emmanuel Sivan

Without quibbling and hair splitting, there is no doubt that Muslim hostility towards the Jewish people (also known as Muslim antisemitism – an imprecise yet widespread term) – is alive and kicking in today’s world. It is an age-old phenomenon, yet essentially also a modern one; like its European namesake it is a product of the last two centuries. Both forms of Jew hatred are built on medieval foundations, but with different qualities. In the case of Islam, Jew-hatred is the outcome of the encounter between two monotheistic traditions, first in the Arabian Peninsula and then throughout the Middle East and North Africa. The encounter in Arabia proceeded from the historical coincidence that although Muhammad drew his gospel from the earlier religions and acknowledged his debt to both Moses and Jesus, the only monotheistic believers he had actually encountered were Jews, then living in Arabia, mostly in Medina. Upon his emigration-escape (Hijra, 622 CE) from his hometown Mecca, where he was being persecuted, he came to Medina. There, he tried to build an alliance with the three Jewish tribes residing in the city. To this end he offered them certain observance concessions (facing the direction of Jerusalem in prayer, Sabbath as the day of rest, the Day of Atonement as a day of fast). This cooperation worked well for a year and a half until it fell apart for reasons which are not entirely clear. Violent clashes ensued which ended with the deportation of two Jewish tribes from Arabia, the killing of all males of the third tribe and the sale of women and children into slavery. In the Koran these acts were presented as punishment for Jewish treachery, in breach of the Jews’ treaty obligations. From that point onwards until the death of the Prophet (632 CE) the Jews were defined as enemies of Islam, much like the pagan infidels of Mecca and Medina. Indeed, the chapters of the Koran revealed in Medina are rife with polemics against both enemies of Islam.

The anti-Jewish verses attack not only the tenets of the Jewish faith but also the alleged characteristics of the Jewish community: treachery, clannishness and divisiveness. The verses claim that Judaism demands

overly strict observance, and that Jews are fanatical, rigorous and petulant in contrast to Islam which is tolerant and lenient in its demands of the believer. As this was the formative period of Islam, these words and deeds had a lasting impact, especially as, according to a famous adage attributed to the Prophet, “all the Jews are similar to their brethren of Arabia.”



The second encounter between Jews and Islam took place in the lands conquered by the Muslims (632-711). In these areas Jews comprised only a tiny minority; most of the monotheists being Orthodox Christians practicing the Byzantine rite. The main thrust of Muslim proselytization (using persuasion, incentives and coercion) was indeed directed at Christians, while the Byzantine Empire formed the greatest enemy beyond the borders. Nevertheless, a substantial portion of oral and written Muslim polemics targeted Judaism, which was considered a worthy and important opponent of Islam. After all, Judaism had preceded Islam in spreading the monotheistic message. Judaism was perceived as having contributed much to Islam during its Mosaic era, yet the rabbis were denounced for having distorted the gospel of Moses just as the Church had distorted the Gospel of Christ. Thus, all had to be converted. This encounter in the lands of the caliphate formed the negative historical background for the clashes in Medina, albeit also a positive theological background. The combination of the two engendered a concept which shaped the legal status of the Jews in the lands of Islam. Unlike the pagans they were not faced with the choice of death or conversion to Islam. Their status was identical to that of Christians as “protected” persons (*ahl al-dhimma*) – persons whose lives, limbs and property were protected by public law (and not by privilege as in Europe); who were allowed to observe the precepts of their religion in the private (though not in the public) sphere, but who were forbidden to propagate their faith or build synagogues higher than nearby mosques. Their status as second class subjects was asserted by a special tax (*jizya*) and a ban on occupying high-ranking positions in the administration, judiciary or army.



Despite all the restrictions it is clear that the Jews were better off under Islam than in the Christian West (or in the Byzantine Empire). The betrayal of Muhammad by a few tribes was not nearly as grave as the murder of God. Jews were safer under the protection offered by state law than in the framework of medieval Christianity. Even the Islamic theological polemic against Christianity was more serious than that directed against Judaism (for example, regarding the Trinity and the Resurrection), and in both medieval and modern times Christianity was perceived to be an incomparably more important enemy.

As for the Muslim's beliefs and attitudes towards the Jews, disdain was tinged with hostility but not outright hatred; the hostility was not of the kind that existed between two equal parties but the kind of hostility felt by superiors towards inferiors; it contained contempt and humiliation but not hatred. In pre-colonial Morocco the Jews were dubbed "the lowest of the low" (*asfal al-safilin*). In accounts by Muslim travelers the Jews were depicted as silent, subordinate and abject, unable to defend themselves. Yet pogroms were rare in Islamic history, as were forced mass conversions except in Yemen and Morocco in the twelfth and thirteenth centuries and in Iran in the late eighteenth century. A key means of humiliation was ridicule, which indeed recurs in the *Hadith* (oral law) literature and in stories about how the crafty Jews had plotted against Muhammad. It is no coincidence that even today Jews in Egyptian films are portrayed as having high-pitched and squeaky voices – a proven device for provoking ridicule.

In return for bribes offered to rulers and high officials, Jews could often receive a concession in terms of status; for example, a relaxation of the ban on riding horses or dispensation regarding wearing a tag (usually yellow) on their hats. The more self-confident the Muslims became the greater the leniency they showed, and vice versa in periods of defeat (Reconquista, Crusade). Thus, it is possible to identify here a kind of medieval tolerance – one granted to an inferior group by a dominant, theologically and militarily superior group, the subordinate group nonetheless being accorded legitimate status. It was a problematic yet not a tragic background to developments in the modern era.

On the popular level, there were many common cults shared by Muslims and Jews around the tombs of virtuous persons, miracle workers and mythological figures (for example, the prophet Elijah). There is also ample evidence of social relations, except in Iran where under the influence of Zoroastrian traditions Jews were considered impure and untouchable; in Iran Jews were also prohibited from renting from Muslims whereas the opposite was allowed. A Jew who converted to Islam received the entire

inheritance of a deceased relative. Jewish women were not allowed to marry Shiites, except in a temporary marriage, in other words in a humiliating and exploitative kind of concubinage.

This background did not lead inexorably to modern Muslim antisemitism. This brand new phenomenon is the product of the encounter with the West in the nineteenth and twentieth centuries and the Israeli-Arab conflict. The medieval state of affairs may have provided some but not all the building blocks of the new phenomenon.

### Nineteenth century, Muslim-Christian relations within the world of Islam

The Christian powers conquered parts of the Islamic world - Algeria, Tunisia and Egypt - thereby resulting in the Islamic world losing its self-confidence as to its inherent, essential supremacy in the ideological, military and political spheres. This was the supremacy upon which the tolerance of *Ahl al-Dhimma* (most of whom were Christians) was based, Christian powers - Britain, France and Russia - also enjoyed "Capitulations." These were extra-territorial rights which provided the foreign citizens or subjects residing in the territories extra-territorial jurisprudential status through their consulates. In effect, entire Christian communities were now exempt from the *Shari'a*. Many Christians also experienced an improvement in their socio-economic status by serving as commercial agents of European companies which had penetrated the Middle East and North Africa. The intra-communal tensions created by the inversion of status did not concern the Jews, some of whom enjoyed these Capitulations **but only as individuals** and not as a community. The sole exception was Algeria where the Jews were granted French citizenship in 1870. Yet, the very sensitivity of the Muslim establishment towards the infringement of the *Dhimma* status often resulted in a stricter application of the rules vis-à-vis Jews, who in the main did not hold European passports.

The very contact of the Jews with the West created several negative shifts in the status of the Jews. Through the Catholic Church and its missionaries, the notion of the Blood Libel slipped into the collective consciousness, and became widespread in the wake of the Damascus Blood Libel (1840). The Blood Libel became part of the traditional image of the scheming Jewish nature. Catholicism also helped propagate the notion of a global Jewish conspiracy linking Jews to Freemasons. For its part the Greek-Orthodox Church, linked with Czarist Russia, helped spread the *Protocols of the Elders of Zion* in the late nineteenth century. To this day, the *Protocols* remain the number one best seller of Jewish hatred in the world of Islam. The traditional narrative concerning the treacherous nature of the Jewish

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religion was upgraded by new information, updated and modernized, helping to account for the globalization of politics and economics.

Nevertheless, it would not be true to say that by the end of nineteenth century Muslim tolerance was completely eradicated. Indeed, much of their traditional, medieval-type tolerance remained intact, as was evidenced during the Dreyfus Affair when a number of important Muslim intellectuals, including Rashid Rida, the father of Sunni fundamentalism, defended Dreyfus' innocence. The transition towards Jew-hatred involved a change of image dictated by circumstances. Rida saw the Dreyfus Affair as proof of the ultimate hypocrisy of 'enlightened' Western civilization which allegedly upheld equality and justice, while oppressing minorities.

The main reason for the transition to Jew-hatred was the Zionist-Arab conflict which burst into the Muslim collective consciousness with the Balfour Declaration of 1917, resulting in violent confrontations in Palestine in 1920 and 1929. The Jews who had previously been perceived as cowards, unmanly and subordinate, proved otherwise by their ability to use violence and garner the international support of the Christian world which until then had only been interested in the local Christian community. The conflict was played out against the background of a colonial onslaught in a Muslim territory saturated with memories of the Crusades.

Islamic journalism has often covered the formidable events affecting the Muslim world in the 1920s and 1930s – the fall of the Ottoman Empire, the abolition of the caliphate and the establishment of new states under Franco-British tutelage.

Events in Palestine, part of the old Ottoman administrative unit of al-Sham (Greater Syria), were generally confined to the old frontiers of al-Sham. On the whole, in the beginning of the struggle the Palestinians were alone and it was they who brought about the most significant change in the image of the Jews. It was the Mufti of Jerusalem, Hajj Amin al-Husseini, who from the late 1920s stressed that the occupation of Jerusalem by the Jews was a pan-Arab threat, a sort of revival of the Crusades designed to rebuild the Third Temple. The resulting drama was acted out violently in the 1929 riots. Some Palestinian educators detected that the Jewish obsession with the conquest of the Holy Land had already started back in Biblical times; they emphasized the cruelty employed by the Israelites against the Canaanites who were the actual ancestors of the Palestinians. Violence was prevalent in the conquest then and now, and was augmented by Jewish arrogance in characterizing the Jews as the Chosen people. Jewish arrogance was also the response of a hitherto down-trodden people, now aided

by colonialism, towards the indigenous population. Counter violence was seen as the only answer. The alleged support of Britain and the rest of the world for Zionism was, of course, explained by the *Protocols of the Elders of Zion*, and Rothschild's role was given as proof of the authenticity of the *Protocols*.

The issue of Jerusalem played a crucial role in arousing the nationalist consciousness of the Palestinian villagers and mobilizing them in the struggle against the Jews, which until then had appealed only to town-dwellers. Yet the impact of this issue beyond the Mandatory borders was tiny, despite the pan-Islamic Congress convened in defense of al-Quds in 1931. This was also true of the Muslim Brothers of Egypt. There was no such burning animosity which could eliminate all sense of common human values. It served mostly as a pedagogical tool, showing how low Islam had sunk.

During 1944-1947 most of the Egyptian press expressed shock and horror at the unfolding story of the death camps, although they treated it as further proof of the degeneration of Western culture. The Palestinian press took a different tack: while not denying the Holocaust, much less space was devoted to it and fears were voiced that it was Zionist propaganda.

The 'Big Bang' came in 1948. Islamic territory fell into the hands of Jewish infidels. Four Arab armies suffered defeat at the hands of an enemy which had been considered weak and insignificant. This was an historical turning point: a previously disdained minority winning a battle against Muslims. The resulting cognitive dissonance was generally explained away by conspiratorial theories in the spirit of the *Protocols of the Elders of Zion* and emphasis was placed on the age-old Jewish characteristic of treachery. The rise of Jew-hatred manifested itself immediately in the growing social isolation of Jews in Arab lands, in a number of pogroms as well as in deportations from Iraq, Yemen, and later Egypt. What until then had been a concept was transformed into a powerful emotion directed against Israel and against its staunch ally - world Jewry. The traditional sense of contempt turned into a deep sense of humiliation and hatred.

The Arab populist-military regimes which sprang up on the ruins of the 1948 fiasco - all animated by the newly revived spirit of pan-Arabism - became the primary carriers of Arab antisemitism during the period 1949-1967. These regimes invested huge state resources in order to continue the fight against the Jews in a struggle that became crucial in terms of legitimizing the regimes. Although pan-Arabism was essentially a secularist movement, it had no qualms about using Islamic themes, such as the treachery of the Medinese Jews against Muhammad and the *Dhimma*, in its propaganda in order to give itself depth and historical

continuity. Still, the Islamic element remained secondary. More important perhaps, was the emphasis on the organic connection between Jewry and international capitalism, the major enemy of progress, thereby weaving pan-Arab Jew-hatred with another trend of the times, Third World anti-colonialism. The cruelty of the Jews in the seventh century was linked to that of modern Imperialism. Films produced in Nasser's Egypt - so popular in mostly illiterate Arab lands - provided a powerful visual vehicle to spread these themes, while an aural vehicle was provided by the Cairo based radio station *Voice of the Arabs*. Jews were depicted in many of these films and broadcasts as greedy Shylock-like persons, crafty and malevolent, ready even to trade their daughters.

The 1967 war, the second turning point in the history of the conflict, also marked the beginning of the decline of pan-Arabism as an ideological-political force throughout the Middle East and North Africa. It is telling that when Anwar al-Sadat appealed to the al-Azhar authorities in the early 1970s for a *Fatwa* (religious ruling) according to *Shari'a* law to justify the struggle against Israel, he did not use pan-Arab terms but Muslim ones. Thus, the era of the Return of Islam was ushered in.

### Radical Islam

By the 'Return of Islam' I mean that Radical Islam now set the tone, the agenda and the priorities of a large part of the Muslim world. Legitimization by the *Shari'a* became the *sine qua non* for all political and social forces. As a result, the view of Judaism and Zionism as one monolithic whole (which had not been the case before 1948) took center stage. The Islamic-Judaic struggle was now presented as an age-old global Holy War (*Jihad*), where the Jewish enemy enjoyed the support of the super-powers and world capitalism. This concept made headway even into some conservative regimes, from Indonesia to Africa. The cultural poisoning produced by Hollywood was taken to be yet another aspect of this anti-Muslim conspiracy. It was thus no longer strictly an Arab cause. In the 1980s the concept also began spreading among Muslim immigrants in Europe, especially given their lack of social and economic interaction and their envy of the Jews. The essence of Judaism was now perceived as the **cause** of the conflict, and it was not the conflict which justified the hostility towards the Jews.

The paradox, however, is that this cluster of negative qualities attributed to Judaism is prevalent above all not among the most fanatic offshoots of Radical Islam, such as al-Qaida, but in *Da'wa*, that is social action and education, implemented for example, by the Muslim Brothers, whether in opposition or in power. The *Jihadist* proponents - with the exception of *Hamas* - are interested mostly in violent action against the rulers of their own countries, who, while

formally Muslims, are perceived as heretics who have accepted Western culture. The *Jihadists* would turn against Israel and world Jewry only after they have achieved their immediate aim, which is the liberation of their homelands from present rulers. As for Shiite *Jihadists*, beyond Lebanon, they have been affected above all by their close relationship with the Iranian Shah's regime.

One should by no means underestimate the effectiveness of the anti-Jewish *Da'wa*, particularly when it has recourse to printed, audio-visual and digital media. Their ideas seep even into conservative Muslim circles, including those associated with the ruling powers.

The major shift in *Da'wa* antisemitism over the last two decades has been the rise of Holocaust denial. The Holocaust is defined as a "colossal Jewish lie" - the product of a worldwide conspiracy between the Jews and their allies in the media, in intellectual circles and in financial institutions. Attempts to deny or to minimize the scope of the Holocaust had already been made by Palestinian nationalists in the years 1945 - 1948 in order to counteract the campaign in favor of immigration of the Jews to Palestine, and the establishment of a Jewish state. But it slowly spread into Arab public opinion in the 1950s and 1960s, as well as into Christian circles in Arab lands towards the time of the Vatican II Council. The supposedly "cynical exploitation" of the Holocaust - whether invented or magnified - was certainly abetted by the Eichman trial.

Holocaust denial became even more intense in the wake of the 1967 war, when the alleged victims of the Holocaust showed their true, cruel and deceitful natures. From the 1980s onwards these themes gained powerful support from the supposedly scientific information provided by the likes of Faurisson, Garaudy and Irving. Opinion polls conducted among Palestinians in the West Bank and Gaza and among Arabs in Israel, as well as some less extensive polls among a number of Arab countries, show that a considerable proportion of the respondents, regardless of education and socio-economic achievements, tend to deny or greatly minimize the Holocaust. What is more alarming perhaps is the spread of such notions among the second and third generations of Muslims who had immigrated to Western Europe.<sup>1</sup> ■

*Prof. Sivan of the Dept. of History at the Hebrew University of Jerusalem is an internationally respected authority on Middle Eastern affairs and has written many books on contemporary Islam.*

1. For a computerized sentiment analysis of Muslim Brotherhood sites in Britain, see the report in the GIF website by the present author in collaboration with E. Pardo, A. Gruenschloss, Y. Charka and R. Feldman, presented in March 2012, GIF grant 991-245.4 / 2007.



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# Documents from the “Poison Cabinet”

Moshe Zimmermann

The Third Reich has now been dead for over three quarters of a century, yet it refuses to be laid *ad acta* or to “become history”. It remains not only a subject for historical research *per se* but also the stuff from which public and legal discussions arise. In this article I will refer to two current examples of acute debates concerning basic documents of the Third Reich; debates in which I was involved as an historian.

The allies who occupied Germany in 1945 were very firm about fighting the ideological roots and expressions of the Third Reich. According to the Potsdam Agreement of August 1945 “German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas”.<sup>1</sup> Hitler’s *Mein Kampf* thus became one of the first books to be taken off the bookshelves. When the German Federal Republic was founded four years later it also outlawed the publication, promotion and dissemination of Nazi literature within the framework of forbidding the use of Nazi symbols in general. The only place where such literature could be kept and used legally was the public library, in a special department open only for research purposes. In Germany this department is nicknamed “*Giftschrank*”, the “poison cabinet”. Bavaria, one of the German *Länder*, in which Hitler was formally resident, considers itself his sole legal heir, *inter alia*, it inherited his rights as an author. According to German copyright law the Bavarian state was thus able to forbid the printing and selling of *Mein Kampf*. But since in Germany copyrights last for only 70 years after the death of an author, this right to *Mein Kampf* will expire on January 1, 2015.

The public debate concerning the pending publication of *Mein Kampf* in the German language, started several years ago, long before the *terminus ad quem*. Even though the full text of Hitler’s book has been translated into many languages including Arabic, and is available worldwide, the German public and the German government have continued to pursue the course taken since 1945 and 1949, to keep the book in the *Giftschrank*. There is still an understandable fear of the lasting effect of Nazi propaganda. This explains not only why Nazi books remain in the *Giftschrank* but why notorious films produced by the Third Reich like *Jud Süß*, *Der Ewige Jude* or *Ich*

*klage* (I accuse), are also kept there. The way out of the complicated *Mein Kampf* question proposed by the Munich Institute for Contemporary History would be to publish an annotated, scientifically up-to-date edition of the book.

In this way, they assume, there would be no danger of the reader being influenced or led astray by Hitler’s ideas, since the intermediary, the commentator, takes over the main function in the publication; in this way the book also evades the fate of Nazi cultural products and symbols in general that remain forbidden in Germany.

The issue of publishing *Mein Kampf*, is indeed a matter of principle and not a technical question concerning practices based on German law. In this respect one can use the specific

Israeli experience as a lesson. Israel already went through a similar debate concerning this very same solution to the problem. In 1994, the Koebner Center for German History at the Hebrew University published a Hebrew translation of about a third of the 750 page-long *Mein Kampf* with introductions, commentaries and annotations for the use of students and other Hebrew readers interested in the lessons of history.<sup>2</sup> The main argument against this publication was that a Hebrew translation of a text written by Hitler caused a severe contamination of the Hebrew language. Little attention was paid to the fact that the original text had been turned into an annotated one. A debate in the Knesset on February 22, 1995 demonstrated both the ignorance and the sensitivities of the political class concerning National-Socialism. Most of the 13 members of the Knesset who participated in the debate opposed a Hebrew publication of the book and especially opposed translating the book’s title into Hebrew. But the Knesset member who was the most vociferous went so far as to argue: “How foolish – researchers need the book. I studied Jewish history. I studied history. Researchers need this book? What a joke.”<sup>3</sup> This was more or less the general tenor of the debate. The 13 Knesset members



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1. Potsdam Conference, 1.8.1945 II, 7
  2. Moshe Zimmermann & Oded Heilbronner (eds.), *Adolf Hitler – Maavaki*, Jerusalem 1994 (Heb.).
  3. *Protocols of the Knesset* 22.2.1995 (Heb.).

decided to leave the issue to the education committee. The MK mentioned above proposed to print on every page the sentence "This was written by the man of evil, Adolf Hitler." Yet nothing came of the debate and eventually the 500 copies of the book were sold by the Hebrew University Press (Akademon). The first edition was sold out and a second edition was never printed, presumably because the Hebrew University publishing house wanted to avoid further complications.

The German public is expected to react differently in 2015, when the new edition of *Mein Kampf* in German is due to be published. It is thought that the readers would understand the difference between a commented and a non-commented text and appreciate the added value supplied by the editors. Annotated and commented oeuvres are no rarity and the expected contribution of such a publication to democratic awareness is solid. This, German citizens believe, would be preferable to the publication of such a book in its original form. After all, when attempting to understand an historical period there is no difference between the use of *Mein Kampf* and Augustine's *Confessions*. Historical documents read critically are the bread and butter of the historians and their public. And whereas in Germany (or in any other place) a text like *Mein Kampf* may appeal to the reader, the situation in Israel is totally different – one can hardly expect an Israeli Jew to be convinced by Hitler's antisemitism (the Israeli Neo-Nazi cell led by Dimitri Bogotich, who was convicted in 2011, is a rare exception). No wonder then that the crusade against the Hebrew publication died away soon after it started.

As for the German case, the political class as well as the general public seem to have acknowledged the fact that there is no use in fighting the new edition of the book, especially as it is due to be annotated in the democratic spirit now prevailing in Germany. Those who fear the dissemination of Nazi ideas in Germany know where the danger lies – in the Internet, in unauthorized or illegal literature and in societal anti-democratic currents and not in such a publication.

Paradoxically, greater misunderstanding and damage ensue in relation to National-Socialism, as the consequence of ignoring or misusing documents that are *not* in the *Giftschrank*. Time and again public discussion is triggered by information that is available but has been forgotten or subdued. This leads me to the second case, the case of the German diplomats and their participation in the crimes of the Third Reich.

The two foreign ministers of the Third Reich, Konstantin von Neurath and Joachim von Ribbentrop, were among the top Nazi criminals to be put on trial at Nuremberg right after World War Two. Ribbentrop, who had been the foreign

minister since 1938, was sentenced to death. Neurath, Ribbentrop's predecessor during the years of peace 1932-1938 (when Hitler became German Chancellor he was already foreign minister for several months) was also found guilty but sentenced only to 15 years imprisonment. Ribbentrop was hanged in 1946, Neurath was released in 1954, and died two years later. There is no doubt, therefore, that on the highest level the German Foreign Ministry (*Auswärtiges Amt*, referred to here as "AA") was led by men who, according to the rules of international law, were acknowledged to be ruthless criminals.

The German diplomatic corps, even more so than civil servants in other ministries, made an extensive effort to separate themselves from the heads of the pyramid, especially Ribbentrop, "a real Nazi" and "outsider". They tried to convince the Germans and the Allies that the ministers did not represent the community of professional and respectable diplomats that they themselves professed to be. But the Allies knew better and were diligent enough to put some of these professional diplomats on trial as well. Undersecretaries and other top civil servants of the AA had to face the Nuremberg Military Tribunal before American judges. The trial was nicknamed the "*Wilhelmstrassenprozess*", because 8 out of the 21 defendants on the dock served in the AA, in a building located in the Wilhelmstrasse, the seat of the German ministries. The trial took place during a period (1948/9) when the Americans were more interested in the Cold War and less concerned about Nazi crimes. Yet, the majority of the defendants were convicted; most prominent among them was Undersecretary (until 1943) Ernst von Weizsäcker, whose son and lawyer Richard was later elected president of the Federal Republic. But there were more: Weizsäcker's successor as Undersecretary (1943-5) Baron Steengracht, Wilhelm Keppler, Ernst Bohle (leader of the Nazi Party organization abroad) Ernst Woermann, Karl Ritter, Otto von Erdmannsdorff and last but not least, Edmund Veessenmayer, a close associate of Eichmann in practicing the "Final Solution" in Hungary. When the trial came to its end in April 1949, on the eve of the foundation of the Federal Republic, they were found guilty and sentenced to 7 to 20 years in jail. The Tribunal's verdict was published and distributed in a German language booklet in the year 1950, and the following headline was printed on the cover in bold letters: "*Dieses Buch muss jeder Deutsche lesen!*" (Every German has to read this book).<sup>4</sup>

The diplomats counterattacked: they refused to be associated with the crimes of the Third Reich and started

4. *Das Urteil im Wilhelmstrassen-Prozess*. Schwäbisch Gmünd 1950.

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a campaign aiming at something more than just releasing their colleagues from jail. They were interested in establishing the myth that opposition to Hitler and Nazism had been widespread in the ministry prior to 1945, and that after 1951 the AA had been free of any trace of Nazism. When the Federal Republic established its AA in 1951, and many diplomats who had been active in the ministry before 1945 were recruited again, the above myth became easier to circulate. The document that was open to the whole world to see – the verdict of the *Wilhelmstrassenprozess* – was easy to ignore and to forget – after all most of the diplomats of the Third Reich had not been put on trial. As it is the German public did not like the *Wilhelmstrassen* verdict and tended to believe that the real criminals in the AA had not been the civil servants who were tried but those Nazis who had been "parachuted" into the ministry by Ribbentrop. The public was also made to believe that these diplomats were honest men and just could not stop the "bad guys" from doing evil. This is how the myth of the faultless diplomats was launched, leading to many of them being released early.

One of the main charges against civil servants of the AA in this trial, as well as against diplomats of the Third Reich in the 1950s and 1960s, concerned the participation of the AA in the persecution of the Jews. After reading the relevant material there can be no doubt that even before the War encouraging antisemitism abroad was considered an important objective of German foreign policy. Moreover, once the War had started most diplomats knew about the atrocities and on the whole did not do much against the implementation of the "Final Solution".<sup>5</sup> As early as April 1937, and in the spirit of the Nazi regime, Weizsäcker put down guidelines concerning emigration to Palestine: "We prefer a dissipation of World Jewry to the establishment of a Palestinian [Jewish] state".<sup>6</sup> Some of the diplomats were willingly involved in the praxis of the "Final Solution". Indeed the main culprits were not on the dock in 1948 – Martin Luther, who participated in the Wannsee Conference, because he was already dead, and Franz Rademacher, the head of the "Jewish department", because the organizers of the trial did not consider him important enough. Later Rademacher was able to fool the system and in practice get away with murder (he fled to Syria), even though there was no doubt that he had taken part in the killing of Jews. These were the diplomats about whom the Nuremberg judges wrote: There were atrocities "in which the AA played a decisive role".<sup>7</sup>

Over the years the myth has been successfully disseminated. In addition, information about some of the diplomats who had belonged to the resistance against Hitler helped establish the image of the AA as a ministry in which there were only few criminals, mainly those

who the Nazi party or the SS had imposed on the AA; but there was a greater number of brave diplomats who had resisted Hitler and a majority of professional civil servants who had not been involved in, nor been informed about the crimes of the regime. This myth was nourished to a great extent by the AA of the Federal Republic which, in its early years, *i.e.* after 1951, had to confront its Nazi past and recruit and employ many civil servants who had served the regime prior to 1945. A special inquiry commission of the *Bundestag* was established in 1951 when the political debate reached its peak.<sup>8</sup> In the long run, the myth was powerful enough to overcome the information gathered by lawyers and historians and it was used even in the training curricula of new diplomats in the AA itself. Yet, as the general trend in the Federal Republic after 1968 was, on the one hand, to deal more systematically and sincerely with the bleak past, and, on the other hand, to look for the continuities leading from resistance against Hitler onward to the democratic attitudes of the new republic, no real controversy arose in relation to the myth and its uses. When the American historian Christopher Browning published his book *The Final Solution and the German Foreign Office* in 1978, it was not considered worth translating into German.<sup>9</sup> Two books that appeared in 1987, when the Nolte debate was at its peak, Peter Longerich's work about the press department of the AA and Hans-Jürgen Döscher's work about the AA in the Third Reich, were far from becoming best sellers.<sup>10</sup> The same was true of the other books published by Döscher, himself a retired German diplomat, within the next decade, and even Sebastian Weitkamp's book about the "*Brown Diplomats*"<sup>11</sup> that appeared in 2008 failed to change the image of the AA.

In the years 2003 and 2004 two post-War AA diplomats died and, unintentionally became the cause of an unprecedented heated discussion about the AA's past. One diplomat, Franz Nüsslein, had served in the AA of the Federal Republic between 1955 and 1974, even though he had been sentenced to 20 years in prison by the Czech

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5. *Id.*, p. 81.

6. *Id.* p. 92.

7. *Id.* p. 82.

8. E. Conze et al., *Das Amt und die Vergangenheit*. München, 2010, p. 475f.

9. Browning, C., *The Final Solution and the German Foreign Office. A Study of Referat D III 1940-1943*. NY 1978.

10. Döscher, H-j, *Das Auswärtige Amt im Dritten Reich*. Berlin 1987, Longerich, P., *Propagandisten im Krieg*. München 1987.

11. Weitkamp, S., *Braune Diplomaten*. Bonn 2008.

Republic for crimes committed whilst serving as chief judge advocate in Nazi occupied Bohemia. The other diplomat, Franz Krapf, had served in the AA between 1951 and 1976 even though previous to that he had served as a diplomat in the Third Reich and had not only been a member of the Party but also of the SS and the SD. The attention of German Foreign Minister, Joschka Fischer, who belongs to the “generation of 1968”, was brought to the Nüsslein case thanks to the obituary published in the internal newsletter of the AA. When the case of Krapf came to his attention a year later, Fischer not only ordered a stop to the printing of obituaries for old Nazi diplomats in the internal newsletter, but decided to convene a committee of historians in order to investigate the history of the involvement of the AA in the politics and crimes of the Third Reich as well to examine the role played by members of the Nazi party and other organizations of the Third Reich in the AA of the Federal Republic. Three German historians (Eckart Conze, Norbert Frei and Klaus Hildebrand), one American (Henry Turner, later replaced by Peter Hayes) and one Israeli (Moshe Zimmermann) were nominated members of this committee. The committee convened for the first time in September 2005 and presented the results of its historical investigation in October 2010.

Most of the results concerning the history of the AA in the Third Reich were not surprising. The majority of the diplomats, and not only the “parachutists” that Ribbentrop had brought along when he became foreign minister, were cooperative and compliant as early as 1933. Some of them had committed crimes against humanity or against peace. The amount of opposition to the regime was minimal. Many managed to reenter the AA when it became the AA of the Federal Republic. What was surprising was the public reaction: many of the facts and documents that had been known for years were received as though they were new. It became clear that in spite of all that had been known and published hitherto, the myth about the AA in the Third Reich had not lost its hold over the collective memory of Germans. This is indeed the crucial point: the fact that documents exist, or have even been published, is not enough to change attitudes, to overcome myths and legends or even to lead to constructive debates about the documents themselves.

A short time after the first wave of reactions another wave followed which on the surface was professional but behind the scenes was essentially a repetition of the revisionist reaction to the *Wilhelmstrassenprozess* back in 1949/50. An effort was made to discredit the work of the committee and thus repeat the kind of attack that 60 years earlier had been directed against the sentence pronounced by the military tribunal. The discussion focused primarily on the first part of the commission's report, *i.e.* the period

of the Third Reich, thereby diverting attention from the more innovative and acute part of the report – the continuities after 1945 and 1951. Instead of engaging in a matter of fact discussion of the new interpretation given to known documents, some of the critics accused the committee of misinterpreting the documents in order to comply with the wishes of the Foreign Minister who had appointed them, so as to disgrace the diplomats prior to and subsequent to 1945. The critics were not ignorant amateurs. Some were well known historians who just believed that they could have done the work of the committee better, others were interested parties because they had been connected in the past with the AA. In practice, they became an instrument in the hands of those who wanted to exploit this opportunity to reinstate the myth of the respectable diplomats and thereby revise not only the findings of the historical commission but ultimately also the verdict of Nuremberg trial itself. A good indication of this can be found in an article published in the *Frankfurter Allgemeine Zeitung*, written by Walter Scheel (a Nazi Party member prior to 1945), who had held the post of German foreign minister in the 1970s and who later became president of the Republic.<sup>12</sup> In that article, Scheel described Krapf as a good diplomat whose only deficiency was that he had made some political mistakes typical of a young man (*politische Jugendverirrungen*) – presumably a reference to him being a member of the Nazi party, the SS and the SD. This lenient retrospective speaks for itself. It is no wonder, therefore, that Ribbentrop's son, himself a war criminal, was sufficiently arrogant to challenge the statement made by the commission about his father taking part in the initiation of the “Final Solution”.

It is not a document, an article, or a book *per se* that is dangerous or an educational risk. It all boils down to the interpretation and the intentions of the reader. Reading *Mein Kampf* does not necessarily lead to the conviction that Hitler was right; similarly, reading the verdict of the Nuremberg Military Tribunal – or for that matter the report issued by the historical committee regarding the history of the AA – may still leave the reader unconvinced of the complicity of the diplomats in perpetrating crimes and mass murder. The best weapon against the dangerous influences of radical texts is critical thinking. More information and a better memory would also be of use. ■

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12. Walter Scheel “Für mehr Diskussionskultur” *FAY* 21.3.12.



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# Combating Antisemitism in Europe – Official and Civil Society Initiatives

Michael Whine

## The work of the European agencies

Recognising that Europe has been the arena for the worst excesses of Jew hatred, European agencies have sought to put in place lasting instruments and agreements to prevent its resurgence.

Jewish groups had noted with alarm that antisemitic incidents began to rise towards the end of the 1990s, and then with gathering intensity after the first Palestinian Intifada and the ill-fated UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, where Muslim states and civil rights groups established a malign coalition against Israel, Zionism and the Jews. This increase in antisemitism became a worldwide phenomenon, but its impact was particularly strong on the Jews of Europe.

The first body to note the reappearance of antisemitism, at the beginning of this era, was the Organisation for Security and Cooperation in Europe (OSCE). Following the Helsinki Accords between the West and the Soviet Bloc, the Conference on Security and Cooperation in Europe (CSCE) meeting in Paris agreed, *inter alia*, to “combat all forms of racial and ethnic hatred, antisemitism, xenophobia etc”.<sup>1</sup> The CSCE subsequently became the Organisation for Security and Cooperation in Europe (OSCE), and at both its ninth and tenth Ministerial Council meetings in Bucharest and Porto respectively, the foreign ministers of the participating states re-focussed their concern. At the first of these meetings, in December 2001, they requested that OSCE institutions pay attention to the “manifestation of aggressive nationalism, racism, chauvinism xenophobia, anti-Semitism and violent extremism” and at the second, in December 2002, having decided to intensify their efforts, called for the convening of a separately designated “human dimension” event, on “issues addressed in this decision, including on the topics of anti-Semitism, discrimination and racism and xenophobia.”<sup>2</sup>

The Vienna meeting that followed in June 2003, was the first high level conference addressed specifically to the issue of antisemitism; it was attended by more than

four hundred participants, including foreign ministers and world Jewish leaders.<sup>3</sup>

It became clear during the proceedings that a further meeting, to focus on practical solutions, would be required as participants came to realise that antisemitism was now coming from new and different directions. Several of the keynote speakers, including former French foreign minister Robert Badinter, Irwin Cotler (then a member of the Canadian parliament, but about to be appointed justice minister) and Robert Wistrich, stressed that the ‘new antisemitism’, which demonises Israel, had the potential to be every bit as genocidal as that of the Nazis.

Badinter, in particular, spelled it out:

In actual fact, the current upsurge of anti-Semitism in France and other countries in Europe is primarily anti-Zionist in inspiration. Nothing could be more meaningful, in that respect, than to analyse



1. *Charter of Paris for a New Europe*, Meeting of Heads of State or Government, Conference on Security and Cooperation in Europe, p. 7, Paris, November 19 – 20, 1990, <http://www.osce.org/mc/39516> (last visited September 28, 2012).
2. *Bucharest Ministerial Declaration*, Decision No. 5 by the Ministerial Council (MC(9).DEC/5), p.29, Ninth Meeting of the Ministerial Council, OSCE, Bucharest, December 3 - 4, 2001, <http://www.osce.org/mc/40515> (last visited September 28, 2012).  
*Porto Ministerial Declaration*, Decision No.6, Tolerance and Non-Discrimination (MC(10).DEC/6), p.45, Tenth Meeting of the Ministerial Council, OSCE, December 6 - 7, 2002, Porto, <http://www.osce.org/mc/40521> (last visited September 28, 2012).
3. ‘OSCE Participating States Ready and Willing to ‘Take Up the Gauntlet’ and Fight Anti-Semitism, Press Release, OSCE Chairman in Office, Vienna, June 19, 2003, <http://www.osce.org/cio/55405> (last visited September 28, 2012).



the acts of anti-Semitic violence committed in France over the past ten years. In 1992, there were 20 recorded acts of anti-Semitic violence. Then their number dwindled significantly between 1992 and 1998: 3 in 1997, just 1 in 1998. In 1999, on the other hand, there were 9 acts of anti-Semitism. The figures explode starting in 2000, with 119. Practically all of them, 114, occurred after 28 September 2000 and the outbreak of the second Intifada and the Israeli-Palestinian clashes, which were widely reported on television.<sup>4</sup>

Irwin Cotler added that the new antisemitism is frequently transmitted on the Internet and that while traditional antisemitism is addressed to individual Jews, or the Jewish religion, the new antisemitism addresses Israel, the collective Jew among the nations.

The following year, the OSCE Parliamentary Assembly, an independent parallel body to the intergovernmental agency, recommended that the OSCE monitor antisemitic incidents, and urged those states that had not yet joined the Task Force for International Cooperation on Holocaust Education (ITF), to do so.<sup>5</sup> At the annual OSCE Human Dimension Implementation Meeting in Warsaw in October 2003, Jewish organisations lobbied for this second meeting, which the German government agreed to host.

The conference that eventually took place, in Berlin in April 2004, was hosted by the German federal president, Johannes Rau. The final conference declaration stated “unambiguously that international developments or political issues, including those in Israel or elsewhere in the Middle East never justify anti-Semitism.”<sup>6</sup>

While not as strong as some would have wished, it nevertheless broke a logjam in pointing to the source of much contemporary antisemitism, that from the Muslim world and the Left, which hides itself in the language of human rights. Of equal importance, it committed participating states to collect and maintain data on antisemitism and other hate crimes, and to work with the Parliamentary Assembly to determine appropriate means for periodic review of the problem. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) was tasked with systematic collection and publication of the information as well as with identifying the best practice in order to advise states on countering antisemitism.<sup>7</sup>

The Berlin Declaration was subsequently endorsed by the OSCE Permanent and Ministerial Councils, thereby obliging OSCE Participating States to follow its recommendations.

This marked the first practical step by governments

towards recognising the growth of ‘new antisemitism’, and was reflected in UN Secretary General Kofi Annan’s address in June 2005, when he called on UN member states to endorse it. Again, crucially, he specifically cited the paragraph in the Declaration about ‘political events never justifying antisemitism’.<sup>8</sup>

Berlin was followed by other high level OSCE conferences, in Cordoba, Bucharest, and Astana at which the mechanisms for monitoring antisemitism were established, teaching materials on antisemitism were commissioned, and procedures for training criminal justice agency personnel were put in place.<sup>9</sup> The OSCE also held a conference on cyberhate in Paris in 2005, which in turn led to governments’ committing themselves to researching the threat presented by the Internet, while acknowledging its benefits.<sup>10</sup>

4. Senator Robert Badinter, Address at *OSCE Meeting on Anti-Semitism*, Vienna, (June 19, 2003), PC.DEL/642/03, <http://www.osce.org/secretariat/42105>, (last visited October 7, 2012).
5. Resolution on Combating Anti-Semitism in the 21<sup>st</sup> Century, Rotterdam Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted during the Twelfth Annual Session, OSCE Parliamentary Assembly, July 5 – 9, 2003, Rotterdam. [www.oscepa.org/images/stories/documents/declarations/2003\\_rotterdam\\_declaration\\_english.2308.pdf](http://www.oscepa.org/images/stories/documents/declarations/2003_rotterdam_declaration_english.2308.pdf).
6. *Berlin Declaration*. OSCE Conference on Anti-Semitism, Berlin, April 28-29, 2004, (PC.DEL/696/04), <http://www.osce.org/cio/3142> (last visited October 7, 2012).
7. *Id.*
8. Kofi Annan, *Jews Everywhere Must Feel that the United Nations is Their Home Too*, speech at Seminar on anti-Semitism, (June 21, 2004), [www.un.org/News/Press/docs/2004/hr4773.doc.htm](http://www.un.org/News/Press/docs/2004/hr4773.doc.htm) (last visited September 28, 2012).
9. *Cordoba Declaration* by the Chairman-in-Office, OSCE, CIO. GAL/76/05/Rev.2, June 9, 2005, [www.osce.org/cio/15548](http://www.osce.org/cio/15548) (last visited October 7, 2012).  
*Bucharest Declaration* by the Chairman-in-Office, OSCE, CIO.GAL/89/07. June 8, 2007, <http://www.osce.org/cio/25598> (last visited September 28, 2012).  
*Astana Commemorative Declaration Towards a Security Community*, OSCE, CIO.GAL/111/10, June 30, 2010, [www.osce.org/cio/74985?download=true](http://www.osce.org/cio/74985?download=true) (last visited September 28, 2012).
10. Conclusions by the Chair of the OSCE Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes, OSCE, Paris, June 16-17, 2004, <http://www.osce.org/cio/37720> (last visited October 7, 2012).

Each of these initiatives is ongoing, with regular reviews requiring governments to report their progress. Although this process began with the realisation that antisemitism was once again growing, and that it is often fuelled by the overspill of Middle East tension and the penetration of Islamist ideologies, it has broadened to encompass all forms of racism and hate crime.

In parallel with the OSCE, European Union agencies have also made progress, although their initiatives were hampered in the early days by the misplaced perception that antisemitism only came from the extreme right.

In 2002, the European Union Monitoring Centre on Racism and Xenophobia (EUMC) commissioned the 15 National Focal Points of its Racism and Xenophobia Network (RAXEN) to collect data on antisemitism within the European Union. It also commissioned Berlin's Technical University Centre for Research on Antisemitism (ZfA) to analyse the reports and publish a composite analysis. The result was not well received by the EUMC board, allegedly because it apportioned much of the blame for rising antisemitism on Europe's Muslim communities, and accordingly a clumsy attempt was made to suppress the results.<sup>11</sup> When the report was leaked to the media, the EUMC was obliged to commission a second report, "Perceptions of Anti-Semitism in the European Union", based on Jewish leaders' perception of the threats to their communities. This confirmed the findings of the first report.

The final composite report, 'Manifestations of Anti-Semitism in the EU 2002 – 2003' finally acknowledged that:

there is indeed evidence to support the view that there is a link between the number of reported anti-Semitic incidents and the political situation in the Middle East. Furthermore, some of the data indicates that there have been changes in the profile of perpetrators. It is not any more the extreme right that is mainly responsible for hostility towards Jewish individuals or property (or public property with a symbolic relation to the Holocaust or to Jews) – especially during the periods when registered incidents peak.<sup>12</sup>

This report also called for regular monitoring of data, and a proper workable definition of antisemitism for the post-Shoah era, when anti-Zionism sometimes cloaks hatred of Jews.<sup>13</sup>

In 2007, the EUMC was replaced by the European Union Agency for Fundamental Rights (FRA), with the purpose of ensuring that the fundamental rights of EU citizens are protected. It does so, *inter alia*, by collecting evidence

of human rights violations, and using this to provide independent advice to European policy makers.<sup>14</sup>

Although the focus of FRA is much wider than was that of the EUMC, the monitoring of antisemitism remains its 'core business'. In this regard, FRA is engaged in three substantial projects on antisemitism. The first is the annual report on antisemitism, drawn from data provided by government and civil society organisations, and designed to update the 2004 EUMC report.<sup>15</sup> The second is a survey of Jews' experiences and perceptions of antisemitism in 9 EU member states. This will be among the largest ever surveys on antisemitism, which is ongoing at the time of writing, and the results of which will be published in mid 2013.<sup>16</sup> The third is a study of the role that memorials, commemoration sites and historical exhibitions play in Shoah and human rights education; the results have been detailed in a handbook for teachers on using visits to Holocaust-related sites and exhibitions to best effect, and in a handbook of best practices for Shoah memorial sites.<sup>17</sup>

11. *Report on Antisemitism*: Commissioned but not published, press release, EJC, December 1, 2003 (copy in author's possession).

12. *Manifestations of Antisemitism in the EU 2002–2003*, EUMC, Vienna, 2004, <http://fra.europa.eu/fraWebsite/attachments/AS-Main-report.pdf>, p.319 (last visited September 28, 2012).

13. *Id.*, p. 322.

14. *What we do*, European Union Agency for Fundamental Rights, <http://fra.europa.eu/en/about-frta/what-we-do> (last visited October 7, 2012).

15. *Antisemitism - Summary overview of the situation in the European Union 2001-2011*, Working Paper, June 2012, FRA, [http://fra.europa.eu/sites/default/files/fra\\_uploads/2215-FRA-2012-Antisemitism-update-2011\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2215-FRA-2012-Antisemitism-update-2011_EN.pdf) (last visited October 7, 2012).

16. *Survey: Discrimination and hate crimes against Jews*, European Union Agency for Fundamental Rights, [http://fra.europa.eu/fraWebsite/research/projects/proj\\_survey\\_jews\\_en.htm](http://fra.europa.eu/fraWebsite/research/projects/proj_survey_jews_en.htm) (last visited October 8, 2012).

FRA survey of Jewish people's experiences and perceptions of antisemitism, [http://fra.europa.eu/sites/default/files/fra\\_uploads/1997-FRA-2012-factsheet-jewish-population-survey\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1997-FRA-2012-factsheet-jewish-population-survey_EN.pdf) (last visited October 7, 2012).

17. *Discover the Past for the Future: the Role of Historical Sites and Museums in Holocaust Education and Human Rights Education in the EU – Summary Report*, European Union Agency for Fundamental Rights, Vienna, 2011.

*Human Rights Education at Holocaust Memorial Sites Across the European Union: An Overview of Practices*, European Union Agency for Fundamental Rights, Vienna, 2011.

The oldest European institution, the Council of Europe (CoE), has also addressed the rise in antisemitism. Established in 1949 by 10 countries, but now with 47 member states, the CoE seeks to develop democratic and legal norms, common responses to political, social and legal challenges, and to monitor adherence to the European Convention on Human Rights.<sup>18</sup> Its monitoring body, the European Commission Against Racism and Intolerance (ECRI), reviews each member's progress in enacting human rights legislation and combating racism via four yearly reviews, and by publishing guidance on particular themes. General Policy Recommendation No. 9, 'on the fight against antisemitism', which it published in 2004, recommended that member states prioritise fighting antisemitism by enacting legislation, taking into account the general requirement to combat racism and racial discrimination contained in General Policy Recommendation No. 7. This advised that national, regional and local administrative levels combat racism by enabling their political, economic, educational, social and religious sectors to undertake the task. It also required member states to establish and support national specialised bodies to monitor racism, xenophobia and antisemitism, introduce anti-racist education into school curricula and promote learning about Jewish history and the Shoah, *etc.*<sup>19</sup>

As the responsible body for initiating European treaties and conventions, the CoE has played a role in combating antisemitism in its various forms over the years. Among recent initiatives has been the Additional Protocol to the Convention on Cybercrime (Budapest Convention), concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<sup>20</sup> This requires signatory states to enact criminal law against the dissemination, via the Internet, of racially and religiously motivated hate speech, incitement and insults, as well as denial of genocide, including the Shoah. By the end of October 2012, 33 states had signed the Additional Protocol, of which 20 had ratified and entered it into their domestic legislation. In addition, two non - Council of Europe states, Canada and South Africa had also signed.<sup>21</sup>

The Additional Protocol was itself an outcome of the ECRI General Policy Recommendation No. 6 on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet, published in December 2000.<sup>22</sup>

Although not strictly a European agency, the Taskforce for International Cooperation on Holocaust Education, Remembrance and Research (ITF) is based in Berlin; it originated in the Stockholm International Forum on the Holocaust, convened by Swedish prime minister, Goran Persson, in January 2000.<sup>23</sup> So far, 31 member countries

have pledged to strengthen efforts to promote education, remembrance and research on the Shoah, and to commemorate it on January 27, when Auschwitz was liberated, or on their own national or other commemoration day, such as *Yom Hashoah* [Holocaust Remembrance Day in Israel].<sup>24</sup> Yet more countries have developed educational programmes to 'inculcate future generations with the lessons of the Holocaust in order to prevent future acts of genocide', at the urging of the United Nations 2005 General Assembly resolution.<sup>25</sup>

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18. Council of Europe, Who We Are, <http://www.coe.int/aboutcoe?index.asp?page=quisommesnous&l=en> (last visited September 28, 2012).
  19. ECRI General Policy Recommendation No. 9, on the Fight Against Antisemitism, Council of Europe, Strasbourg, September 2004.
  20. Additional Protocol to the Council of Europe Cybercrime Convention, <http://conventions.coe.int/Treaty/EN/Treaties/html/189.htm> (last visited September 28, 2012).
  21. Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems, Status as of 7 October 2012, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=189&CM=4&DF=&>.
  22. General Policy Recommendation No.6, Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet, European Commission Against Intolerance, Strasbourg, December 15, 2000.
  23. Declaration of the Stockholm International Forum on the Holocaust, January 26 – 28, 2000, <http://holocausttaskforce.org/about-the-itf/stockholm-declaration.html> (last visited October 7, 2012).  
About the ITF, Task Force For International Cooperation On Holocaust Education, Remembrance and Research, <http://holocausttaskforce.org/about-the-itf.html> (last visited October 7, 2012).
  24. Member Countries, ITF, <http://www.holocausttaskforce.org/membercountries.html> (last visited September 28, 2012).
  25. U.N. GAOR Res, Doc. A/RES/60/7.1 (2005), <http://www.un.org/en/holocaustremembrance/docs/res607.shtml> (last visited October 7, 2012).

### How effective are the European agencies?

Assessing the effectiveness of the European agencies in combating antisemitism requires a longer perspective than is afforded by this brief review, but their efforts to date can be noted, and commented on.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) energetically pursues governments and civil society organisations for data on hate crimes including antisemitism, and it provides regular fora for giving and receiving advice. The annual *Hate Crimes in the OSCE Region: Incidents and Responses* report provides an overview of these efforts and those of other international agencies. It is divided into thematic sections and country reports, and is drafted by ODIHR staff from responses to an annual questionnaire sent to governments' National Points of Contact (usually interior or justice ministries), and reports from civil society groups. The *Anti-Semitic Crimes and Incidents* chapter records the genesis of ODIHR's work, from the high level conference declarations, brief reports of high level and expert meetings, and synopses of the country reports, noting particularly serious incidents, and responses to them.<sup>26</sup>

Following the Berlin Conference, the OSCE appointed a Personal Representative of the Chairman-in-Office on Anti-Semitism, and summaries of their investigations are also included. The first of the Personal Representatives was Prof. Gert Weisskirchen, then a member of the German Bundestag and Vice President of the OSCE Parliamentary Association. The second and current holder of the position is Rabbi Andrew Baker, Director of International Jewish Affairs at the American Jewish Committee.<sup>27</sup>

Again following the Berlin conference, ODIHR embarked on a long term project to educate on antisemitism, in cooperation with partners, including the ITF, the Anne Frank House, whose staff wrote the three books referred to above, and Yad Vashem, whose staff prepared an accompanying teachers guide. These have been translated into many languages, and distributed via national education ministries.<sup>28</sup>

A third focus has been on training criminal justice agencies to understand, investigate and prosecute hate crime. As first responders, the police should be able to determine if a crime is motivated by bias, and to investigate it accordingly. The OSCE initiative, namely, the Law Enforcement Officer Programme, has now been broadened into the Training Against Hate Crimes for Law Enforcement (TAHCLE) programme, to provide continuous and holistic training for police officers and prosecutors.<sup>29</sup> To accompany this, ODIHR published *Hate Crime Laws: a Practical Guide*, and is shortly to publish a guide for prosecuting hate crime, with the assistance of the International Association

of Prosecutors.<sup>30</sup>

As noted above, FRA also publishes an annual report on antisemitic crimes and incidents, *Anti-Semitism: summary overview of the situation in the European Union*. As with the ODIHR report, it provides a historical background opening chapter followed by country reports, based on data submitted by governments and Jewish organisations.<sup>31</sup>

The overriding concern in both the ODIHR and FRA reports, since they were first published, has been the lack of reliable data. European governments are required to submit data on all hate crime according to various instruments and agreements. The data must be capable of disaggregation, so that antisemitic incidents and crimes can be isolated, but the reality is that only 13 out of 27 EU member states collected such data on antisemitism, and only 20 out of 56 OSCE Participating States in 2011. The reasons for failing to do so are various, and not necessarily due to lack of interest or sympathy. For example, states may lack capacity or may not yet have legislated to give their competent ministries a mandate to do so.<sup>32</sup>

26. *Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2010*, Warsaw, November 2011. [http://tandis.odihr.pl/hcr2010/pdf/Hate\\_Crime\\_Report\\_full\\_version.pdf](http://tandis.odihr.pl/hcr2010/pdf/Hate_Crime_Report_full_version.pdf) (last visited October 7, 2012).

(The author is one of many people asked to review the 2011 Report, to be published in September 2012, but see also previous annual reports).

27. *Rabbi Baker Reports*, OSCE, [http://www.osce.org/search/apachesolr\\_search/reports%20by%20rabbi%20baker](http://www.osce.org/search/apachesolr_search/reports%20by%20rabbi%20baker) (last visited September 28, 2012).

28. Teaching materials to combat anti-Semitism developed in co-operation with ODIHR, <http://tandis.odihr.pl/?p=ki-as,tm> (last visited September 28, 2012).

OSCE Press Release, *OSCE human rights office launches new hate crimes training programme for law enforcement officers*, May 13, 2011, <http://www.osce.org/odihr/77522> (last visited September 28, 2012).

OSCE, *Effective prosecution of hate crimes focus of ODIHR event for prosecutors*, <http://www.osce.org/odihr/91990> (last visited September 28, 2012).

30. *OSCE/ODIHR Hate Crime Laws – A Practical Guide*, Warsaw, 2009 <http://www.osce.org/odihr/36426?download=true> (last visited October 7, 2012).

31. *Anti-Semitism: Summary Overview of the Situation in the European Union*, European Union Agency for Fundamental Rights, Vienna, 2012.

32. *Ibid*, p.9, See also *Hate Crimes*, OSCE ODIHR, 2011 (to be published September 2012).



Frustrated by the lack of official data, both agencies now encourage civil society organisations to fill the gaps, and to provide context for the official reports. However, many of these reports, including those from Jewish groups, may be based only on media reports or anecdotal evidence, and the agencies require their information to criminal justice standards. As a consequence, a dialogue begun in 2008 between FRA and the Community Security Trust (CST) in the UK, led to the establishment of the Facing Facts project, a consortium of CST, the Dutch Jewish community's Israel and Jewish Documentation Centre (CIDI), the Brussels-based, CEJI – A Jewish Contribution to an Inclusive Europe, and the Federation of Dutch Associations for the Integration of Homosexuality (CoC), funded by the European Commission. The International Lesbian and Gay Association-Europe (ILGA), subsequently joined as junior partners.<sup>33</sup>

Training is offered to all, and over two years, the partners will train volunteers and professionals to standardise criteria for comparable hate crime and hate incident data collection, learn how to hold their governments accountable to international agreements, work to improve cooperation between civil society and public authorities, and publish an instruction manual for use by all. Given ODIHR's equal concern to obtain better quality data, they are providing additional expertise to augment that provided by the UK Ministry of Justice, and additional funding has been provided by the Open Society Foundations and the Dutch Jewish Humanitarian Fund (*Joods Humanitair Fonds*).<sup>34</sup>

Another issue preventing data collection has been the lack of a common definition for antisemitism. The 2004 EUMC report noted that the RAXEN network found it difficult to define antisemitism in a post-Shoah Europe. Is, for example, anti-Israel graffiti on a synagogue wall, antisemitic, or is it legitimate comment about Israel? The authors of the report observed that 'different monitoring bodies apply different methods of counting incidents and complaints', which they ascribed to the lack of a common definition. They added that this led to underreporting of incidents, and proposed that a common definition be created.<sup>35</sup>

The EUMC thereupon embarked on extensive consultation with Jewish organisations, Jewish and non Jewish academics and ODIHR, which led to the creation of the Working Definition on Antisemitism, which was adopted in January 2005. Although the definition could not subsequently be adopted by FRA (because it has no mandate to do so), it is published on their website, and the latest FRA report points to its continuing need: 'where data exist, they are generally not comparable, not least because they are collected using different definitions, methodologies and sources across the EU member

states.'<sup>36</sup>

The Definition has been recommended by the US State Department, ODIHR, and the British Association of Chief Police Officers, among others, and is translated into all European languages by the European Forum on Antisemitism.<sup>37</sup>

Two recent agreements have empowered states and the European agencies. The 2008 Common Framework Agreement required all EU member states to legislate against incitement to racial and religious hatred, and denial of genocide, including the Shoah, by November 2010. Compliance will be monitored during 2013, and states will be prosecuted before the European courts for non compliance, in 2014. Although weaker than originally intended, it nevertheless puts down an important marker.<sup>38</sup>

The second agreement, the OSCE Ministerial Agreement on Combating Hate Crimes, calls on Participating States, *inter alia*, to collect and make public reliable data on hate crimes, enact specific legislation to counter hate crime, enhance capacity building, ensure national and international cooperation, address the increasing use of the Internet to promote hatred and increase government and civil society cooperation, *etc.*<sup>39</sup>

### Conclusions

It has become clear that the European agencies now accept their responsibility for combating antisemitism and for securing their Jewish citizens in a way that they had not previously done. Because these initiatives have been incremental and slow their scale and extent generally goes

33. *Facing Facts – Make Hate Crimes Visible, Project*, [http://www.ceji.org/facingfacts/?page\\_id=2](http://www.ceji.org/facingfacts/?page_id=2) (last visited 28 September, 2012).

34. *Facing Facts - Train the Trainer Programme*, <http://www.ceji.org/facingfacts/?p=293> (last visited September 28, 2012).

35. See *supra* note 12, p. 322.

36. See *supra* note 31, p. 4.

37. European Forum on Antisemitism *Working Definition of Antisemitism*, <http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/> (last visited September 28, 2012).

38. Council Framework Decision 2008/913/JHA, on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, November, 28, 2008, O.J. (L 328/55).

39. OSCE Ministerial Council Decision No.9/09 Combating Hate Crimes, MC.DEC/9/09, Athens, December 2, 2009.



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unmentioned, except within the bodies themselves.

It must also be noted that they were sometimes vigorously argued for, and might not have taken place had not the representatives of the Jewish groups involved been so active and persistent.

Any assessment of the value and effectiveness of these initiatives, however, needs to be measured against a set of criteria, of which the three most important are: understanding contemporary antisemitism; how effective are they in combating antisemitism; whether these initiatives are likely to endure, or whether they are merely temporary palliatives.

With respect to the first of these, the EUMC report on “Manifestations of Anti-Semitism” and the Berlin Declaration acknowledged that antisemitism was coming from new directions and often in different forms, although the effect on the victims may have been little different from that of ‘old antisemitism’. Both documents recognised that the Middle East and the Muslim world were impacting the Jews in negative ways (at least in Western Europe), although there had been reluctance to do so initially.

It remains to be seen how effective the measures taken will be, but Europe has now established a body of agreements that (i) criminalise incitement to antisemitism and Holocaust denial while preserving freedom of speech, (ii) promote Holocaust education in varying ways and through different bodies, and (iii) train criminal justice agencies to understand, investigate and prosecute hate crime, including antisemitism. These are enduring initiatives and although their application may be less than consistent, particularly in post Communist states, they are slowly impacting the body politic, and will increasingly provide protection to Jewish communities.

The annual OSCE and FRA surveys of antisemitism now provide regular and consistent measurement, which can only improve as the capacities of state parties improve, and as civil society groups are trained to add data, and context to that data.

The agencies encourage Jewish community groups to investigate antisemitism, and in doing so have recognised that some of these groups have become leaders in understanding and investigating hate crime generally. This has had an empowering effect on some in the Jewish community, and as a consequence they have been able to educate the European agencies, and some national criminal justice agencies. In this context they are able to also demonstrate that contemporary antisemitism may be less about far right extremism and daubing of swastikas on synagogue walls, and more about the antisemitic effects of Jew hatred that cloaks itself in the language of human rights, or which demonises Israel.

Assessing the real effectiveness of the above measures over slightly more than ten years is difficult. They have been implemented within a deteriorating economic situation in which political extremism is once again growing, as hate crime generally, and antisemitism specifically, are rising, and as the distance from the Shoah is increasing, and its memories fade.

While the initial concerns about rising antisemitism were voiced by politicians, the ensuing progress would not have been attained without consistent pressure from the Jewish organisations. ■

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# Quo Vadis UNRWA?

Nitza Nachmias

The twentieth century experienced some of the worst instances of refugee cases in history: the partition of the Indian subcontinent in 1948 created tens of millions of Muslim and Hindu refugees, millions of Turks and Greeks had to flee their homes following the collapse of the Ottoman empire, millions of ethnic Germans were forced out of their homes in Eastern Europe following World War II and millions of Armenians, Finns, Bulgarians, Jews, and Kurds, among others, were driven from their lands and resettled elsewhere. The newly born United Nations (UN) created two humanitarian aid agencies to provide aid to the displaced: The United Nations Work and Relief Agency for the Palestinian Refugees (UNRWA, 1949), and the United Nations High Commissioner for Refugees (UNHCR, 1951). UNRWA is the second largest UN humanitarian aid agency; its annual budget exceeds a billion dollars and it is the oldest UN refugee agency. UNRWA was created to provide humanitarian aid exclusively to the 750,000 Palestinians who had fled Palestine after the 1948 Israel-Arab war. For the past 64 years UNRWA has dedicated its vast resources solely to catering to the needs of the Palestinian refugees. The largest UN humanitarian aid agency, the UNHCR is in charge of the approximately 40 million other displaced persons around the world. Since 1949, the Palestinian community has enjoyed a special refugee status, and has been provided with economic and legal privileges that no other refugee population has been awarded before or since. Palestinian refugees status is unique both *de jure*, namely, under international law, and *de facto*, namely, in the processes and procedures that have been established to address the issue. Since its inception, UNRWA has been issuing refugee ID cards to people claiming to be Palestinian refugees, and today the numbers of people holding refugee ID cards has grown to about 5 million!

While in the 1950s UNRWA was a *bone fide* humanitarian aid agency, for the past decade UNRWA has been providing a variety of non-humanitarian, social services to a population which can hardly be defined as “refugee”. In its 2008 annual report, UNRWA’s former Commissioner-General Karen AbuZayd explained the agency’s current mission: “The agency’s vision is for every Palestinian refugee to enjoy the best possible standard of human development,

including attaining his or her full potential individually and as a family and community member”.<sup>1</sup> Karen AbuZayd recognized the findings of our research that UNRWA’s mission is neither humanitarian nor necessary. Most of the 1948 refugees are fully settled and have been for decades, integrated in the local communities in the West Bank, Gaza, Jordan, and even Syria, where they have been living for four generations. Many others have immigrated to the US and Europe where they are either legal residents or citizens. UNRWA is now providing social services to the fourth generation of people claiming to be descendents of the 1948 refugees; persons who are in no need of humanitarian help.<sup>2</sup> We argue that it is morally and politically wrong to spend

billions of dollars supporting a community that has long been integrated and settled, while millions of genuine refugees, mostly women and children, in Africa, Southeast Asia and other regions, suffer and often die of diseases, lack of shelter and hunger. While the UNHCR and other international organizations suffer from lack of resources, UNRWA spends billions perpetuating the myth of the Palestinian refugees.

## Historical and political background

The United Nations General assembly (GA) and the Security Council (SC) have been intensely involved in the Israeli-Arab conflict since 1948.<sup>3</sup> One of the most discussed issues has been the fate of the Palestinian refugees, and the General Assembly spends many hours

1. U.N. GAOR, 64<sup>th</sup> Sess., U.N. Doc. A/64/13/Add1. (2009).
2. UNRWA 2012 budget allocations: acquiring knowledge and skills 53.1%; effective and efficient governance and support in UNRWA 17.2%; human rights enjoyed to the fullest, 0.7%; a decent standard of living 11.4%; long and healthy life 17.6%. Total non-humanitarian activities: 100% <http://www.unrwa.org/etemplate.php?id=248> (last visited on September 5, 2012).
3. Between 1947 and 2011 the General Assembly and the Security Council passed over 1,000 resolutions concerning the Israeli-Arab conflict, more than on any other subject.

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and approves billions of dollars in aid to resolve this issue. A few misconception have led the UN to award the Palestinian refugees a special status: (a) the United Nations assumes that the problem of the Palestinian refugees is a corrolary of a League of Nations colonial mandate sytem that denied the Palestinian people statehood and self-determination; (b) the United Nations is responsible for the suffering of the Palestinian people because it created the State of Israel despite Arab opposition, and (c) the refugee issue hinders the peace process, thus the UN has the responsibility of serving as the warden of the Palestinian refugees until their national problem is resolved.<sup>4</sup>

UNRWA's humanitarian mission is set out in Paragraph 7 of UNGA Res. 302 (IV) of December 8, 1949, namely, to administer the distribution of food, shelter, clothing, medical treatment and education for the Palestinian refugees in five fields of operation where the refugees had found shelter. UNRWA was also instructed to collaborate with local Arab governments in the execution of its operations, and to focus on reintegration and resettlement of the refugees in their countries of refuge; in particular, UNRWA's mandate required the agency to prepare the Palestinian refugees for the time when international assistance for relief and works projects would no longer be available. The basic assumption was that the Palestinian refugees would be absorbed by the neighboring Arab states, similar to the absorbtion of the Jewish refugees who had fled the Arab states and taken refuge in Israel.

In the 1950s and early 1960s, UNRWA did make plans and negotiate with the neighboring Arab countries, in particular, Jordan, Egypt and Syria, for concrete ways of reintegrating and resettling the refugees in their countries of refuge. The resettlement should have created economic opportunities and economic development for the whole region, including Israel. The second UN Secretary General, Dag Hammaskjold, was heavily involved and was an avid supporter of the resettlement plans. In 1952 the General Assembly allocated \$250 million for the refugees' reintegration projects, mainly for developing irrigation and agricultural projects "to be carried out over the period of approximately three years starting as of July 1, 1951";<sup>5</sup> however, the Arab governments prevented the creation of a unified working coalition needed to achive economic development for the region as a whole.<sup>6</sup> Sixty-four years and billions of dollars later, UNRWA has become an entrenched, permanent, overstaffed, affluent bureaucracy. Hardly any traces of the original mandate can be found in its current operations. UNRWA is the most protracted and the most expensive aid agency in the annals of the UN (calculating aid per refugee).<sup>7</sup> Filippo Grandi,

UNRWA's Commissioner-General stated on June 18, 2012, at a meeting of UNRWA Advisory Commission: "UNRWA's mandate is unchanged and remains clear: you and other United Nations Member States have asked and continue to ask UNRWA to assist the refugees until a just solution is found."<sup>8</sup> UNRWA today claims to provide non-humanitarian social services to 5,115,755 persons who are holders of UNRWA refugee ID cards: Jordan 2,050,000; Lebanon, 470,000; Syria, 510,444, West Bank, 875,000; Gaza Strip 1,220,000. However these numbers are questionable because (a) UNRWA does not exclude from its roles millions of Palestinians who are bone fide citizens of other countries, (b) the agency has never conducted a census, (c) UNRWA does not follow up on deceased persons, and (d) most of the persons holding refugee ID cards have a distant, or no relationship to the original 1948 refugees.<sup>9</sup>

### **The special status and privileges of Palestinian refugees**

The Palestinian refugees have enjoyed an uninterrupted unique status and wide range of special economic privileges. The most important privilege has been the creation of an international aid agency dedicated solely to attending to their humanitarian needs. In the mid-1960s it became clear that the Palestinian refugees no longer needed humanitarian aid and UNRWA promptly adjusted itself to the new reality. The agency executed a gradual shift in its operations and transformed itself from a humanitarian aid agency to a social service provider. UNRWA has been constructing and running hundreds of schools, healthcare clinics, and sports and recreation facilities in the five fields of its operation. UNRWA proudly claims that "The Agency operates one of the largest school

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4. In addition to UNRWA, the UN has created four more agencies to help the Palestinian people.
  5. G.A. Res. 513 (VI), U.N. GAOR (1952).
  6. See Nitza Nachmias, "UNRWA at 60: Are there Better Alternatives?" MEF Policy Forum, October 12, 2009.
  7. Calculating a UNHCR annual budget of about \$3 billion servicing 40 million displaced persons, compared with UNRWA's \$1 billion annual budget for 5 million persons.
  8. UNRWA official website, <http://www.unrwa.org/etemplate.php?id=1376> (last visited on September 5, 2012).
  9. See Emanuel Marx and Nitza Nachmias, *Dilemmas of Prolonged Humanitarian Aid Operations: The Case of UNRWA (UN Relief and Work Agency for the Palestinian Refugees)* in THE JOURNAL OF HUMANITARIAN ASSISTANCE, June 15, 2004.

systems in the Middle East, with nearly 700 schools, and has been the main provider of free-of-charge basic education to Palestine refugees for over sixty years”.<sup>10</sup> UNRWA also promotes the Palestinian business sector and offers loans (microfinance) to thousands of Palestinians. UNRWA’s services are often given free of charge, frequently without regard to the recipients’ eligibility. UNRWA’s vast resources should be used to provide much need emergency aid to the millions of genuinely displaced persons all over the world who lack food, clean water, basic medical care and basic shelter.

The Palestinians’ unique status originates from the definition of a Palestinian refugee, that is different from the legal Refugee Convention definition. The Refugee Convention says that “A refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country.” UNRWA introduced a more permissive working definition that says: “A person whose normal residence had been Palestine for a minimum period of two years preceding the 1948 conflict and who, as a result, had lost both his home and means of livelihood”<sup>11</sup> This definition allowed temporary Arab economic migrants to obtain UNRWA refugee status. UNRWA’s definition also covers all persons displaced in Palestine during the 1948 war irrespective of ethnic, national or religious origins. Most importantly, proof of residence in Palestine for two years and loss of livelihood and job have been waived, and a mere statement by the applicant is accepted.<sup>12</sup> Thus, economic migrants who lived in Palestine for two years prior to 1948 received refugee status. In 1959, Dag Hammarskjold, the second UN Secretary General, pointed out that UNRWA’s definition of a Palestinian refugee has no legal basis: “UNRWA’s working definition of a person eligible for its services ... is not contained in any resolution of the General Assembly but has been stated in annual reports of the director and tacitly approved by the Assembly.”<sup>13</sup>

Because UNRWA’s definition of a refugee was considered temporary and informal, the issue of the refugees’ descendants has not been addressed. In 1965 UNRWA asked the General Assembly to award refugee status and benefits to the second generation, a policy that UNRWA was pursuing without waiting for UN approval. But the General Assembly did not take action on the matter.<sup>14</sup> In 1982 UNRWA again requested the General Assembly “to issue identification cards to all Palestine refugees and their descendants, irrespective of whether they are recipients or not of rations and services from the Agency.”<sup>15</sup> This time the GA approved UNRWA’s request and the agency’s rolls swelled

from less than a million in 1950, to five million today.

In 1993 UNRWA waived the residency requirement altogether; that is, it no longer required residence, since the conflict, in any of UNRWA’s five fields of operation (Jordan; Syria; Lebanon; West Bank; Gaza). Palestinians are considered refugees even if they are citizens of another country and reside elsewhere in the world. UNRWA took this step because over 3.5 million holders of refugee ID cards are living outside UNRWA designated refugee camps.<sup>16</sup>

Currently, UNRWA’s agenda bears no resemblance to its original mandate. Due to the lenient oversight of UNRWA’s activities, and the lack of structural accountability procedures, UNRWA’s departure from its original mandate has been continuously approved by the UN General Assembly. UNRWA has a 25-member Advisory Commission that should oversee UNRWA’s operations but it only holds advisory authority. UNRWA is the only UN agency that reports directly to the UN Secretary General and the General Assembly. For decades, both the Secretary-General and the General Assembly have been serving as a rubber stamp, approving all of UNRWA’s policies and projects. Due to this unique lack of accountability UNRWA has been able to define its mission in terms of providing the Palestinian community: “long and healthy lives; acquire knowledge and skills; [a] decent standard of living; [and] human rights to the fullest.”<sup>17</sup> While clearly UNRWA services are neither humanitarian nor necessary, the donors continue to support UNRWA. The agency has proved to be a public relations wizard,

10. UNRWA official website, 2012, <http://www.unrwa.org/etemplate.php?id=32>.

11. UNRWA official website, <http://www.unrwa.org/etemplate.php?id=86>.

12. See *supra* note 9.

13. *Proposals for the Continuation of the United Nations Assistance to the Palestine Refugees*, U.N. GAOR, 14<sup>th</sup> Sess., U.N. Doc. A/4121 at part II, para. 4 (1959).

14. “*Question Relating to the Middle East: The Palestine Question*”, UN document, A/2052 December 15, 1965.

15. U.N. Relief and Works Agency for Palestine Refugees in the Near East at A and I U.N. GAOR, Doc. A/RES/37/120, (1982).

16. UNRWA’s annual report (2012) admits that out of a total of 4,797,723 registered refugees, only 1,485,598 reside in “refugee camps”. <http://www.unrwa.org/userfiles/20120317152850.pdf> (last visited on September 15, 2012). Still all 4.7 million are considered refugees, eligible for UNRWA’s free services.

17. UNRWA in figures, January, 2011.



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successfully perpetuating the myth of five million refugees, a myth that promises the agency eternal life.

### **UNRWA: A non-territorial government**

UNRWA operates in the West Bank, Gaza, Jordan, Lebanon and Syria. In each of these areas UNRWA has designated territories, with clear boundaries, that it defines as “refugee camps”. During its 64 years of operation UNRWA has established a “governing authority” in the refugee camps, and UNRWA’s administrative control of the refugee camps has turned the agency into virtually a “non-territorial government”. While in some camps there are local committees that help manage the camp’s affairs, UNRWA is the final authority and it functions as an independent territorial authority within the jurisdiction of the PA, Jordan, Syria and Lebanon.<sup>18</sup> All the designated refugee camps are actually urban suburbs of nearby cities, for example, Shua’fat, is a wealthy suburb of Jerusalem although it is still defined by UNRWA as a “refugee camp”. Interestingly, about 20,000 residents of Shua’fat hold Israel ID cards and have voting rights in Israeli municipal elections; these Israeli residents are nonetheless defined by UNRWA as Palestinian refugees, and hold refugee ID cards. Other areas in Jenin, Nablus, *etc.*, are integral parts of the cities, but UNRWA insists that they are “refugee camps” under its administrative control. The population in these refugee camps constantly changes since apartments in the camps are bought and sold on the open market. UNRWA provides indiscriminate services to the residents of these “refugee camps” and in fact, apartments in areas designated as “refugee camps” are often more expensive because the residents receive free UNRWA services.

While UNRWA has been operating as a “non-territorial government”, the agency does not have any legal jurisdiction over either the territory it controls, or its inhabitants. There is no precedent, and there is no other UN agency, that has managed and controlled a territory for over half a century.<sup>19</sup> In its capacity as a “non-territorial government” UNRWA has declared that it is now the protector of the Palestinian people, and it will continue to exist until the Palestinians are allowed to exercise their “right of return”. In all its written and oral statements UNRWA reiterates the claim that the agency will continue to operate until the political status of the Palestinians is resolved.

### **The politicization of UNRWA**

The manipulation of refugee crises is a well-known phenomenon in the history of humanitarian assistance. Organizations “sell” misery, and make a fortune using pictures of starving African children. However, “the most highly organized and protracted example [of refugee manipulation] can be found in the Middle East following

the 1948-49 Arab-Israeli war when the UN established UNRWA ... From the start Israel’s neighbors saw the refugees as an asset in their struggle against ...an illegitimate state since resettling the refugees would have deprived the Arab states of evidence of Israel’s illegitimacy.”<sup>20</sup> UNRWA serves the Arab countries’ purpose by perpetuating the myth of millions of unsettled refugees and preserving the Israeli Arab conflict. Interestingly, UNRWA’s operations actually undermine the authority of the PA, Israel’s important partner in the peace process. The PA has no control over UNRWA’s operations, and has no influence over UNRWA’s policies. The PA has to accept the fact that a foreign agency is acting as a “non-elected territorial government” within its borders, providing its citizens with free social services and competing with the PA for donations. Funding of UNRWA’s hundreds of schools could have supported the PA Education Ministry. Often, UNRWA openly competes with the PA for donations and contracts.<sup>21</sup> In many respects UNRWA competes with the PA for students, for highly educated personnel and for international donations.

UNRWA acts as the legal representative of the 5 million Palestinians regardless of the fact that many of them are bone fide citizens of the PA and Jordan. UNRWA rejects calls to transfer its authority to the PA claiming that “*we will remain steadfast in our mission and mandate to bring human development to Palestine refugees through education, health, relief and social services, pending a just and durable resolution of their plight*”.<sup>22</sup> UNRWA places itself as a

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18. See Sari Hanafi, *Governing Palestinian Refugee Camps in the Arab East: Governmentalities in Search of Legitimacy* Working Paper # 1, Issam Fare Institute, American University of Beirut, October 2010.

19. An example of a UN territorial administration is Kosovo. On June 10, 1999, the Security Council passed Resolution 1244, placing Kosovo under the UN Interim Administration Mission in Kosovo (UNMIK). The UN administration was terminated on May 15, 2001 with the establishment of the Kosovo Provisional Institutions of Self-Government (PISG).

20. REFUGEE MANIPULATION: WAR, POLITICS, AND THE ABUSE OF HUMAN SUFFERING (Stephen J. Stedman & Fred Tanner (eds.) 4 (2003).

21. For example, in 1994-95 UNRWA competed for development contracts with the newly created Palestinian Economic Council for Development and Reconstruction (PECDAR).

22. UNRWA website, June 27, 2011, <http://www.unrwa.org/etemplate.php?id=1029>, (last visited on September 5, 2012).



governing body alongside the PA until the Israeli-Arab conflict is settled. Consequently, the PA's credibility, legitimacy and ability to gain the respect of its citizens have been tarnished. It can be argued that UNRWA has contributed to the Palestinian people's loss of faith in the effectiveness of the PA, a fact that influenced the demise of the PA and rise of Hamas in Gaza.<sup>23</sup>

The fact that UNRWA's operations undermine the legitimacy of the PA is clear to the donors. Following the Oslo Accords and the 1993 Israeli-Palestinian "Declaration of Principles" (DOP) the future of UNRWA was questioned both in the international community and within UNRWA itself. "A 1995 report by the Agency noted for the first time since UNRWA was established... [That] it is possible to see on the horizon the end of the Agency's mission."<sup>24</sup> During the annual meeting in Jordan, in 1995, donors and the host governments agreed that UNRWA should prepare for the eventual transfer of its operations to the Palestinian Authority. However, UNRWA never followed up on the request to plan for the phasing out of its operations, and used the 2000 El Akza Intifada to argue that its operations were essential to keep the peace. Recently, UNRWA's Commissioner-General declared that "the arrival of that day [when UNRWA can fold its operations], is contingent upon a real peace process that bears tangible results for Palestine refugees in line with United Nations resolutions and with international law and practice."<sup>25</sup>

### UNRWA's terrorist dilemma

UNRWA operates in areas with a high level of terrorist activities, and the issue of UNRWA's interaction with terrorism should not be overlooked. UNRWA has been accused of passively cooperating with terrorist organizations mainly in Gaza, and the US, the largest donor to UNRWA (contributing about 40 percent of UNRWA's budget) has demanded compliance with Section 301 of the 1961 Foreign Assistance Act (PL 87-195) as amended by Congress: "UNRWA [should] take all the possible measures to assure that no part of the United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of the so called PLO or any other guerrilla type organization, or who has engaged in any act of terrorism". UNRWA has responded by stating that it cannot meet this requirement: "UNRWA does not have ready access to information on refugees who are receiving military training from guerrillas".<sup>26</sup> By its own admission, UNRWA does not know, and has no record of, how many of its workforce of 31,000 Palestinians are members of terrorist organizations. Dr. Levitt's research discloses: "as recently as December 2002, USAID "cleared" several charity commitments to receive funding despite information publicly tying them to Hamas."<sup>27</sup> It should be noted that "UNRWA

*makes no attempt to weed out individuals who support extremist positions... and some staff members undoubtedly support violence to achieve these goals.*"<sup>28</sup> Because UNRWA does not follow a strict vetting process it should be assumed that among its employees are members of extreme terrorist groups who use UNRWA's facilities, schools, health clinics, vehicles and the like, to pursue their terrorist activities. Former Commissioner-General, Peter Hansen, made a startling admission in an interview with the Canadian Broadcasting Corporation on Monday, October 4, 2004: "I am sure that there are Hamas members on the UNRWA payroll and I don't see that as a crime... we do not do political vetting and exclude people from one persuasion as against another."<sup>29</sup>

### Conclusion

Nearly sixty-four years ago the General Assembly of the United Nations created a temporary humanitarian agency to provide emergency assistance to Palestinian refugees who had fled their homes during the 1948-49 Israeli-Arab war. Since then, the GA has uninterruptedly voted to extend UNRWA's mandate and continued to support the Palestinian community, although the majority of the millions who now hold refugee ID cards have long been settled in their countries of refuge and in other countries around the world. While UNRWA was conceived as a short-lived operation, it has managed to stay in business, grow and become the second largest aid agency

23. Glenn E. Robinson, "Hamas as Social Movement", in Quintan Wiktorowicz, (ed.): *Islamic Activism*, (Bloomington: Indiana University Press, 2004), 112.

24. "UNRWA and the Transitional Period: A Five Year Perspective on the Role of the Agency and its financial requirements", Vienna January 31, 1995, p. 1. Quoted in: "What Role for UNRWA?" Discussion Paper Prepared by BADIL Resource Center for Palestinian Refugee, Workshop on the Future of UNRWA, UK (February 2000), p. 1.

25. Chris Gunness, UNRWA's spokesman in an interview to the Palestinian Ma'an News Agency, December 16, 201.

26. *Id.*, p. 7.

27. Matthew Levitt, Broken aid to the Palestinians", January 30, 2009, Middle East Strategy at Harvard, <http://blogs.law.harvard.edu/mesh/2009/01/broken-aid-system-to-palestinians/> (last visited on September 5, 2012).

28. James G. Lindsay, *Repairing the UN's Troubled System of Aid to Palestinian Refugee*, p. 32.

29. Quoted in "UNRWA's Hamas Employees", <http://honestreporting.com/unrwas-hamas-employees-2> (last visited on September 5, 2012).

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in the international system. UNRWA's baseless and inflated "refugee" numbers feed the impossible demand for a "right of return". In a few years Israel could face 10 million "refugees" demanding the right of return. UNRWA's continued operations cost the international community billions of dollars that could otherwise be used to provide life-saving aid to millions of genuine refugees in Africa and other conflict areas.

UNRWA's ability to survive is due to the fact that its officials use two voices; on the one hand, the agency stirs international public opinion against Israel's policies, and on the other hand, UNRWA claims to be a crucial, positive force on the road to peace. Karen Abu Zayd and other UNRWA officials use inflammatory language to fuel international public opinion against Israel's policies; for example: "*The bleak and dismal conditions that currently prevail ensure that the wounds and the pain of 1948 and 1967 remain exposed and alive. They ensure that these wounds are renewed and transmitted to successive generations. Each missile that [Israel] strikes in Gaza reminds the Palestinian refugees of the.... justness of their cause.*"<sup>30</sup> UNRWA has succeeded in perpetuating the myth of millions of unsettled, miserable, hungry, homeless Palestinian refugees and for decades UNRWA has been using scare tactics to claim that its existence is essential to the peace process, "*in recent years [UNRWA] had made decisive contributions in support of the peace process which gained broad recognition.*"<sup>31</sup>

While the facts show that UNRWA is a negative factor on the road to peace, donors continue to support UNRWA and its budget has grown exponentially. UNRWA's strongest argument is that the Palestinian "refugees" need a patron to take care of them until a legitimate Palestinian government is established and takes over UNRWA's operations. UNRWA ignores the fact that the Palestinians have a governing authority, the PA, and this authority is internationally recognized as the legitimate government of the Palestinian people. Since 1993, the PA has been running schools, operating hospitals and health clinics, issuing ID cards, administering the national and regional governments and collecting taxes.

UNRWA claims that its mandate requires the agency to "*assist the refugees until their status is politically resolved*". Our discussion clearly shows that this condition has been met in Gaza and the West Bank, with the establishment of the PA. The 1948 refugees who settled in Jordan and Syria are fully integrated and should receive their social services from their respective governments.<sup>32</sup> UNRWA continues to object to any attempt to reduce or limit the agency's administrative authority. For example, during the 1990s, local Palestinian municipal authorities in the West Bank requested to annex the camps to their areas

of responsibility, collect taxes and manage the territories. UNRWA blocked these plans claiming that the refugee camps were under a UN governing authority. The only place where emergency aid is still needed is Lebanon. However, in Lebanon, a myriad of well-funded non-governmental and governmental aid organizations work hard and provide assistance to the camp residents (mostly non-refugees), and UNRWA is only one of many aid providers. Thus, UNRWA's services are not critical.

As early as 2000, Palestinian leaders publicly expressed disappointment at UNRWA's resistance to relinquish its responsibilities to the PA. "*While the Oslo Process of 1993 renewed the debate about the future of UNRWA, and for the first time since UNRWA was established it is possible to see on the horizon the end of the Agency's mission and UNRWA's ultimate dissolution... five years later, however, the future of the Agency remains unclear.*"<sup>34</sup> To date, UNRWA continues to defy the obvious reality: most refugees are long settled and UNRWA's operations have to be phased out. This act will serve both the peace process, and the self-governing future of the Palestinian community. ■

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30. Karen Abu Zayd, Address to the Middle East Institute 60<sup>th</sup> Anniversary Conference, Washington D.C., November 13, 2006.
  31. Peter Hansen, Report of the Commissioner-General of UNRWA, July 1, 1995-30 June, 1996, p. 15.
  32. International law requires the host government to provide refugees with the same legal and civil services as those granted to its nationals, see e.g. Article 22, 23 of the Refugee Convention.
  33. Interview in Jerusalem, with Dr. Mahdi Abdul Hadi – Chairman of PASSIA (Palestinian Academic Society for the Study of International Affairs), February 11, 2008.
  34. Badil – Information & Discussion Brief, Issue No. 6, July 2000, p. 1.

# Universal Jurisdiction in Civil Cases

## The Netherlands Joins the United States in Granting Victims a Forum

Gavriel Mairone

Generally, victims of violations of international human rights law and international humanitarian law are left without enforceable civil remedies of reparations or compensation. The Netherlands has joined the United States in providing a forum based upon universal jurisdiction for foreign nationals wishing to assert civil tort claims arising from violations of the laws of nations.

Dr. Ashraf Ahmad el-Hojouj, a Palestinian doctor, and five Bulgarian nurses were tried in Libya in 2000 for deliberately infecting more than 400 children with HIV at the El-Fatih Children's Hospital in Benghazi, Libya. The six, who always maintained their innocence, alleged that their "confessions" were forced and made under the horrific torture to which they were subjected during their 8-year detention. In 2004 Dr. el-Hojouj and the nurses were convicted and sentenced to death by a Libyan court; the sentence was upheld by the Libyan Supreme Court. The sentences were later commuted to life sentences<sup>1</sup> after the children's relatives agreed to accept compensation worth US \$1 million per child. The prisoners were eventually released to the Bulgarian government in 2007 following a prisoner transfer agreement with Qaddafi. The six were subsequently pardoned by the Bulgarian president.<sup>2</sup>

Following his release, Dr. el-Hojouj brought civil lawsuits in The Hague against 12 Libyan officials for their involvement in his torture and inhumane treatment while he was incarcerated. In a precedent setting case, a Dutch court awarded one million euros in damages.<sup>3</sup> The case of Dr. el-Hojouj marked the first time that the principle of universal jurisdiction was applied in the context of a civil human rights case,<sup>4</sup> outside the US.<sup>5</sup>

### Universal jurisdiction

Universal jurisdiction is a legal doctrine which grants national courts jurisdiction to try perpetrators of gross violations of international human rights laws and serious violations of international humanitarian law. These crimes are so heinous that they are deemed to be crimes against

all humanity<sup>6</sup> and therefore it is appropriate that any court, in any country, be able to assert jurisdiction. Generally, universal jurisdiction has been applied only in criminal cases; for example in the trials of Adolf Eichmann<sup>7</sup> and Augusto Pinochet.<sup>8</sup>

1. *Dutch court compensates Palestinian for Libya jail*, BBC, March 28, 2012 <http://www.bbc.co.uk/news/world-middle-east-17537597> (last visited October 1, 2012).
2. THE SOPHIA ECHO, March 29, 2012; see also ALJAZEERA, July 25, 2007.
3. *Ashraf Ahmed El-Hojouj v. Harb Amer Derbal, et al*; 400883/HA ZA 11-2252, The Hague Dist. Ct. March 21, 2012 (English).
4. See *supra* note 1. The defendants were all Libyan nationals residing in Libya. None were present in The Netherlands. The plaintiff was neither a citizen nor a resident of The Netherlands at the time of the filing of the lawsuit and the alleged tort (crime) was committed outside of The Netherlands.
5. *Id.* The United States provides universal jurisdiction in federal courts for civil actions in tort by aliens (non-citizens) resulting from torture or violations of the laws of nations.
6. The American Non-Governmental Organizations Coalitions for the International Criminal Court, <http://www.amicc.org/docs/Universal%20Jurisdiction%20Q&A.pdf> (last visited October 1, 2012).
7. "We have said that the crimes dealt with in this case are not crimes under Israeli law alone, but are in essence offences against the law of nations. Indeed, the crimes in question are not a free creation of the legislator who enacted the law for the punishment of Nazis and Nazi collaborators, but have been stated and defined in that law according to a precise pattern of international laws and conventions which define crimes under the law of nations." *A.G. Israel v. Eichmann* (1968) 36 I.L.R. 1, 19 (Dist. Ct. Jerusalem, 1961).
8. Naomi Roht-Arriaza, *The Pinochet Precedent and Universal Jurisdiction*, 35 NEW ENG. L. REV. 2 (2001).

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The trial and punishment of individuals for war crimes and crimes against humanity have received great attention over the past two decades. International forums have been created such as the *ad hoc* tribunals for crimes committed in Rwanda and in the former Republic of Yugoslavia and the International Criminal Court of Justice.<sup>9</sup> Crimes that potentially fall within the parameters of universal jurisdiction include piracy, slavery, crimes against humanity, war crimes, torture and genocide.<sup>10</sup> These tribunals, however, have focused primarily or exclusively on punishment of the criminals and have not provided victims with access to civil justice despite the fact that most of these victims suffer serious physical, psychological and economic loss as a result of these crimes, making it impossible for them to resume their former lives.<sup>11</sup>

The Statute of Rome that created the International Criminal Court of Justice provides principles for reparations for victims, including restitution, compensation and rehabilitation, and has even called for the establishment of a *Trust Fund*, to be administered by the United Nations; however, principles have not been fully established and only recently in August 2012 did the ICC issue its first decision on reparations.<sup>12</sup>

The *European Convention on the Compensation of Victims of Violent Crimes* emphasizes the importance of compensation for victims of violent crimes and the necessity of developing schemes for the compensation of these victims by the State in whose territory such crimes were committed.<sup>13</sup> It adopts a hybrid approach, which first encourages holding the perpetrators accountable for the commission of international crimes and subsequently provides a safety net where there are insufficient assets available to pay compensation. However, the European Convention only applies to nationals of Member States of the Council of Europe and is silent on the issue of enforcing foreign judgments against foreign actors or providing access to European civil courts for non-European victims of crimes committed by non-European actors.<sup>14</sup>

Many nations have established funds to support their nationals who have become victims of human rights offenses; for example: the American fund to compensate the victims of 9-11; the United States government's compensation of the American (and foreign employee) victims of the East African US Embassy bombings, and the Israeli national insurance terrorism victims' compensation program. While these funds provide a vital support net for the victims, they are not a substitute for civil justice which can restore the victims' sense of dignity and empower them to hold the primary perpetrators accountable as well as secondary facilitators who aid, abet, support, finance or profit from the crimes.

### **The problem: lack of enforceable remedies for victims**

Lord Denning<sup>15</sup> instructed that "*a right without a remedy is no right at all.*"<sup>16</sup> The legal and judicial systems of most civilized nations provide that victims of crimes may seek monetary compensation from the wrongdoers through civil redress. Ironically, access to domestic courts for victims of violations of international human rights and

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9. Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (International Tribunal for the Former Yugoslavia <http://www2.ohchr.org/english/law/itfy.htm> (last visited October 1, 2012); Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between January 1, 1994 and December 31, 1994 <http://www2.ohchr.org/english/law/itr.htm> (last visited October 1, 2012); Rome Statute of the International Criminal Court <http://www2.ohchr.org/english/law/criminalcourt.htm> (last visited October 1, 2012).
  10. See Dictionary of Gross Human Rights Violations by Shared Humanity.org. at <http://www.sharedhumanity.org/LibraryArticle.php?heading=Universal%20Jurisdiction> (last visited October 1, 2012). Examples of prosecution and convictions of human right crimes in national courts include: April 2004 conviction by a Dutch Court of Congolese national Sebastien N. of complicity in acts of torture committed in the former Republic of Zaire (currently known as the Democratic Republic of the Congo) under the provisions of the UN Convention against Torture; 2001 conviction by a Belgium court of Lphonse Higaniro, Vincent Ntezimana and two Rwandan nuns Gertrude Mukangango and Maria Kisito Mukabutera for murder and torture committed in Rwanda during the 1994 Rwandan genocide and others.
  11. Cited by Prof. Liesbeth Zegveld, *Remedies for Victims of Violations of International Humanitarian Law*, 85 IRRC 497 p. 523-524(2003).
  12. *Trust Fund for Victims welcomes first ICC reparations decision, ready to engage*, ICC Press Release, 8 August 2012 <http://www.icc-cpi.int/NR/exeres/66C1C74B-AC3B-4C92-AF4A-D5F32FF5FAB4.htm> (last visited October 1, 2012). The case involved Thomas Lubanga, who was convicted of enlisting and conscripting children under the age 15 years and forcing them to participate in armed hostilities.



humanitarian crimes committed by democratic governments or their agents generally is available in democratic countries. However, access to justice generally is denied to victims in non-democratic countries which are largely responsible for such crimes or which support the non-state actors perpetrating these crimes, as in Sudan, Syria, Iran, Cuba and North Korea. Furthermore, usually victims' claims against rogue States and their officials in democratic countries are frustrated by rules of sovereign immunity. In addition, private actors and corporations which cooperate with the perpetrators, or directly profit from their actions, can avoid the jurisdiction of courts in democratic countries by carefully structuring their businesses to avoid a presence in forums where victims can assert claims. Thus, even where victims of crimes perpetrated by these rogue States may have a *right* to compensation under international law, and even where they may have access to courts in democratic countries, unless such courts apply universal jurisdiction, the victims will be left empty-handed and without an enforceable remedy.

As noted in the Diplomatic Conference of Geneva of 1949:

It is not enough to grant rights to protected persons and to lay responsibility on the States; protected persons must also be furnished with the support they require to obtain their rights; they would otherwise be helpless from a legal point of view in relation to the Power in whose hands they are.”<sup>17</sup>

#### Non-binding principles and guidelines from the United Nations

On December 16, 2005 the United Nations General Assembly adopted *the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (the “*Basic Principles*”). The Basic Principles urge all States to incorporate the “norms of international human rights law and international humanitarian law into their domestic law,”<sup>18</sup> adopt “effective legislation and administrative procedures ...that provide fair, effective and prompt access to justice,”<sup>19</sup> and make “available adequate, effective, prompt and appropriate remedies, including reparation...”<sup>20</sup>

The Basic Guidelines provide an expansive definition of “victims” as

...persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss

or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.<sup>21</sup>

Victims should have the right to the following remedies: 1) equal and effective access to justice; 2) adequate, effective and prompt reparation for the harm suffered; and 3) access to relevant information concerning violations.<sup>22</sup> Reparation or *compensation*<sup>23</sup> should be provided by all liable parties, including natural and legal persons and entities.<sup>24</sup>

13. European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=116&CM=8&CL=ENG> (last visited October 1, 2012).

14. Part 1- Basic Principles – Article 3.

15. Lord Denning was one of the most celebrated English judges of the twentieth century. See, Clare Dyer, *Lord Denning, Controversial 'People's Judge', Dies aged 100*, The Guardian, 6 March 1999, <http://www.guardian.co.uk/uk/1999/mar/06/claredyer1> (last visited October 1, 2012).

16. *Gouriet v. Union of Post Office Workers* (1978), AC, 435.

17. Final Record of the Diplomatic Conference of Geneva 1949, Vol. II, p. 822.

18. Basic Principles, Art. I 2(a).

19. Basic Principles, Art. I 2(b).

20. Basic Principles, Art. I 2(c).

21. Basic Principles, Art. IV 8.

22. Basic Principles, Art. VII 11.

23. Compensation includes all economically assessable damages, such as: physical or mental harm; lost employment, earnings, potential earnings, education or benefits; material damages and moral damages; legal and medical expenses; all proportional to the gravity of the violation. Basic Principles, Art. IX 20. Cf the Rome Statute of the International Criminal Court of Justice which provides three types of reparation: restitution; compensation monetary for material and moral damages; and rehabilitation (medical costs) Art. 75(1).

24. Basic Principles, Art. IX 15.



The Basic Principles though are non-binding. Generally, until States adopt the legislation envisioned in the Basic Principles, victims of violations of international human rights and humanitarian crimes will be left without remedies. For example, claims brought by women survivors of the Japanese military sexual slavery (“comfort women” cases) have been consistently dismissed by Japanese courts.<sup>25</sup>

Finally, perhaps one of the most compelling provisions of the Basic Principles is Article IX (17), the principle of enforcing judgments, including judgments issued by foreign countries.<sup>26</sup> Currently, it is almost impossible to enforce foreign judgments for reparations in national courts, especially in cases where the judgments are against State actors or corporations owned by States.

### Universal jurisdiction for civil cases in revolutionary United States

In 1789, the first Congress of the United States enacted a one-sentence long law called the “Alien Tort Claims Act” (“*Alien Tort Statute*” or “*ATS*”).<sup>27</sup> This was the first civil law of universal jurisdiction for the prosecution of civil lawsuits in the United States, by non-Americans, in connection with death or injury arising from violations of international law. At the time of enactment, the only two violations of the laws of nations were a) denying safe passage or otherwise harming diplomats or diplomatic property and b) piracy. The United States Supreme Court held that the law is not limited to the laws of nations as of 1789 but rather applies to international human rights law and international humanitarian law as it exists today.<sup>28</sup>

The ATS was rarely invoked between 1789 and the 1970s. In a landmark case, relatives of a victim of State torture and murder in Paraguay brought a lawsuit in New York. The Second Circuit Court of Appeals overturned the dismissal by the District Court and found jurisdiction in federal court proper thereby opening the door to numerous claims filed by foreigners for compensation relating to violations of international criminal law, irrespective of where the crimes had taken place.<sup>29</sup> US federal courts have held that there is jurisdiction in cases alleging war crimes,<sup>30</sup> crimes against humanity,<sup>31</sup> torture,<sup>32</sup> and aiding and abetting or financing terrorism.<sup>33</sup> Resistance to broad interpretation of the ATS has however arisen in some courts in the US. In a controversial lawsuit against Royal Dutch Shell Corporation stemming from its operations in Nigeria, the 2<sup>nd</sup> Circuit held that corporations are immune from liability under civil and criminal international humanitarian law and therefore also immune from civil liability under the ATS.<sup>34</sup> Oral argument was heard before the United States Supreme Court on October

1, 2012.<sup>35</sup> Other US Circuit Courts have ruled that no such bar to corporate liability exists under international law.

25. Eight of the ten cases were dismissed by the lower court and the other two were dismissed by the Japanese Supreme Court. See Hideyuki Katsutani and Segio Iwamoto, *Yearbook of International Humanitarian Law*, Vol. 3, 2000 p. 543 and *Yearbook of International Humanitarian Law*, Vol. 2, 1999 pp. 389-390. Cited by Prof. Liesbeth Zegveld, *Remedies for Victims of International Humanitarian Law*, 85 IRR (2003) p. 508.

26. Basic Principles, Art. IX 17. “States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavor to enforce valid foreign judgments for reparation...”.

27. 28 U.S.C. § 1350 “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”

28. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

29. *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

30. *Kadic v. Karadzic*, 70 F.3d 232 (2nd Cir. 1995).

31. *Hilao v. Marcos*, 103 F.3d 767 (9th Cir. 1996), the action was brought directly against the head of the government that allegedly committed the crimes against humanity.

32. *Abebe-Jira v. Negewo*, 72 F.3d 844, 847 (11th Cir. 1996); *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

33. *Almog v Arab Bank Plc*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007), claims of over 6,000 claimants, victims of over 400 terror attacks, were consolidated in the Eastern District of New York. The Plaintiffs U.S. and foreign nationals sued the Arab Bank for knowingly providing services to terrorist organizations sponsoring suicide bombings against civilians in Israel. The foreign nationals asserted violations of the law of nations with jurisdiction under the Alien Tort Claims Act (ATS), 28 U.S.C.S. § 1350. The Court denied the Bank’s motion to dismiss and the case is currently awaiting trial.

34. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010).

35. Oral argument on October 1, 2012 ignored the issue of whether or not legal persons may be found liable under international humanitarian law and instead focused on determining guidelines and limits of the applicability of jurisdiction under ATS when alternative forums are available or plaintiffs have not exhausted all other remedies. See *Kiobel Roundtable: Getting Exhaustion Right*, Doug Cassel, Professor of Law at Notre Dame Law School, OPINIO JURIS, October 3, 2012.

### Criminalizing torture and degrading treatment and providing civil remedies

On June 26, 1987 the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the “*Convention*”) entered into force.<sup>36</sup> The Convention provides that alleged offenders be extradited but also provides an alternative that each “*State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction...*”<sup>37</sup> Such universal jurisdiction for criminal liability may also extend to civil remedies for the victims.<sup>38</sup>

The US *Torture Victim Protection Act of 1991* (“*TVPA*”) provides jurisdiction for civil lawsuits in federal courts within the United States, against individuals (not corporations or governments) who, acting in an official capacity for any foreign nation or under color of law, commit torture and/or extrajudicial killing. The law extends rights to non-US citizens/nationals who are victims of torture (including extra-judicial killing) to sue the wrongdoers in US courts for monetary compensation, in circumstances where they are unable to do so in the country where the crime occurred because they may face retaliation in their attempt to seek redress in a local court for harm caused.<sup>39</sup>

### Universal jurisdiction for civil claims reaches Europe

The plaintiff Dr. el-Hojouj pleaded that the defendants, 12 Libyan civil servants, unlawfully tortured him, while he was incarcerated, with the goal of obtaining a confession to crimes that he had not committed. As a result of the forced “confession,” Dr. el-Hojouj spent eight years in detention, three of which were under threat of execution. Dr. el-Hojouj sought material and non-material damages.

The Dutch court found that it had jurisdiction to hear the case pursuant to Article 9 subparagraphs (c) and (d) of the Dutch Code of Civil Procedure,<sup>40</sup> which grants jurisdiction to a Dutch court where a non-national plaintiff brings suit against non-national, non-resident (in The Netherlands) defendants in a *forum necessitates* situation. The Court found that it would be impossible for the plaintiff to bring his claim in Libya and therefore he would be denied access to justice and any remedy unless the Dutch court asserted jurisdiction.

Dutch law on this point is compatible with Article 6 of the European Convention on Human Rights, which guarantees plaintiffs the right to a fair trial and impartial tribunal.<sup>41</sup> The facts and circumstances necessary to establish this situation must be assessed as of the day of the plaintiff’s first claim.

Pursuant to Dutch law, the choice of law in the above action was the *situs* of the tort,<sup>42</sup> specifically Article 166 of the Libyan Code of Torts and Damages. The Court noted that Libya was a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and found that the physical and mental pain inflicted upon Dr. el-Hojouj constituted torture under the Convention and hence under Libyan law.<sup>43</sup>

36. U.N. GAOR Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Resolution 39/46, <http://www2.ohchr.org/english/law/cat.htm> (last visited October 1, 2012).

37. Convention, Art. 5 (2).

38. Convention, Art. 14 (1) Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

39. Torture Victim Protection Act - Pub.L. 102-256, H.R. 2092, 106 Stat. 73(1992). The TVPA requires a plaintiff to show exhaustion of local remedies in the location of the crime, to the extent that such remedies are “adequate and available”.

40. *Wetboek van Burgerlijke Rechtsvordering* (Code of Civil Procedure – Dutch).

41. The European Convention on Human Rights- Art 6 <http://www.hri.org/docs/ECHR50.html#Coonvention> (last visited October 1, 2012).

42. Article 3(1) of the Dutch Conflict of Law in Tort Act (*Wet Conflictenrecht Onrechtmatige Daad Wcod*) which provides that “torts are governed by the laws of the State on whose territory the act occurs.”

43. United Nations General Assembly Resolution 39/46, Article 1 (1) ...“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. See also Art. 2 (2) of the Convention “No exceptional circumstances whatsoever, whether a state of war or a threat of war, international political instability or any other public emergency, may be invoked as a justification of torture.”

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Because of the potential significance of this ruling, the trial was referred to the Civil Section of First-Instance Regional Court in The Hague.<sup>44</sup> The Court ruled that:

1. Jurisdiction pursuant to Article 9 subparagraph c of the Dutch Code of Civil Procedure was proper because it was unacceptable to ask the plaintiff to seek a remedy in a Libyan court at the time he first filed his claim (July 27, 2011).
2. A *forum necessitates* situation existed because of the post-war circumstances, therefore jurisdiction was accepted.
3. The choice of law was Libyan law.
4. Damages in the amounts of €750,000 for material damages and €250,000 for non-material damages were awarded and were not unlawful or unfounded.
5. The defendants acted unlawfully against the plaintiff and would be liable for future material and non-material damages.

While the trend in domestic courts toward exercising universal civil jurisdiction seems to be promising, there still remains the problem of satisfying the judgments and the compensation awards for the victims. Remarkably, this problem is not relegated to those non-democratic regimes that may be the instigators of such human rights violations or those regimes unwilling to take responsibility for the actions of their officials. The problem with satisfying the judgments or collecting compensation prevails in those democratic states that are pushing for compensation yet are reluctant to enforce such foreign judgments in their respective states or allow access to frozen assets of those offending states, individuals or entities within their territory.

As urged by Professor Zegveld<sup>45</sup> following the Dutch ruling in the Dr. el-Hojouj civil suit and the subsequent March 2012 conviction of Libya for the torture of Dr. el-Hojouj and the other detainees (in the Benghazi-HIV trial),<sup>46</sup> Libya should guarantee compensation to the victims without delay; Professor Zegveld also called upon The Netherlands, the European Union and its member states to assure “that the compensation is paid to these victims forthwith.”<sup>47</sup>

The plea for payment of the compensation underscores what has been missing in human rights and humanitarian law discussions. That is, the view from the victims’ perspective. Absent the establishment of international civil courts for determining and enforcing victims’ rights, or the adoption of universal jurisdiction principles by national courts, victims of international human rights violations and international humanitarian law violations

will be left without effective remedies. Which is greater, the victims’ need to see the perpetrators and their collaborators punished or the need of the victims, their children and families to be compensated and empowered and to fight for their dignity in civil courts? How many banks and other institutions and entities that launder monies for these wrongdoers have paid compensation to the countless victims, in order to assist with medical treatments and rehabilitation? The billions of dollars that have been stashed by these human rights offenders in banks around the world have not been used for reparations for the victims. Should the profiteers of international crime be immune from civil liability? Universal civil jurisdiction is required to hold accountable the financial infrastructures behind the human rights violators. Universal enforcement of civil judgments for compensatory awards for the victims of violations of international human rights and international humanitarian law is a necessary component in the fight against such violations and the restoration of the victims’ dignity. ■

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44. *Rechtbank’s Gravenhage*. The original judgment of March 21, 2012 may be found at <http://zoeken.rechtpraak.nl/detailpage.aspx?ljn=BV9748>.
  45. Liesbeth Zegveld, Ph.D. is an international human rights lawyer in Amsterdam, the Netherlands. Professor Zegveld was the advocate representing Dr. el-Hojouj in the civil case against Libya.
  46. The conviction was by the Human Rights Committee in its 104 session.
  47. See Press Statement by Böhler Advocaten, Amsterdam, May 2, 2012 “*Human Rights Committee Convicts Libya for Torture of detainees during the Benghazi HIV trial urging payment of the compensation awarded by the court*”.

# “Kol B’ishah Ervah” – Does Jewish Law Prohibit Women from Singing in Public?

David Golinkin

On September 5, 2011, an IDF entertainment troupe performed at an official military event focusing on Operation Cast Lead at *Bahad Ehad*, the officers’ training base in the Negev. When a female soldier began to sing solo, nine observant Israeli officer cadets got up and left; they said that it was forbidden for them to listen to women singing. Their Regiment Commander Uzi Kliegler ran after them and ordered them to return to the ceremony. “Anyone refusing [this] order will be dismissed from the course”. In the end, four cadets refused to return to the hall and were dismissed from the officers’ training course, while five were allowed to continue the course after convincing the committee that the move had not been preplanned. It should be noted that, although a considerable number of the officer cadets were observant, most did not walk out.



Subsequently, various Orthodox rabbis were quoted in the media as being either for or against the cadets’ action. The Ashkenazi Chief Rabbi of Israel Yonah Metzger issued a formal *responsum* on September 25, 2011, justifying the walk-out and urging the army to ensure that only men would sing at military events where large numbers of observant men were present. Is it really forbidden for Jewish men to listen to women singing? Is there any halakhic justification for soldiers to walk out in these circumstances?

## I. The Three Talmudic Sources

All halakhic discussions of this topic are based primarily on one sentence uttered by the Amora Samuel in Babylon (ca. 220 CE). Some rabbis have claimed that his intent is clear; we shall see below that that is very far from the case. The sentence appears in three places in rabbinic literature, twice in the *Bavli* [Babylonian Talmud] and once in the *Yerushalmi* [Jerusalem Talmud].

1. The Babylonian Talmud (*Berakhot* 24a) contains a lengthy *sugya* [Talmudic section] about whether one may recite the *Shema* in immodest situations such as two men

sharing a bed or a family sharing a bed or when the man’s clothes are torn and do not cover his private parts. The Talmud continues:

Rabbi Yitzhak said: a handsbreadth in a woman is *ervah* [nakedness, lack of chastity, impropriety]. [The Talmud discusses this and concludes:] rather he is talking about his wife and when reciting *Keriyat Shema*.

Rav Hisda said: a thigh in a woman is *ervah*, as it is written<sup>1</sup> “Bare your thigh, wade through the rivers” and it is written<sup>2</sup> “your *ervah* shall be uncovered and your shame shall be exposed”.

**Samuel said: *kol b’ishah ervah, a woman’s voice is ervah***, as it is written<sup>3</sup> “for your voice is sweet and your appearance is comely”.

Rav Sheshet said: Hair in a woman is *ervah*, as it is written<sup>4</sup> “your hair is like a flock of goats”.

There are at least three major problems with this *sugya*:

A. None of these four *Amoraim* mention the *Shema* and it appears that this unit was copied here in its entirety from some other context.

B. Jastrow in his Talmudic dictionary<sup>5</sup> and many others think that Samuel is referring to a woman **singing**. But it is not at all clear whether Samuel means the **speaking** voice of a woman or the **singing** voice of a woman. On

1. Isaiah 47:2.

2. *Id.*, v. 3.

3. Song of Songs 2:14.

4. *Id.* 4:1.

5. Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli, etc.*, Philadelphia, 1903, s.v. *ervah*, p. 1114.



the one hand, he may mean the **speaking** voice of a woman.<sup>6</sup> On the other hand, he may mean the **singing** voice of a woman.<sup>7</sup>

C. It is also not clear if this is *halakhah* [law] or *aggadah* [non-legal material]. If these are halakhic statements, they would say: “it is forbidden to look at a woman’s thigh or to hear her voice or look at her hair”; therefore the Amoraim seem to be making aggadic statements followed by verses.

At the most, we can say that the editor of the *sugya* who copied this unit here is trying to say that when a person recites the *Shema* he should avoid a woman’s handsbreadth or thigh or voice or hair.

2. The Babylonian Talmud (*Kiddushin* 70a-b) also contains a lengthy story about a man from Nehardea who insulted Rav Yehudah while visiting Pumbedita. Rav Yehudah excommunicated him and declared him a “slave”. The man then summoned Rav Yehudah to a *din torah* [Jewish court hearing] in front of Rav Nahman in Nehardea. Rav Yehudah asked his friend Rav Huna whether he should go and Rav Huna advised him to do so. Rav Yehudah proceeded to Nehardea to the house of Rav Nahman but, since he resented going, he challenged everything that Rav Nahman did and said, frequently using the words of Samuel to do so. The story continues:

[Rav Nahman:] May my daughter Dunag come and give us to drink?

[Rav Yehudah] said to him: So said Samuel: one does not use a woman.

[Rav Nahman:] But she is a minor!

[Rav Yehudah:] Samuel said explicitly one does not use a woman at all, whether she is an adult or a minor!

[Rav Nahman:] would my Lord like to send shalom to my wife Yalta?

[Rav Yehudah] said to him: **So said Samuel: kol b’ishah ervah, a voice of a woman is ervah** [*i.e.*, I am not allowed to talk to her].

[Rav Nahman:] it is possible to talk to her via a messenger.

[Rav Yehudah] said to him: So said Samuel: one does not ask after the welfare of a woman.

[Rav Nahman:] Via her husband!

[Rav Yehudah] said to him: So said Samuel: one does not ask after the welfare of a woman at all.

[Yalta then tells her husband Nahman to get to the point so that Rav Yehudah should stop insulting him.]

Once again, this *sugya* is making secondary use of Samuel’s words “*kol b’isha ervah*”, but in this case it is not the later anonymous editors of the Talmud who quote Samuel but Rav Yehudah, one of his main disciples, who quotes him almost 500 times in the Babylonian Talmud. Rav Yehudah understands Samuel to say: a voice of a woman is *ervah* ***i.e.* do not talk to women**. This is in keeping with other Talmudic dicta about avoiding conversations with women.<sup>8</sup>

3. The third passage is found in the Jerusalem Talmud (*Hallah* 2:4).<sup>9</sup> According to the Torah<sup>10</sup>, when a person bakes a loaf of bread or a cake, they are supposed to give a small portion of the dough called *hallah* to a Kohen. Today this small portion is burned after reciting a blessing. The *mishnah* in *Hallah*<sup>11</sup> says that a woman can sit and separate her *hallah* [and make the blessing] while naked because she can cover herself. The Talmud *Yerushalmi* comments:

From this we learn that her rear end is not forbidden because of *ervah*.

This is true regarding her reciting the blessing for *hallah*, but to look at her, is forbidden. As we have learned: a person who looks at her heel is like one who looks at the house of her womb [=vagina], and a person who looks at the house of her womb is as if he slept with her.

Samuel said: **a voice of a woman is ervah**. What is the reason? “*vehaya mikol znutah*”, “the land was defiled from the sound of her harlotry”.<sup>12</sup>

For the third time, Samuel’s words are quoted in a secondary fashion in a Talmudic discussion. He is not part of that discussion and his words are not connected to the main topic which is looking at a scantily clad woman who is sitting and separating dough for *hallah*. Once again,

6. See Psalm 104:34; *midrashim* on the verse in Song of Songs 2:14 in the Bar Ilan Responsa Project; *Metzudat David* on Song of Songs *ad loc*.

7. See the beginning of the verse in Song of Songs; *Ta’anit* 16a; and six *midrashim* on Song of Songs 2:14.

8. *Avot* 1:5; *Eruvin* 53b; *Nedarim* 20a; *Hagigah* 5b; *Sanhedrin* 75a; *Berakhot* 43b at the bottom.

9. Vilna edition, fol. 12b; Venice edition, fol. 58c.

10. Numbers 15:17-21.

11. *Hallah* 2:3.

12. Jeremiah 3:9; the new JPS *tanakh* translates following Radak: “the land was defiled by her casual immorality”.

it is not clear what Samuel means to say. There is no hint whatsoever that he is referring to the singing voice of a woman; it is more likely that he is referring to her speaking voice.

Thus, if we were to rule on the basis of the three Talmudic passages, we could say that Samuel and his fellow Amoraim, quoted in *Berakhot*, are making aggadic statements about the dangers of **looking** at and listening to women. Alternatively, we could say on the basis of *Kiddushin* (and probably *Yerushalmi Hallah*) that Samuel is making a halakhic ruling that it is forbidden to speak to women, or we can state on the basis of the context in *Berakhot*, that it is forbidden to speak to or look at women while reciting *Keriyat Shema*. **It is quite clear from the careful analysis above that none of these three passages say anything about a woman singing.**

### II) The Rif ignored Samuel's statement in both passages in the Bavli

The Rif, Rabbi Yitzhak Alfasi (1013-1103), was one of the most influential *poskim* [halakhic authorities] in Jewish history. Maimonides states that he relied on the Rif in his Mishneh Torah in all but thirty places.<sup>13</sup> *Hilkhot Harif*, also known as *Talmud Kattan*, the little Talmud, codifies Jewish law by abbreviating each *sugya* in the Talmud. It omits the aggadic passages and most of the give and take of the Talmudic *sugya*, leaving only the opinions which the Rif considers to be Jewish law. In the *sugya* in *Berakhot* quoted above, the Rif<sup>14</sup> **omits the opinion of all four Amoraim quoted by the Talmud**, as emphasized by Rabbi Zerahia Halevi<sup>15</sup> and by the Ra'avad of Posquieres.<sup>16</sup> In his code on *Kiddushin*<sup>17</sup>, the Rif quotes a few of the dicta of Samuel, quoted by Rav Yehudah, **but omits the dictum "kol b'ishah ervah"**. This means that the Rif considers Samuel's statement in both *Berakhot* and *Kiddushin* to be *aggadah* and not *halakhah*!

### III) It is forbidden to talk to women or to certain women

In the Rambam's (Egypt, 1135-1204) summary of the *sugya* in *Berakhot*,<sup>18</sup> he rules that one may not recite *Keriyat Shema* while looking at a woman, even one's wife, in view of the Talmud's explanation of Rabbi Yitzhak quoted above in *Berakhot*, but he omits Samuel's opinion entirely. However, in his Laws of Forbidden Sexual Relations<sup>19</sup> he rules that one should not wink at or laugh with or look at the little finger of one of the *arayot*, i.e. one of the forbidden sexual relationships listed in *Leviticus* 18, "and even to hear the voice of the *ervah* or to see her hair is forbidden". The Rambam seems to understand Samuel to mean "*kol b'ishah-ervah*" [*assur*], "the voice of a woman who is an *ervah*" is forbidden. This is a rather novel

interpretation since that is not exactly what Samuel said. In any case, the Rambam is clearly referring to her **speaking** voice and not to her **singing** voice.

This is proven by his famous reponsum about listening to secular Arabic girdle poems sung to music.<sup>20</sup> After listing four reasons for forbidding this music he writes: "And if the singer is a woman, there is a fifth prohibition, as they of blessed memory said, *kol b'ishah ervah*, **and how much more so if she is singing**". In other words, Samuel is referring to women **speaking** and the Rambam adds that the prohibition is even greater if she is **singing**.

Rabbi Ya'akov ben Asher (Toledo, 1270-1343) followed the Rambam in his *Tur*, one of the major codes of Jewish law<sup>21</sup> as did the Maharshah (Cracow, 1510-1573).<sup>22</sup>

A similar opinion is found in *Sefer Hassidim*, which is attributed to Rabbi Judah Hehassid, a contemporary of the Rambam (Regensburg, ca. 1150-1217).<sup>23</sup> He says that "a young man should not teach a girl practical Jewish law even if her father is standing there, lest he or the girl be overcome by their *yetzer* [=evil inclination] and *kol b'ishah ervah*, rather a father should teach his daughter and wife". Thus, Rabbi Judah thinks that Samuel is opposed to listening to the **speaking** voice of a woman or a girl.

This also seems to be the opinion of Rabbi Yitzhak ben Isaac of Vienna (1180-1250)<sup>24</sup> and the Rosh (1250-1320).<sup>25</sup>

### IV) It is forbidden to listen to women singing while reciting the *Shema*

The *poskim* in this camp ruled according to their understanding of the *sugya* in *Berakhot* which is connected to *Keriyat Shema* and ignored the *sugya* in *Kiddushin*. Rav Hai Gaon (Pumbedita, 939-1038) rules<sup>26</sup> that a man

13. *Responsa of the Rambam*, ed. Blau, No. 251, p. 459 and the literature cited there in note 7.

14. ed. Vilna, fol. 15a.

15. *Hama'or Hakattan*, *id.*, fol. 15b.

16. Quoted by the Rashba to the *sugya* in *Berakhot*.

17. ed. Vilna, fol. 30b.

18. *Hilkhot Keriyat Shema* 3:16.

19. *Hilkhot Issurei Biah* 21:2, 5.

20. *Responsa of the Rambam*, ed. Blau, No. 224, pp. 398-400.

21. *Tur Even Haezer* 21.

22. Quoted by the *Perishah* to *Even Haezer* 21, sub-para. 2.

23. Ed. Margalio, para. 313.

24. *Or Zarua*, Part I, fol. 24a, para. 133.

25. *Piskei Harosh* to *Berakhot*, Ch. 3, para. 37.

26. *Otzar Hageonim* to *Berakhot*, *Perushim*, p. 30, para. 102.

“should not recite the *Shema* when a woman is singing because *kol b’ishah ervah*... but when she is just talking normally it is permitted; and even if she is singing, if in his heart he can concentrate on his prayer so that he does not hear her or pay attention to her - it is permissible...”. In other words, he understands from the context in *Berakhot* that Samuel only says *kol b’isha ervah* when one is reciting the *Shema* and he further understands that Samuel is referring to a woman singing. Even so, Rav Hai allows a man to recite *Keriyat Shema* when a woman is singing if he is able to ignore her voice.

This general approach was followed by a number of classic Ashkenazi *poskim* such as Rabbi Eliezer of Metz (1115-1198);<sup>27</sup> the Ra’aviyah (Cologne, 1140-1225);<sup>28</sup> and the Mordechai (Nuremberg, 1240-1298).<sup>29</sup> Rabbi Eliezer of Metz, on the one hand, adds a stringency that one may not recite the *Shema* or “*dvar kedushah*” [anything holy] when a woman is singing; but also a leniency - that because of our sins we live among the Gentiles and therefore we are not careful to avoid learning while Gentile women are singing. The Ra’aviyah adds a leniency that one may recite *Keriyat Shema* when a woman is singing if he is accustomed to it (or: to her voice).

This general approach was also followed by *Aharonim* such as the *Beit Shmuel* to *Shulhan Arukh*,<sup>30</sup> who expands the prohibition to *tefillah* [= prayer] as opposed to only the *Shema*.

#### V) A combination of the previous two approaches

A number of prominent *poskim* combine the previous two approaches. They rule that a man should not talk to a woman on the basis of Samuel in *Kiddushin* as in paragraph III above **and** that a man should not recite the *Shema* while a woman is **singing** on the basis of *Berakhot* as understood in paragraph IV above.

This camp includes the Ra’avad of Posquieres (1120-1198);<sup>31</sup> the Meiri (Provence, d. 1315);<sup>32</sup> and Rabbi Yosef Karo in his *Shulhan Arukh*.<sup>33</sup>

#### VI) It is forbidden to listen to any woman singing at any time

This approach was first suggested as a possible interpretation by Rabbi Joshua Falk (Poland, 1555-1614) in his *Perishah* to the *Tur*,<sup>34</sup> nevertheless he himself rejected it. The first to actually rule this way in practice was Rabbi Moshe Sofer, (Pressburg, d. 1839).<sup>35</sup>

Aside from the fact that this very strict approach contradicts all of the halakhic sources we have seen above, we also know from the research of Emily Teitz<sup>36</sup> that this approach contradicts the actual **practice** of Jewish women who sang in the home, on festive occasions, as singers, and also in synagogues throughout the Middle Ages.

Unfortunately, the *Hatam Sofer’s* strict ruling was adopted by many later *poskim*. Some tried to find “leniencies” such as allowing girls and boys to sing at the same time<sup>37</sup> or allowing men to listen to women who could not be seen, as when they sang on the radio or on a record.

#### VII) *Kevod Haberiyot* sets aside various prohibitions

Even if one were to rule entirely according to the *Hatam Sofer*, it would be forbidden to get up and leave a concert where women are singing. Even if Samuel meant to give a halakhic ruling (which is not at all clear) and even if he meant to prohibit listening to all women singing (which we have disproved above), there is a well-known halakhic principle that *kevod haberiyot* [=the honor of human beings] sets aside various prohibitions.<sup>38</sup> There is no question that leaving a concert is insulting to the women performing as well as to most of the soldiers at the concert and to their commanding officers – indeed that is why the commanding officer removed those soldiers from the officers’ training course.

#### VIII) Summary and conclusions

We have seen above that there is no general prohibition against women singing in classic Jewish law based on the Talmud and subsequent codes and commentaries until one reaches the early nineteenth century. The current

27. *Sefer Yerei'im Hashalem*, para. 392.

28. ed. Aptowitz, Vol. 1, pp. 52-53, *Berakhot*, para. 76.

29. *Berakhot*, para. 80.

30. *Even Haezer* 21, Sub-para. 4.

31. Quoted in *Hiddushei Harashba* to *Berakhot* 24a [mislabelled 25 in the printed editions].

32. In *Bet Habehirah* to *Berakhot* 24a, pp. 84-85.

33. *Orah Hayyim* 75:3 and *Even Haezer* 21:1, 6.

34. *Even Haezer* 21, sub-para. 2.

35. Responsa Hatam Sofer, *Hoshen Mishpat*, No. 190.

36. Emily Taitz, “Kol Isha – The Voice of Women: Where was it heard in Medieval Europe?”, *Conservative Judaism* 38/3 (Spring 1986), pp. 46-61.

37. Rabbi Yehiel Ya’akov Weinberg, *Serdei Eish*, Vol. 2, No. 8.

38. See David Golinkin, *Ma’amad Ha’ishah Bahalakhah: She’elot Uteshuvot*, Jerusalem, 2001, pp. 120-121 and the literature cited there; Daniel Sperber, *Darkah Shel Halakhah*, Jerusalem, 2007, pp. 34 ff. and in a reworked form in *Women and Men in Communal Prayer: Halakhic Perspectives*, New York, 2010, pp. 74 ff.; Rabbis Elliot Dorff, Daniel Nevins and Avrum Reisner, “Homosexuality, Human Dignity and Halakhah”, 2006 at [www.rabbinicalassembly.org](http://www.rabbinicalassembly.org).

blanket prohibition accepted by Haredi and some modern Orthodox rabbis was first suggested and rejected by Rabbi Joshua Falk (d. 1614) and was only given as a halakhic ruling by Rabbi Moshe Sofer, the *Hatam Sofer*, in the early nineteenth century. However, this opinion does not accord with the simple meaning of the dictum by Samuel and with all the opinions of the *Rishonim*. The Rif **ignored** Samuel's dictum in both *Berakhot* and *Kiddushin*. Some *Rishonim* ruled according to the *sugya* in *Kiddushin* that Samuel was referring **to the speaking voice of women** in view of the concern that such conversation would lead to forbidden sexual relations. This interpretation also seems to be the intent of the parallel passage in *Yerushalmi Hallah*. On the other hand, Rav Hai Gaon and most of the *Rishonim* in Ashkenaz interpreted the words of Samuel according to the *sugya* in *Berakhot* and

therefore ruled **that it is forbidden to recite *Keriyat Shema* where a woman is singing** because of "*kol b'isha ervah*". Finally, some of the rabbis of Provence and Rabbi Joseph Karo ruled according to both of these interpretations. Furthermore, Emily Teitz has shown that in practice Jewish women sang at home, at *semahot* [joyous occasions], as singers and in the synagogue throughout the Middle Ages. Thus, there is no halakhic justification for anyone walking out when women sing. But even if one accepts the very strict ruling of the *Hatam Sofer*, it is forbidden to walk out in order not to insult the female performers. ■

*Rabbi Prof. David Golinkin is the President and a Professor of Jewish Law at the Schechter Institute of Jewish Studies in Jerusalem.*



### *The Association Warmly Congratulates M. Joseph Roubache on his Promotion to the Rank of Commander of the French Legion of Honor*

In Vol. No. 32 of *JUSTICE* we congratulated M. Joseph Roubache, prominent member of our Board, Senior Vice-President of our Association and Founder of our French Committee upon being awarded the rank of Officer in the National Order of the Legion of Honor, by former French President Jacques Chirac. In this issue we take even greater pleasure in congratulating him on his promotion to the most prestigious rank of Commander of the Legion of Honor.

This award not only recognizes Joseph Roubache's position as one of the most incisive and prominent lawyers in France but also his humanism, his fight against all forms of racism and antisemitism and his tireless service to the Jewish community in France.



# The Migron Outpost Evacuated Upon the Order of the Israeli High Court of Justice

Rahel Rimon

This case concerned an application to dismantle Migron, the largest outpost built in Judea and Samaria. The judgment set out below marks the first ruling by the Israeli High Court of Justice on dozens of petitions demanding the demolition of outposts in the territories. Until this ruling, the policy adopted by the Court had been to allow the State to choose how to resolve this issue.

The main points raised by the parties and the principles grounds for the Court's unanimous decision are extracted here, paraphrased in part. The fairly long chronology of events explains the great delay between the initial submission of the petition in June 2006 and the ultimate judgment of the Court in August 2011.

Following this judgment, the Migron settlers reached a compromise with the government, brokered by Minister Benny Begin. The agreement was rejected by the High Court in a unanimous decision dated 25.3.12 reached by a panel of three Supreme Court Justices – Asher Grunis, Miriam Naor and Salim Joubran – who ordered the outpost demolished by August 1, 2012. In that decision, written by Justice Naor, concerning the compromise, Justice Naor wrote

that the proposed postponement of three and a half years “could not be accepted. It is unreasonable. Solutions that could have been accepted in 2006, when the petition was submitted, cannot be accepted now after all of the procedures and postponements have been exhausted. All are subject to the law and the moment of truth has arrived.”



In addition she declared: “The desire to take the distress of the residents into account, one which we do not take lightly, cannot continue to come at the expense of the Petitioners and at the expense of the enforcement of the rule of law.”

And finally, “Migron’s residents have come before us and asked that we accept the State’s request for a postponement. As they clearly would have respected a decision to postpone, they must now wholeheartedly respect a decision rejecting that request... the

obligation to uphold rulings is not a matter of choice. It is an essential part of the rule of law to which all are subject as part of the State of Israel’s values as a Jewish and democratic state.”

Ultimately, in compliance with the instructions of the Court, the Migron settlers completed the peaceful evacuation of Migron in September 2012, moving to temporary housing a few miles away.

**In the Supreme Court sitting as the High Court of Justice**

**HCI 8887/06**

**Before:**

**Chief Justice Dorit Beinisch**

**Justice Miriam Naor**

**Justice Salim Joubran**

**Judgment given on 2.8.2011**

**Yosef Moussa Abd a-Razek al- Navot and 6 others**

**Petitioners**

**Against**

**Minister of Defense; IDF Commander in West Bank;  
Head of the Civil Administration and others**

**Respondents**

## JUDGMENT

Chief Justice Dorit Beinisch:

Chief Justice Beinisch noted that the Court was seized with a petition for relief that would give effect to the Respondents’ decision to evacuate the Migron outpost and implement the demolition and demarcation orders issued in respect of it.

The Migron outpost (hereinafter: "Migron" or the "outpost") was situated on a hill north-east of Ramallah, outside the jurisdiction of any regional or local council, in the area of Judea and Samaria. The outpost was established in May 2001 but the government had not made a decision at the time approving its establishment. The State's position was that the outpost had been built illegally on private Palestinian land, without the necessary permits. In June 2006 the outpost comprised about sixty mobile structures ("trailers") and one permanent structure, in which 43 families lived. Additional construction work for more permanent structures had taken place. In 2009, the number of residents estimated to live in Migron stood at about 250, and the outpost was estimated to be the largest in the West Bank. In the following years, the number of structures in the outpost grew, public buildings were added and public areas were expanded.

### Sequence of Events

1. Petitioners 1-6 (the Petitioners) were Palestinian residents of the area, on whose alleged land the outpost had been built. After pleas to the Civil Administration to dismantle the outpost were not met, they petitioned the High Court on 30.6.2006. The "Peace Now" movement joined the petition as Petitioner No. 7. The Petitioners asked the Court to order the State to explain why the outpost, which they claimed had been established illegally on private lands, should not be evacuated; why the demolition and demarcation orders issued by authorities should not be enforced and why the State's declaration that the outpost was illegal should not be given effect.

2. On 17.12.2006 the State responded to the petition. The State did not contest the fact that the land which was the subject of the petition was registered land, privately owned by Palestinians, and formed part of the land of the villages of Burqa and Deir Dibwan, nor did the state contest that the Migron outpost was illegal. The State added that the outpost was located outside the jurisdiction of any regional or local council in Judea and Samaria, and that no permits had been given for infrastructure in the area, apart from electricity cables for the construction of a cellular antenna. Even the connection to the electricity, for the antenna, had been carried out without the necessary permits. The Supervisory Unit in the Civil Administration had initiated proceedings to stop the work and had issued demolition orders against the outpost since its establishment. Discussions had also been held in the relevant ministries and final demolition orders had been issued ordering the cessation of work, which had remained in effect ever since. The State further noted that claims had been made that some of the land had been purchased but the necessary documents were never produced to prove the claims of purchase. The State argued that these unsupported claims were outweighed by the fact that the outpost land was registered land, owned by Palestinian residents. The State noted that the Ministry of Housing had transferred funds to the Binyamin Regional Council; funds that were invested primarily in constructing infrastructure in Migron, however this transfer too had been made unlawfully, since no decision had ever been made by the competent political leadership authorizing the establishment of the outpost.

At the same time the State declared in its response of 17.12.2006 that the Minister of Defence had ordered a dialogue to be initiated in an effort to obtain the voluntary evacuation of the outpost residents. In the absence of a dialogue, the Minister of Defence undertook to evacuate the outpost within a few months, subject to the approval of the Prime Minister and the absence of security, legal and other constraints.

3. The Court noted that on 31.12.2006, Respondent No. 5, the Secretary of the Migron Residents Committee (the Committee Secretary), had filed his response to the petition. There, he claimed that the outpost land was vacant and rocky soil that had never been cultivated, and alternatively that it was absentee land; in any case, he argued, the residents of Migron claimed that they had purchased most of the land in dispute. The Secretary further argued that the outpost had been established with the *de facto* approval of State officials, and was therefore legal. In addition, he asserted that the High Court of Justice was not the proper legal forum to consider this petition and that the petition should have been submitted as a civil action to the competent court, as the relief requested was removal of a trespasser.

4. On 12.2.2007 this Court (President Dorit Beinisch and Justices Ayala Procaccia and Edmund Levy) held a hearing on the petition, during which the State completely denied all allegations regarding the legality of the outpost raised by the Secretary, and announced that *"the only questions on the agenda are the timing and the date of the evacuation of the outpost and whether the outpost will be evacuated voluntarily by the residents and the buildings demolished by them, or whether the authorities will have to be activated for that."* Accordingly, and in the light of the State's notice that the Minister of Defense was working to achieve a systemic solution for the voluntary evacuation of illegal outposts, the hearing of the petition was adjourned to allow the State to complete its handling of the matter.

5. On 1.5.2007 the State filed notice in which it stated that the government was seeking to formulate a plan to evacuate all the unauthorized outposts in Judea and Samaria, including Migron and asked for additional time to update the Court. The Petitioners objected on the grounds that the various promises made over the years about regulating the evacuation of illegal outposts had not been kept. Other requests for time followed in order to exhaust negotiations with the leaders of the settlements in Judea and Samaria for an agreed evacuation. The Petitioners opposed the State's requests, noting *inter alia* that while extensions of time were being requested, construction was continuing in Migron and the outpost had grown unimpeded, despite the State declaring it to be illegal.

6. Subsequently, on 24.11.2008 the State announced that, with the consent of Judea and Samaria Council, Migron would be moved to a new neighborhood to be established in the municipal area of the Adam settlement, on State land located within the boundaries of Plan 240/1, designating the land as residential land.

7. On 26.11.2008 a third hearing was held on the petition (Chief Justice Dorit Beinisch and Justices Miriam Naor and Edna Arbel), at the end of which an *order nisi* was given ordering the Respondents to show cause why all the actions necessary to evacuate the Migron outpost were not being taken. In its affidavits in response the State reiterated the main elements of the agreement reached with the Judea and Samaria Council, and concerning the progress in the planning of the neighborhood designed to absorb the evacuated Migron residents. The State noted that it could not commit to the time involved in implementing the plan to move the outpost to its new location, however, it estimated the total time as two to three years from its response of February 2009.

9. On 6.7.2009 a hearing was held on the opposition to the *order nisi*. The principle argument put by the Petitioners was that the Migron residents were not parties to the agreement reached regarding the evacuation plan, and that it seemed that their agreement to evacuate had never been obtained. The Committee Secretary also noted that the outpost settlers had not participated in discussions about the agreed evacuation and that they were convinced of their rights in the land. The Petitioners further argued that even if the Migron residents would agree to evacuate, planning and construction of the new neighborhood would take much longer than the time estimated by the State, namely, at least seven years. Accordingly, the Petitioners argued that the plan to move Migron was manifestly unreasonable, as it did not guarantee voluntary evacuation, while it allowed a continuous and prolonged violation of the property rights of the Petitioners.

During the hearing, the State repeatedly denied the land rights claimed by the Secretary; it did not deny that the consent of the residents of Migron to the evacuation had not been obtained, but argued that under the circumstances, and given the Judea and Samaria Council's support for the solution, the political leadership believed that the Migron residents would eventually evacuate the outpost voluntarily. Regarding schedules, the State estimated that at the beginning 2010 a detailed plan for the new neighborhood would be approved, and that in the middle of 2010, a year from the date of the hearing, the marketing of the land would begin. This would be the stage at which it would become clear whether the residents agreed to buy the lots and whether, as a result, they were prepared to evacuate the outpost voluntarily. During the hearing the State undertook that should it become clear that voluntary agreement could not be obtained, it would evacuate the Migron residents involuntarily.

12. On 27.7.2011 a fifth hearing was held. Ultimately, the State made an undertaking to the Court to demolish three new structures built in Migron by no later than September 2011. The State asked permission to update the Court on progress in moving the outpost in March 2012.

#### **Discussion and decision**

13. Chief justice Beinisch noted that the petition for the evacuation of Migron was one of the toughest and most unusual cases concerning the establishment of an illegal outpost that had come before the Court, it concerned the illegal construction of an outpost on private land, which even according to the State had to be evacuated. Migron was the largest illegal outpost in Judea and Samaria. It was home to about 250 people and was spread over extensive lands, all privately owned by Palestinians. As noted, there was no dispute between the State and the Petitioners that the outpost sat on private registered Palestinian land, and that the outpost had been established without a permit as required by Government Decision No. 150 of 1996, and without the planning and other approvals required by law. Moreover, the measures establishing and expanding the outpost ignored demolition and demarcation orders issued by the authorities. ... The establishment of the outpost and its ongoing expansion blatantly and defiantly violated the law and violated the property rights of Palestinian landowners.

Chief Justice Beinisch noted that this case was not even one of those cases where the illegality was clear and agreed upon by the parties, but for reasons rooted in enforcement priorities the State wished to defer the date of removal of the illegality for later (e.g. HCJ 1161/06 *"We're On the Map" Movement v. Minister of Defense* (unreported, 14.10.2007). Even according to the enforcement priorities presented to the Court by the State as its overall policy in HCJ 9051/05, *"Peace Now" Movement et al v. Minister of Defense*, a policy which the State continued to apply, the outpost was a top priority for law enforcement in Judea and Samaria, and had to be evacuated and dismantled. The State's position on this issue was consistent. Only recently the State had declared to the Court that: *"It is emphasized that the Defense Ministry does not intend to accept the construction of new structures in the Migron outpost ... Therefore, the Defense Ministry seeks to clarify and emphasize that the Civil Administration will work fast and efficiently to enforce the planning and construction laws for all new construction to be performed at Migron"* (State's response of 7.25.2011). Nevertheless, despite the State's declarations that it would not accept the existence of the outpost, five years had passed since the petition was filed and the outpost had grown and expanded. The Court stated that this factual chronology was problematic, to say the least.

14. Chief Justice Beinisch noted that the Court was not ignoring the difficulties raised by the evacuation of an outpost in the area, not to mention a large outpost which had been in place for a long time. These difficulties had grown bigger as time had passed, and the Court could understand the desire of the Respondents to implement the evacuation with the consent of the residents, without recourse to force. This aspiration was based on the desire to establish proper relations of trust and cooperation between the authorities and the residents, even though they had broken the law. According to the Court, these difficulties would have been prevented or greatly diminished had the State taken effective enforcement measures in the first place and prevented the outpost from being established and expanded. However, given the known complexity of forced evictions of settlements and the experience gained by the Respondents handling these matters, the Court had given the State time to examine the possibility of achieving an agreed evacuation, in so far as possible.

The Court noted that nonetheless, almost three years had passed since the date on which the State had informed the Court that it had reached an agreement with the Judea and Samaria Council regarding the evacuation of the outpost, and after numerous extensions of time, it was still not clear whether the plan to evacuate Migron by agreement would be implemented. The Court noted that for reasons which could only be speculated upon the contacts conducted by the State to reach an agreed evacuation had not been conducted with the residents of Migron, but with the Judea and Samaria Council, which on the face of it did not seem to represent the residents. Moreover, the residents of Migron had refrained from responding or appearing at the hearing before the Court and



had avoided making a declaration to the Court that the move to the planned new neighborhood in Adam was acceptable to them – while the State had refrained from asking them to make such a declaration. Similarly, it appeared that the Committee Secretary adhered to his original petition, and the residents had not abandoned their claims of rights in the land. The State had also clarified that *“the residents of Migron are not party to the agreement between the Ministry of Defense and the Judea and Samaria Council. Therefore, the question of whether the residents of Migron will cooperate with the said agreement will be resolved in practice only ... when the residents of Migron are offered the opportunity to purchase residential plots in the new neighborhood”* (affidavit from 7.25.2011). The Court explained that within the framework of the evacuation proceedings for the three new structures built in Migron, the State had maintained direct contacts with the residents of Migron, in order to try and refrain from forcible demolition. These contacts were unsuccessful. Consequently, the Court held that considerable doubt clouded the prospects of realizing the plan to evacuate the outpost by agreement, even without taking into account the State’s forecast that even with such an agreement – this process would take years.

15. Under these circumstances, the Court stated that it could not continue to accept the State’s linkage between the evacuation and relocation of the outpost to the new neighborhood, when no current timetable for completing the relocation program was provided to the Court. This was due to the severe and ongoing violation of the rights of the Petitioners and the rule of law, and in light of the many delays in advancing the voluntary evacuation plan. ... Under these circumstances, the Court held that there was no justification for preserving the illegal situation that had continued since the establishment of the outpost, and the knot between the evacuation of the outpost and the establishment of new neighborhood had to be untied.

The Court stated that based on the approach that evacuation by agreement and not by force was preferable in the circumstances the Court had been ready to allow the State considerable time to formulate a plan and put it into practice.... But this proved unsuccessful... The consent factor was a proper and weighty consideration, but it was not a decisive factor, in the face of which all the legal values that Israel believed in had to retreat. Alongside the priority which had to be given to evacuation by agreement, consideration was also to be given to the violation of the rights of the Petitioners and of the rule of law, whose weight had increased as time passed and as the illegality continued. When the harm was major and significant as in this case, the State, at minimum, had to point to a real likelihood of success of the plan in a reasonable time, to properly balance the damage caused vis-à-vis the benefit and value ensuing from evacuation by agreement and not by force. This had not been done in the present case.

16. This Court stated that it had made every effort to show restraint and patience despite the blatant violation of the law, because of the need for internal peace and because of the desire to avoid any appearance that the dispute before the Court was a political dispute between different views competing for Israeli public opinion. In a similar matter, years ago, in the case concerning the evacuation of the Elon Moreh settlement, Chief Justice M. Landau (then Deputy Chief Justice) had said, *“I see myself as obligated to rule in accordance with the law in any matter lawfully brought before a court, I am so compelled, in the good and prior knowledge that the public at large will not pay attention to the legal reasoning but only to the final conclusion”* (HCJ 390/79 Duikat et al v. Government of Israel et al, 34(1) PD 1, 4 (1979) (hereinafter: the *Elon Moreh* case). Agreeing with former Chief Justice Landau, Chief Justice Beinisch stated that this was the Court’s task and duty as judges.

The guiding principle which carried decisive weight in the Court’s judgment was that the State authorities had to act to maintain the law and enforce it in the area, particularly when breach of the law violated the property rights of protected persons; this also accorded with the position of the State as presented to the Court many times. No one disputed that as a matter of law no settlement could be established on private land belonging to Palestinians, and according to the Respondents too, causing harm to the property rights of those residents had to be regarded with severity. Accordingly, the State had set this principle at the top of its priorities for law enforcement in the area.

Chief Justice Beinisch noted that the declared policy of the Israeli government was consistent with the basic principle that had guided the Court since it first started deliberating on the issue of the establishment of settlements in Judea and Samaria. In the *Elon Moreh* case, Chief Justice M. Landau had declared:

*"... When the property rights of the individual are in question, the matter cannot be dismissed on the grounds of the 'relativity' of the right. According to our legal system, the individual's property right is an important legal value protected by civil and criminal law alike, and it is immaterial, in so far as concerns the right of the owner of the land to protection of his property under the law, whether the land is cultivated or rocky soil" (id., pp. 14-15).*

In the spirit of the remarks in that judgment and in many other judgments given over the years, Chief Justice Beinisch declared that the law required the State to avoid dragging its feet in circumstances where it had to act to enforce the law, particularly when the State itself did not dispute that duty.

Accordingly, the Court decided to grant an *order absolute* requiring the State to evacuate the Migron outpost. Chief Justice Beinisch stated that she could only express the wish that the residents of the outpost would come to their senses and accept their obligation not to appear to be lawless and agree to settle in another site permitted to them by the State.

The Court stated that it would grant the Respondents considerable time to make preparations to comply with the *order absolute* and ordered the evacuation procedures to be completed by 31.3.2012.

Justice M. Naor and Justice S. Joubran concurred.

*Dr. Rahel Rimon, Managing Editor of JUSTICE, is a lawyer specializing in maritime law and family law.*

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# Seminar at the Schechter Institute for Jewish Studies, held on March 22, 2012

Summary by Ronit Gidron-Zemach  
IAJLJ's Executive Director

In March 2012, the International Association of Jewish Lawyers and Jurists, in association with the Schechter Institute for Jewish Studies, held a seminar in Jerusalem under the heading *Religion and State – Orthodox, Price Tags and Exclusion of Women*.

This subject has been on the IAJLJ's agenda for some time; however, as a result of the escalating tension between the secular and orthodox population, and at the request of our members in Israel and abroad, we decided to devote a one-day seminar to examining the sources of the conflict from both a legal and Jewish perspective. Our objective was to determine the reasons for the current situation and consider what changes can be made to heal the divide.

The opening remarks were given by Mr. Efraim Halevy, former head of the Mossad (Israel's Institute for Intelligence and Special Operations). He addressed the potential damage to Israeli society should this rupture continue or deepen.

Judge (Ret.) Hadassa Ben-Itto, former president of the IAJLJ, referred to the *lacunae* in prevailing legislation relating to the Rabbinical Courts and their harmful ramifications for women. Judge Ben-Itto explained how the case law produced by the Rabbinical Courts is both non-democratic and chauvinistic.

Prof. Asher Maoz of Tel Aviv University spoke about religious boundaries within the public domain and considered the limitations of the concept of liberality, and the point at which reactions to acts committed by third parties cross that threshold.

Prof. Menachem Friedman of Bar Ilan University talked about the historical developments that have led to the recent rise of religious fundamentalism.

Prof. Alice Shalvi was the moderator of a dynamic and colorful session in which Prof. Ruth Halperin-Kaddari of Bar Ilan University, Dr. Tzvia Greenfeld and Rabbi Dr. Einat Ramon, Dean of Seminary School for Rabbis (traditional) participated. The session was entitled The Exclusion of Women and it offered the audience three very different approaches to the phenomenon of the segregation of women.

The seminar concluded with a panel comprising Rabbi Prof. David Golinkin, the President of the Schechter Institute, Dr. Amichai Magen of the Inter Disciplinary Center and Adv. Shai Nitzan, Deputy Legal Advisor to the Government, who concluded by calling upon Israeli society and the Israeli Police to assist the judicial system to prevent and punish these abhorrent acts of segregation.

## IZHAK NENER – IN MEMORIAM

**Hadassa Ben-Itto**  
**Former President of the Association**



Izhak Nener was my best and closest friend for many years, and I still find it almost impossible to come to terms with his passing away.

Twenty-five years ago I only gave my consent to stand for the presidency of the IAJLJ, and step into the big shoes of my mentor, Justice Haim Cohn, on the insistence of Nener and his offer to act as my first Deputy President. With his standing and reputation in the Jewish world and in the legal community, his full dedication to Israel and to the cause of the Jewish destiny, his firm commitment to the law and to human rights, we could have reversed roles, but his modesty prevailed.

We acted as a team, full partners in the conduct of the Association, dividing the work between us on the basis of full equality, irrespective of our official roles and titles.

We served together for sixteen years, but I could never have done it without his advice, his support and his invaluable contribution. Our daily consultations, our practice of arriving at important decisions after long deliberation and only by consensus, helped us not only to attain our goals, but also to cross some stormy seas.

How do I speak of Itzhak Nener without using superlatives? A mission impossible, as all those who knew him would agree.

In this limited space I shall mention just a few of the outstanding milestones in his long life.

Itzhak made *Aliya* as a young idealistic Zionist student shortly before the outbreak of World War II, but once he learned that his entire family had perished in that inferno, the Holocaust became a living presence in his life, and everything he did in the public sphere was dictated by his personal philosophy, his staunch commitment to the Zionist dream and his intense efforts to preserve the memory of the victims and fight against Holocaust denial.

Starting as a young penniless student, he succeeded in becoming a lawyer and building an impressive legal career. He raised a fine family, his children sharing his ideals and continuing in his footsteps, each in his own field.

He was not only a good lawyer; he was a people's lawyer, fully dedicated to his professional duties, while setting an example of adherence to a moral and ethical code, which he instilled in generations of outstanding legal figures who passed through his law firm.

Although he never neglected the daily management of his thriving law firm and gave his full attention to his family, it is surprising how he found the time and the energy to be so active in the public sphere, both locally and internationally. Itzhak was among the founders of the Israeli Bar Association and the IAJLJ, he held official posts in both, leaving his mark and serving as an example in both organizations. At the same time he also held high office in international bodies, amongst them the "Liberal International" and the World Jurist Association.

Itzhak Nener was at the forefront of the legal battle on behalf of Jewish *Aliya* from the Soviet Union. He utilized his stature, rhetorical abilities and international connections to fight for the rights of Jews behind the Iron Curtain. He sponsored IAJLJ resolutions, led a delegation of Israeli lawyers and jurists to the CSCE Vienna Helsinki Follow-up Conference in 1986 and in various international conferences developed the legal arguments that ultimately led to the Soviet Union opening its gates to Jews who wished to leave.

Despite not holding an official role in the Israeli government, he was recognized by many as one of Israel's best representatives, proudly carrying Israel's message and often preventing hostile resolutions by creating and maintaining friendly contacts and avoiding offensive confrontations.

He will be missed by many.





הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (I.A.J.)

NGO: IAJLJ – The International Association of Jewish Lawyers and Jurists  
Representative delivering the statement: Adv. Tom Gal

### Human Rights Council 20<sup>th</sup> Session, July 2, 2012 - Item 7

Today, the implementation of the report of the fact-finding mission regarding the humanitarian flotilla of May 2010 is being considered. Two different commissions inquired into the flotilla incident – one established by this Council and the other by the Secretary-General. However, only with one of these commissions did the State of Israel cooperate (for its own reasons) – the Inquiry Panel established by the Secretary-General.

Notwithstanding the importance of the fact-finding mission established by the Council and its conclusions, it seems that the report submitted by the Secretary-General Panel might have a larger factual foundation, since the Panel had access to evidence submitted by both sides (due to their full cooperation with it). Unfortunately, and although the conclusions and recommendations submitted by the Secretary-General's Panel were balanced and followed the participation of both Israel and Turkey, both these states refused to respect and implement them.

The refusal of Israel and Turkey to implement the Panel's recommendations (among them monetary compensation to the victims of the incident) is disappointing. Such disappointment is stressed due to their cooperation with the Panel and its balanced outcome: recognizing that neither party intended the outcome of the incident. On the one hand, the report recognizes Israel's excessive use of force and its obligation to investigate the incident and provide remedies to the victims. On the other hand, the report determines the legality of the blockade and that Turkey should have tried harder to prevent the humanitarian flotilla in the first place.

Therefore, the International Association of Jewish Lawyers and Jurists believes that the Council and the international community should invest their efforts in encouraging Turkey and Israel to implement the Panel's report; a report that might renew the cooperation and re-establish the friendly relations that once existed between these two major states. In this period of time, when the Middle East is unstable, civilians are killed, detained and tortured due to political uprisings; cooperation between Turkey and Israel would be welcomed. Thus, the International Association of Jewish Lawyers and Jurists recommends and encourages both Turkey and Israel to take the first step by both respecting and implementing the recommendations in the report of the Panel.

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הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

NGO: IAJLJ – The International Association of Jewish Lawyers and Jurists  
Representative delivering the statement: Adv. Tom Gal

### Human Rights Council 20<sup>th</sup> Session, July 3, 2012 - Item 9

Item 9 is dedicated to combating racism and xenophobia. The existence of Item 9, as part of the Council's agenda and other international tools (such as the Genocide Convention) reflects the importance given to these issues by the international community in general and the UN specifically. Nonetheless, and despite these international tools, last week, an incident violating the concept of Item 9, the Genocide Convention and the spirit of the UN Charter occurred, within the UN framework.

Last Tuesday, a conference concerning combating drugs and drug trafficking took place in Teheran. The aim of the conference was to encourage Iran's much appreciated efforts to combat the phenomenon of drug trafficking and strengthen the cooperation between states on the matter. The UN office on drugs and crimes participated in the conference. Representatives of different states, some members of this very Council, attended the conference. Drug trafficking is a serious phenomenon that should be combated and diminished. However, as reflected in the *New York Times* article, Iran's Vice-President, Mr. Rahimi, saw fit to use the stage given to him to express once more Iran's antisemitic agenda. Apparently, among other antisemitic expressions, Mr. Rahimi blamed the Jews and Israel for the drug trafficking phenomenon, claiming that they are conducting a drug trafficking policy.

The time given to this current statement is limited, thus I will not be able to review all statements made during that conference nor can I explore the different and numerous ways in which Jews have assisted in combating the drug phenomenon. Suffice it to say that these statements have no factual foundation and are disconnected from reality. These statements are driven from pure hatred; they amount to hate speech and violate the Genocide Convention. They are a shame to the UN regime. More shocking than these outrageous statements, is the idleness and inaction of the attending representatives from both the UN and other states. None of them saw fit to leave the conference or object to these statements.

The International Association of Jewish Lawyers and Jurist, requests this Council to condemn such incidents; moreover, it hopes that further participation by state representatives abusing the UN framework to make such statements, will be prohibited.

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הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

Yasser Rida, Ambassador  
Arab Republic of Egypt  
By email

20 July, 2012

Your Excellency,

On this special day, July 20, 2012, The International Association of Jewish Lawyers and Jurists (IAJLJ) respectfully addresses you with regard to Mr. **Ouda Tarabin**.

Mr. Tarabin, an Israeli citizen, who was sentenced at the age of eighteen to 15 years imprisonment for the offence of spying, has already been incarcerated in Egypt for more than 10 years. Today, July 20, 2012 is Mr. Tarabin's birthday and accordingly **we call upon you to intervene in this matter and bring about his immediate release.**

The IAJLJ has been working towards Mr. Tarabin's release since 2010 when it first wrote to the outgoing president, Mr. Hosni Mubarak on this matter. In view of the fact that we did not receive a reply to our letter, in August 2011 we approached the High Commissioner for Human Rights asking her to exercise her power and instruct the Government of Egypt to arrange for the immediate release of Mr. Tarabin. Our arguments were based on both legal and humanitarian grounds.

Both letters are enclosed.

Recently, we received a letter from the Working Group on Arbitrary Detention at the Human Rights Council which clearly stated that the legal process, sentence, and consequential incarceration of Mr. Tarabin, were wrongful (enclosed). Further, this letter too called upon the Government of Egypt to immediately release Mr. Tarabin.

The IAJLJ has sent a copy of the HRC letter to the newly elected president, Mr. Morsi, but so far has not received any response.

We wish to draw your attention to the fact that today, this letter is being submitted to more than ten Egyptian embassies, world wide, in order to raise public awareness of this wrongful and shameful case.

**We call upon you to take part in our on going efforts to release Mr. Tarabin in the name of justice.**

Yours sincerely,

Irit Kohn, Adv.

President, IAJLJ

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הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

Omar al-Zein, Secretary General  
Arab Lawyers Union  
13 Ittehad El-Mouhameen El Arab St.  
Garden City  
Cairo, Egypt

October 17, 2012

Secretary General Omar al-Zein,

The International Association of Jewish Lawyers and Jurists (IAJLJ), is a non-political organization with special NGO status at the UN, which works to promote human rights, equality, and the rights of people everywhere to a life of peace. One of our objectives is to fight against antisemitism wherever it is in the world.

We invite you to learn about the Association on our website, located at [www.intjewishlawyers.org](http://www.intjewishlawyers.org).

Our Association was appalled to read about the honour accorded by the Arab Lawyers Union, the organization in which you hold the office of Secretary General, to the family of the female suicide bomber who perpetrated the attack on Maxim Restaurant in Haifa in 2003. In that attack, 21 innocent men, women and children, were killed and more than 50 people were injured. The grievous loss of life has meant that this attack is considered one of the most heinous faced by Israel to date.

**This reprehensible crime which should be condemned by society is one that you have chosen to honour.** The ALU, an organization of lawyers, which represents about 15 Arab countries, and which claims to work for human rights and promote law, and act in accordance with the law, is undermining its own purposes and the profession which it represents by granting this award to a suicide bomber.

**The IAJLJ regrets that that ALU has chosen to grant an award that contradicts the most basic principles of law. The oxymoron in the grant of this prize, speaks for itself and the IAJLJ can only protest and express its abhorrence at the bad judgment this represents.**

Through this award your organization encourages terrorist activity; activities that violate international law.

Your website states that your organization is associated with UNESCO and has been given the special status of an NGO at the United Nations. Organizations such as yours and ours which have been recognized in this way by the United Nations are expected to respect the United Nations Declaration of Human Rights and the principles on which the UN was founded.

By granting the aforesaid honour, grounds have arisen to revoke your NGO standing.

A copy of this letter will be sent to the UN Secretary General together with a separate request to revoke the ALU's status as aforesaid.

We hope that the ALU will, at a minimum, issue an apology and withdraw its wrongfully given decoration.

Yours sincerely,

Irit Kohn, Adv.  
President, IAJLJ

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THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (I.A.J.)

Secretary-General Ban Ki-Moon  
The United Nations  
New York

October 18, 2012

Dear Secretary General Ban Ki-Moon,

I am writing to you on behalf of the International Association of Jewish Lawyers and Jurists (IAJLJ) and attaching a letter which we have sent to Omar al-Zein, Secretary General of the Arab Lawyers Union. The ALU is an association holding NGO status at the UN.

As you will see we utterly condemn the prize given by the ALU to the family of the suicide bomber who cold bloodedly murdered 21 innocent people and injured another 50 in 2003 in Maxim's Restaurant in Haifa, Israel.

We ask that in view of this reprehensible award which counters every principle of justice and is in blatant contradiction to the principles of the UN, you take steps to censure the ALU and revoke its formal recognition at the UN.

Yours sincerely,

Irit Kohn, Adv.  
President, IAJLJ

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THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

## IAJLJ - Membership Form

Yes. I want to join/renew my membership at IAJLJ and pay the annual membership fees - US\$100 (or equivalent in NIS) per year - for the year/s \_\_\_\_\_, Total: \_\_\_\_\_ US \$ / NIS.

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Mr.  Ms. שם בעברית: \_\_\_\_\_

First name: \_\_\_\_\_

Last name: \_\_\_\_\_

Title (Prof., Adv., etc.): \_\_\_\_\_ תואר (פרופ', עו"ד וכו'):

Occupation: \_\_\_\_\_ עיסוק:

Street Address: \_\_\_\_\_ כתובת:

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Members are entitled to have their names and details appear on our Lawyers Directory website. If you wish to upload your details to this directory, go to: <http://www.lawyers.org>

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# צדק

**ENGLISH:** 1. justness, correctness. 2. righteousness, justice. 3. salvation. 4. deliverance, victory. [**ARAMAIC:** צדק (he was righteous), **SYRIAC:** זדק (it is right), **UGARITIC:** *šdq* (= reliability, virtue), **ARABIC:** *šadaqa* (= he spoke the truth), **ETHIOPIC:** *šadaqa* (= he was just, righteous)] Derivatives: צדקה **POST-BIBLICAL HEBREW:** alms, charity. Cp. **ARAMAIC** צדקתה (= justice). **PALMYRENE** צדקתה (= it is right). צדק 1. just, righteous. 2. pious.

*After Ernest Klein, A Comprehensive Etymological Dictionary of the Hebrew Language for Readers of English. 1987: Carta/University of Haifa*

Justice is one of the goals of the International Association of Jewish Lawyers and Jurists. Thus, the Association works to advance human rights everywhere, addressing in particular issues of concern to the Jewish people through its commitment to combat racism, xenophobia, antisemitism, Holocaust denial and negation of the State of Israel.

We invite you to join a membership of lawyers, judges, judicial officers and academic jurists in more than fifty countries who are active locally and internationally in promoting our aims.

As a new or renewing member, you will receive a subscription to *Justice* and a free, one-month trial subscription to The Jerusalem Post. You will be invited to all international conferences of the Association and may vote and be elected to its governing bodies. You may also have your name and other information appear in our online directory linked to our main website.

Help make a difference by completing the membership form on the opposite page and mailing it to us together with the annual membership fee of US \$50 or NIS 200.



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