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**TABLE OF CONTENTS**

**PRESIDENT'S MESSAGE** / Hadassa Ben-itto - 2

**Propagating Anti-Semitism on the Internet** / David Sitman - 3

**THE MIDDLE EAST PEACE PROCESS**

**The Hebron Agreement** / Daniel Reisner - 12

**The Holy Places in Jerusalem: Legal Aspects (Part Two)** / Shmuel Berkovitz - 17

**Can the Law Survive a Change in Political Sentiments?** / Moshe Wertheim - 22

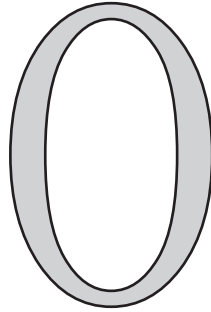
**Europe vs. Intolerance** / Peter Leuprecht - 27

**Working to Retrieve Lost Jewish Assets  
in Europe** / Aaron Abramovich and Yehouda Ofrath - 34

**Nazi Gold and Neutral Countries: The Role of  
Switzerland and the Swiss National Bank** / Daniel Lack - 41

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# PRESIDENT'S MESSAGE



On 1-3 June 1997, our Association will hold its World Council Meeting in London. Our council meetings are open to all members, and indeed hundreds avail themselves of the opportunity we offer to meet colleagues from around the world and exchange information, views and ideas on public as well as professional matters. We also use these occasions to provide information and insights on the most urgent subjects on our agenda, with the participation of prominent experts in each field.

As our next World Council Meeting is planned for the year 2000, we have decided to use this occasion to discuss a number of issues under the title - *The Rule of Law at the Millennium's End: Myth or Reality*. We have given much thought to the

specific issues which may properly be considered under this heading, and although a variety of possibilities come to mind we hope that the ones we have selected will fall within the general consensus.

Fifty years after the conclusion of the Second World War, and after the Holocaust, racism, xenophobia and anti-Semitism are not only present in our society but are a growing phenomenon. One of its most abhorrent manifestations is denial of the Holocaust. We have persistently advocated the use of legal means to combat these evils, but while a slow process of legislation and litigation has been targeting racial incitement of an oral or written nature, we have been amiss in not yet confronting the spread through electronic means of hate material. Today the Internet provides access to racial and anti-Semitic propaganda to any computer user in the privacy of his own home. Future generations will hold us accountable for not dealing in time with this growing threat.

Another matter which not only troubles but actually threatens all of us is international terrorism. We plan to face it and ask frankly what is really being done apart from the exchange of rhetoric so-often heard in much publicized international meetings.

Facing all of us is also the problem of asylum and immigration. Borders are often meaningless to those who are poor or persecuted. Affluent countries, which enjoy the benefit of cheap labour, are often reluctant to practice what they preach in terms of equality and human rights. The phenomenon of racism and hatred of foreigners is fuelled by unemployment and by economic distress.

Placing these matters on the agenda of our upcoming meeting seemed a natural choice.

\*

The Association wishes to convey its condolences to Adv. Baruch Geichman, Honorary Deputy President of the Association, on the untimely death of his wife Ahuva. The Association mourns the passing of Adv. Markus Pardes, Deputy President of the Association and President of the Belgian Section.



*Hadassa Ben-Yahu*

# Propagating Anti-Semitism on the Internet

David Sitman

In 1996, the phenomenal growth of the Internet continued unabated with penetration into new countries, regions, markets and an ever-widening range of day-to-day activities. Not surprisingly, the role of the Internet as a major battleground in the fight to influence public opinion also continued to grow. While it still lags behind newspapers, magazines, radio and television in the size of its audience, the Internet has already captured the imaginations of people with a message, including purveyors of hate, racists and anti-Semites. On the Internet, one can disseminate a large amount of material at a relatively low initial cost, regardless of the size of the audience. These materials can include not only text, but also charts and tables, photographic images, sound recordings and video clips. There are various possibilities for interactive dialogs and discussions.

Most of the anti-Semitic materials on the Internet today still come from the United States and Canada, are written in English, and appeal mainly to the North American audience. This is not surprising, as the Internet began in the U.S. and has had its greatest penetration into society at large there. However, Internet access is now available in over 100 countries and use of the Internet has become common throughout the industrialized world. As a result, we are witness to the appearance of anti-Semitic sources throughout the globe. Due to the open international nature of Internet access, most sources are available in English. Nonetheless, an ever-increasing number of sources are appearing in other languages as the Internet-connected audience grows and the multilingual capabilities of the popular Internet software programs are enhanced. Many of these non-English sources are hosted on computers in North America, even though the principal audience is elsewhere.

This article is divided into three parts: one, gives a brief introduction to the most important systems for communication in the

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This report has been prepared for *JUSTICE* with the support of a team of the Project for the Study of Anti-Semitism of Tel-Aviv University, headed by Dr. Dina Porat, leading computer expert David Sitman, and Co-ordinator Ronni Stauber.



Dina Porat



David Sitman



Ronni Stauber

Internet. Two, is a survey of anti-Semitic material currently available on the Internet. Three, deals with tracking and combating anti-Semitism on the Internet.

## Communicating on the Internet

Why have the anti-Semites chosen the Internet to distribute their message rather than one of the "online services" such as America On-Line or CompuServe or Prodigy? The online services are proprietary systems, and all information is placed on computers owned and operated by the services. Subscribers may access the information, but making access available to others can only be done with the express agreement of the service. Even in the discussion groups on these online services, there is some degree of control, and legal responsibility, by the service. These services are now also offering connectivity to the Internet to their subscribers, but they are essentially information services.

The Internet, on the other hand, is a communications service. When you connect your computer to the Internet, you are gaining access to the full range of services and systems which are provided on top of the Internet communications infrastructure. Any computer which is connected to the Internet can be used to disseminate information as well as to receive. A computer with only an intermittent Internet connection (e.g., a computer connected by dial-up modem to an Internet service provider) is not suitable as the information it holds will not be available at all times. However, any computer with permanent Internet accessibility (e.g., the computers of an Internet service provider, or the computers of an organization with a dedicated

communications line to an Internet service provider) can be used. Due to the relatively high cost of a dedicated communications line, individuals wishing to publish information on the Internet usually arrange to have their material hosted on the computer of some organization rather than using their home computer.

What legal responsibility does the hosting organization have for material made available on its computers or over its communications lines? Can the hosting organization claim ignorance as a defense in the case of a client having illegal material on the site?

These issues have yet to be worked out in most countries. In the United States, many Internet Access Providers (IAPs) are claiming that they should be given "common carrier" status, but they are not necessarily willing to be subject to the regulatory practices required of common carriers. They would like to be information providers, being able to decide who can supply what information via their service, but balk at taking on the responsibility that this entails. Still, several IAPs have taken that responsibility and have defined what materials may not be placed on the Internet through them.

The most widely used systems for the dissemination of anti-Semitism over the Internet today are the World-Wide Web and Usenet, with lesser use of mailing lists, FTP and Gopher.

### **World-Wide Web**

The World-Wide Web (YAW) is a global information system made up of a body of software and a set of protocols and conventions which uses hypertext and multimedia techniques to provide easy access to information throughout the Internet. The programs for accessing and viewing information in YAM are called "browsers". Using a browser, one can access information which has been prepared for YAM using the Hyper Text Transfer Protocol (HTTP) as well as other systems such as FTP, Gopher, and Usenet news. WWW browsers use an addressing system called Uniform Resources Locators (URL) to request information. A URL consists of the name of the system in which the information is formed and the Internet name of the computer on which it is stored as well as additional information.

Because the URL contains the Internet name of the computer on which the information is stored, it is possible to discover where the information is located. While it might not be possible to determine the author, it will at least be possible to find out who is responsible for the computer. Thus, if one encounters offensive material in WWW, there is an address for complaints.

### **Usenet News**

Usenet is a world-wide distributed discussion system. It consists of a set of "newsgroups" with names that are classified by subject. There are thousands of newsgroups covering a very wide range of topics. The first part of the newsgroup name suggests the general area of interest, so that groups beginning with 'soc.' (e.g., soc.culturejewish) deal with social issues while groups beginning with 'austin.' are of interest to people in Austin, Texas. "Articles" or "messages" are "posted" to these newsgroups by electronic mail -,these articles are then broadcast to other interconnected computer systems via a wide variety of networks. In thousands of sites around the world, a Usenet "feed" is maintained through which the sites get the articles of the newsgroups. Each site can decide which newsgroups it wishes to carry and how long articles are held before they are erased to make room for new ones.

There are various ways to manipulate the name and address that appear in the "From": header field of electronic mail messages. Thus, it is often impossible to determine the true identity of the sender of a Usenet article. Moreover, one can make it appear that the message actually came from someone else.

### **Anti-Semitic Sources on the Internet**

Many anti-Semitic groups have begun to utilize the Internet for publication without abandoning their previous methods of distribution. In some cases, only partial information is available electronically, along with forms for ordering the full print sources.

Anti-Semites have also been prominent in various Usenet newsgroups. These include newsgroups with radical rightwing themes and Jewish newsgroups in which they put forth their message as well as appearing as a disruptive influence on unrelated newsgroups.

### **Anti-Semitic WWW Sites**

Finding anti-Semitic Web sites does not require any detective work. After all, anyone who puts up a site wants to be found and wants to attract as large an audience as possible. The net address of the site is clearly indicated, or else WWW browser softwares (such as Netscape Navigator or Internet Explorer) would not be able to find the site. Most of the antiSemitic sites have pointers to many of the other sites, as is customary in any subject area on the Web. The YAW network is clearly for mass, public distribution (although it is possible to restrict access to information on

the Web in various ways). Someone who is interested in anonymity or non-traceability, or who wants to limit access to a small, select group, will not use WWW.

All of the following WWW sites were accessible on 8 March 1997, unless otherwise noted. However, it is important to keep in mind that, in particular, unprofessional, low-budget singleperson sites have a tendency to come and go quite quickly, often without leaving a trace. In the case of anti-Semitic sites, many of which are placed on the computers of Internet Providers which allow free or inexpensive individual homepages, the life expectancy of the site is rather short. When one considers that these sites may be in violation of the rules which have been set by the Internet Provider, who is also subject to adverse publicity for hosting an anti-Semitic site, it is no wonder that these sites disappear, and occasionally reappear, quite quickly.

Moreover, the quality of these sites is low. This is reflected in the poor layout, the choice of colours, the frequent misspellings and the many incorrectly defined links. In short, there is little reason for anyone to visit most of these sites, and even less reason to return for a second visit. There are exceptions, however: sites which are professionally maintained, frequently updated and have an attractive layout.

The sole criterion for inclusion in the following listing (see pp. 10-11) is the presence of overtly anti-Semitic material on the WWW site. Not included are the many blatantly anti-Semitic organizations with a Web presence that do not display their anti-Semitism on their site.

## Holocaust Denial

By and large, the WWW sites devoted specifically to Holocaust denial are meant to project an image of responsible scholarship and to serve as the academic face of anti-Semitism on the Internet. They strive to maintain the facade of dignified truth-seekers using scientific principles to try to overcome the "propaganda of the Holocaust".

These sites all invoke the right of freedom of expression and portray themselves as victims of vicious attacks meant to keep them from spreading the truth.

### The Zündelsite

The Zündelsite, run by Ernst Zündel in Toronto, Canada, is the most well-known of the WWW sites for Holocaust denial. This tri-lingual (English, German and French) site has been the focus of much press coverage and public attention, and Zündel

has had some success in appealing to the cause of freedom of speech on the Internet. Zündel is careful to avoid overt verbal attacks on Jews and states that "some Jews caught up in the maelstrom of the largest war in history unfortunately died."

The three central claims of the Zündelsite are:

1. Adolf Hitler never gave an order to eradicate the Jews;
2. there were no homicidal gas chambers in any German concentration camps set up specifically to kill human beings, and
3. not nearly as many Jews died or were killed as a result of German policies as is now widely and ever more viciously claimed. Jews were a vocal small minority in a global struggle involving many nationalities. It is deceptive to portray them as prime "victims" of a non-existent German genocidal policy.

Along with the Holocaust denial material, Zündel gives special prominence to material covering his fight against those who try to silence him. Not only has his Internet provider, Webcom in California, agreed to continue to carry his material, but "mirror sites" (sites with the same material at a different location) have been set up for him at MIT and Carnegie Mellon University in the US to protect his freedom of expression.

The Zündelsite is well-maintained, frequently updated, and now contains many audio clips of Zündel speaking on a number of Holocaust-related issues such as "German War Reparations to Israel".

### Committee for Open Debate on the Holocaust (CODOH)

CODOH is the work of another well-known Holocaust denier, Bradley R. Smith. Smith has recently (April, 1996) added a large section to his site devoted to the revisionist David Irving. Smith has targeted college campuses has his potential audience and, as such, he tries to appeal to that audience by invoking the right to freedom of expression, including some detailed material (from Irving), and giving a list of "Hot Links": pointers to various interesting sites on the Web, most of which have no connection at all to Holocaust denial or anti-Semitism, but rather are connected to "Internet culture" in general.

### Institute for Historical Review

Greg Raven, who manages the site, claims that this site "is not supported, sponsored, or financed by the Institute for Historical Review", a claim which has been hotly contested by Ken McVay

of Nizkor. According to the "counter" on the first page, this site is currently getting over 2000 visits a month. The site contains excerpts from the print journal of the Holocaust deniers, The Journal for Historical Review, going back to 1980, the year it was established.

In 1995, Raven obtained the list of the e-mail addresses of all the members of the History of the Holocaust electronic mailing list (several hundred scholars, survivors, children of survivors, etc., with an interest in Holocaust research) and sent them an email message promoting his revisionist materials.

### **Adelaide Institute**

The Adelaide Institute in Australia is one of a small but growing number of anti-Semitic sites outside North America. It calls itself "the final intellectual adventure of the 20th century". The site consists mainly of pointers to the main North American sites for Holocaust denial and other sources.

### **Arthur Butz**

Arthur Butz is Associate Professor of Electrical and Computer Engineering at Northwestern University, Evanston, Illinois, USA. He is the author of *The Hoax of the Twentieth Century* (1976), a book of Holocaust denial published by the Institute for Historical Review.

This site was established on 7 May 1996 on a server at Northwestern University which is intended as a tool for people to learn the basics of publishing information on the World-Wide Web. At present, the site contains only an article by Butz which appeared in the Northwestern daily newspaper in May, 1991, with some supplementary information.

## **Aryan Racism**

### **National Alliance**

The National Alliance was founded by William Pierce and is based in West Virginia. It is dedicated to the creation of a new Aryan society, meaning "pop music without Barry Manilow and art galleries without Marc Chagall". From the National Alliance WWW site, one can get information about their radio broadcasts and order their printed information, as well as reading about Pierce's goals, principles and ideas.

Pierce rejects Judeo-Christian culture:

"We are part of Nature and subject to Nature's laws. Within the scope of these laws we are able to determine our own destiny... This view may be contrasted with the Semitic view, which separ-

ates man from the rest of the world and postulates a divine but nevertheless manlike being who rules man and the world by supernatural law."

The message of the National Alliance is aimed at white people (defined as "a non-Jewish person of wholly European ancestry") and preaches opposition to all non-whites. Their main enemy, however, is clearly the Jews and their "alien grip on our news and entertainment".

### **Stormfront**

Don Black's Stormfront site is one of the more technically polished anti-Semitic sites. Black uses the latest WWW techniques, the site includes a section with articles in German and Spanish, and the various links all seem to work. Among the links are one to David Dukes' Senate campaign site and Pat Buchanan's presidential campaign site. There are several articles from the print Stormfront magazine written by a number of different authors.

Black also maintains a second site with the Stormfront materials, including the anti-Semitic texts.

### **National Socialist White People's Party**

This appears to be the official site for the American Nazi Party established by George Lincoln Rockwell in the 1960's. The party was re-established in 1994, and its mailing address is listed as a post office box in Chapel Hill, North Carolina.

### **Occupied America**

Kevin Alfred Strom, a frequent contributor of anti-Semitic postings to Usenet newsgroups, has opened a site with a number of articles, most of which are simply copied from other anti-Semitic sites.

### **First Amendment Exercise Machine**

Hiding behind this innocent name is a poorly written, poorly designed site with insidious texts, occasionally of fabricated authorship (e.g., The Great Society). The site points to many of the other sites for Holocaust deniers, neoNazis and other racists and anti-Semites.

### **White Aryan Resistance**

Tom Metzger is a well-known California right-wing extremist. He is now in the process of rebuilding his site of intentionally offensive material.

## Christian Anti-Semitism

The distinction between Christian anti-Semitism, Aryan racism, and Skinheads is not always cut and dried. Several sites combine a strong Christian message with their anti-Semitic texts. At some sites, such as Schoedels Christian Identity site, there is a combination of hatred towards Jews and hatred toward all nonwhite people, as is the case at the Aryan racism sites. The 'Be Wise As Serpents' site on the other hand contains only anti-Semitic material.

### Scriptures for America

The Scriptures for America site of Peter Peters claims to be "dedicated to proclaiming the true Gospel of Jesus the Christ and to reveal to Americans, and all Western Nations, their true Biblical Identity." Like other Christian antiSemites, Peters states that "the modern day people who call themselves Jews are not the Israelite people of the Bible." Peters attacks not only Jews, but also blacks, homosexuals, communists, environmentalists, humanists and others.

Scriptures for America has had an FTP site since 1994 with much of the same information (and more).

### Christian Identity Online

Ronald Schoedel's Christian Identity Online combines home-spun preaching with virulent anti-Semitic attacks:

"The jews who troll the usenet constantly crying about anti-Semitism have found the Internet a nice way to be able to spew trash that no decent person would ever say to another individual. When they get upset, instead of debating the issues as they are continually challenged to do, they resort to the filthiest of personal attacks - usually sexually derogatory and filled with perversions that are contrary to all that any sane decent human being would think of.

The perverted overtones of their filth is ingrained in their minds from their religious book, the Talmud, which is full of pornographic and indecent material, including a passage which allows jews to have relations with little girls and a passage which allows the rape of "gentile" women. Talmud will be discussed below, but for now, if you dare, you are invited to sample the depths of human depravity - the product of the jewish mind." (<http://ll www.alaska.net/~schoedel/jewry exposed.html>)

### Be Wise As Serpents

This site is run by Kevin Schmid and -the home page indicates that it is a service of International Christian Educational

Services. The titles of the contents make the message of this site quite clear:

- TALMUDIC JUDAISM - Exposed
  - Sworn Enemy of Christianity is revealed for all to see
  - PROTOCOLS OF ZION - Revealed & Exposed
- Do you know the origins of these ominous documents? Are you sure?!
- Good information provides documentation of their origin!

## Islamic Anti-Semitism

The Islamic anti-Semitic sites are all located outside Islamic countries, in Sweden, Italy and Australia.

### Radio Islam

Ahmed Rami's Radio Islam is the oldest, largest and most virulently anti-Semitic of the Islamic sites. Rami is a Moroccan living in Sweden and has supplied material on his site in a number of languages. It is clear from the material and links on the site that Rami is far less concerned with Islamic issues and more concerned with spreading hate and anti-Semitism.

## Usenet Newsgroups

There are four widespread Usenet newsgroups in use which deal with anti-Semitic subject matter:

- \* alt.revisionism
- \* alt.politics.nationalism.white
- \* alt.politics.white-power
- \* alt.skinheads

From the names of these groups, one can see that the first was established for the discussion of Holocaust denial, the next two for right-wing white political discussion, and the last is intended as a forum for the skinhead movement. In point of fact, the discussion in all these newsgroups is quite similar and it is often the case that a discussion will be cross-posted on several or all of these groups simultaneously.

Due to the nature of Usenet, the fact that anyone can access some Usenet database (usually the database of one's Internet Provider) and read the items currently stored for any newsgroup, it is impossible to tell how many people are actually reading the material in these groups. As with most newsgroups, there is a relatively small number of people who provide most of the posts to the newsgroup.

Although these groups are not dedicated to anti-Semitism per

# The Arthur Butz Controversy

In 1974, Arthur R. Butz, 63, an associate professor of electrical and computer engineering, received tenure at the Northwestern University, Chicago.

In May 1976, he published (in England) a first limited circulation edition of his work *The Fabrication of a Hoax* referring to the Holocaust as an extermination legend. This was followed in 1977 by *The Hoax of the Twentieth Century*, a pseudoscientific publication denying the Holocaust.

Today, twenty years later, having become a leading figure among international Holocaust deniers, Butz is in the position to promote his ideas on the World Wide Web, thus spreading his anti-Semitic propaganda to millions.

In March 1996, on the twentieth anniversary of the publication of his *Hoax*, he placed an article on the web site of Greg Raven, associate editor of the *Journal of Historical Review*, the leading worldwide Holocaust denying publication. Two months later, on 7th May 1996, Butz finally opened his own personal web-page on one of the Northwestern servers. Unlike the home pages of his colleagues, Butz's page has nothing to do with his university work. The whole purpose of his web site is, as he puts it, "that ... the material will always have an emphasis on Holocaust denial". His page serves as a gateway to many Holocaust denial articles and weblinks.

The fact that Butz uses the facilities of the University to disseminate his anti-Semitic thesis has again revived discussions and put the controversial

professor at the centre of a debate over free speech in General and on the Internet in particular. To the question: how far does academic freedom extend inside and outside the classroom (which has been a dilemma in higher education for decades) have been added questions regarding freedom of speech in cyberspace. It is still unclear, according to the Vice President of the University, Michael Weston, what forms of speech regulation will, if ever, pass constitutional muster.

In an answer to Rabbi Abraham Cooper and Mark Weitzman of the Simon Wiesenthal Center, Los Angeles, who had asked that Butz be restricted in expressing his personal opinions on the University server, the President of Northwestern University, Henry S. Bienen, wrote that he believed that Butz's

"distortion of well-documented historical facts [the Holocaust] are a contemptible insult to all who experienced the horrors of that time, living and dead [...] indeed to all humanity but that, in spite of this, Butz has the right to promote his odious views as long as he does not represent them as the views of Northwestern University."

Nevertheless, the Northwestern tried to get rid of Butz in January 1997 by offering him early retirement with the university buying out his contract. But Butz did not show any interest.

In 1996 Sheldon Epstein, a volunteer adjunct instructor at Northwestern received notice from Dean Jerome B.

Cohen that his appointment would not be renewed at the end of the year. Epstein, outraged by Butz's activities, had tried to refute Butz's views in class although the subject was not included in his syllabus. His students demanded an explanation from the University authorities concerning Butz's publications on the Internet. The controversy which ensued reached the media and was widely discussed. In response, Northwestern University declared that its general policy was one of unlimited intellectual freedom in cyberspace: "The network is a free and open forum for the expression of ideas, including unpopular ones. However, such opinions may not be represented as the views of Northwestern University". Butz was, of course, well aware of this principle. He had taken his precautions and included the following statement in his web text: "it [the web page] exists for the sole purpose of expressing those views of Dr. Butz which are outside the purview of his role as an Electrical Engineering faculty member".

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*Chicago Jewish Star, 31. May 1996*  
*Chicago Jewish Star, 24. January 1997*  
*Chicago Jewish Star, 4. February 1997*  
*Chicago Tribune, 28. December 1996*

Article prepared by **Sarah Rembiszewski**, Researcher at the Tel Aviv University, Project for the Study of Anti-Semitism.



se, anti-Semitic posts and responses to these posts form a major part of the traffic on the groups. Since there is no control over participation in the group, either reading or posting, the number of postings condemning anti-Semitic remarks or disproving anti-Semitic claims far exceeds the amount of anti-Semitic material itself.

While there are occasional intelligent and scholarly contributions to these groups, most postings consist of baseless slurs, epithets and mud-slinging. Very little real dialogue takes place, rather people use the newsgroups as a place to vent their spleen.

As there is very little control over the nature of the postings on any newsgroup, occasional anti-Semitic postings can be found on a wide range of groups. Certain anti-Semitic activists even promote the targeting of newsgroups for propaganda or attack.

### **Tracking Anti-Semitism on the Internet**

A number of organizations have already undertaken to track anti-Semitism, racism and hate on the Internet (see p. 11).

#### **Finding Anti-Semitics Sites**

The best source of information on new anti-Semitic sites are the sites themselves. In this area, as in all other areas, it is customary for a site to have a page of "related links" pointing to other, similar sources. One can also use the popular search engines available on the Internet to search for catch-all terms appearing on these sites, such as ZOG, revisionism, Holohoax, etc. However, each search engine covers only a very small part of the information available on the Internet, and it takes as much as two months for the database of a search engine to be updated.

It is not by chance that a majority of the anti-Semitic sites are located in the United States, even those sites which are not in English and are aimed at a non-American audience. First of all, IAPs in the United States are able to provide the quickest service at the lowest price. In addition, by locating the site outside the target country, it is possible to circumvent legal restrictions on the content which one may publish. Attempts to attack these sites on a legal basis are unlikely to succeed and, in fact, may simply generate much free publicity for them, as has been the case with Ernst Zündel, whose fame on the Internet stems from attempts to block access to his site.

#### **Dealing with Anti-Semitism on the Internet**

Can these people call themselves whatever they want and write whatever they want with impunity? Can they be stopped from taking names such as "www.first-amendment.com"? Unfortunately, these names are registered on a "first come, first

served" basis, with no determination of the legality or appropriateness of the name by the registration authority. Through the offices of any IAP, one can register and use a domain name without having one's own computer connected to the Internet. Only the largest and most active anti-Semitic sites can afford a dedicated communications line and the computer and personnel resources required to maintain an Internet site. In fact, many are not even willing to take on the small additional expensive of registering their own domain name, and so their sites appear under the domain name of their IAP (this is normal procedure for personal home pages).

Up until now, most discussion of legal problems in Internet usage have involved copyright, privacy, and data security issues. The question of allowable content has been mostly concerned with distribution of pornography over the Internet. One attempt to legislate against indecent content on the Internet (the Computer Decency Act in the United States) is currently tied up in the courts, having been ruled unconstitutional in 1996. Other countries are waiting to see the outcome in the American case.

By and large, the maintainers of anti-Semitic sites are concerned with the legal status, and have taken action to try to stay within the letter of the Computer Decency Act (CDA). Many of these sites have added warnings and disclaimers to their sites, explaining to the visitor that the site contains material which many people are likely to object to. Since there is very little chance that visitors will reach the site accidentally, without knowing what information is inside, the maintainers have little to lose by placing these warnings, as their material continues to be easily accessible.

Another effort underway is to have site maintainers voluntarily label the materials they make available over the Internet to make it possible for filtering software to block access. A system called "Platform for Internet Content Selection" (PICS) has been developed for this purpose. Distributors of sexually explicit material over the Internet have eagerly embraced this effort, and several software products are already available which block access to material on the Internet by site or by content label. Several of the anti-Semitic sites have also adopted the use of PICS.

It is highly unlikely that trying to reason with the purveyors of these materials or to engage them in debate and discussion is effective. Ken McVay of Nizkor has been responding to Holocaust denial claims both on WWW sites and in Usenet newsgroups. He has also convinced several of the anti-Semitic sites to add a pointer to Nizkor, although he certainly has not convinced them that they are wrong.

*continued on p. 11*

# WWW Sites With Anti-Semitic Materials

## Holocaust Denial

- The Zündelsite/ Ernst Zündel  
<http://www.webeom.com/~ezundel/english>  
Web Communications
- Committee for Open Debate on the Holocaust/ Bradley R. Smith  
<http://www.codoh.com>  
Techlink Communications
- nstitute for Historical Review/ Greg Raven  
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- Adelaide Institute/ Fredrick Toben  
<http://www.adam.com.au/~fredadin/adins.html>  
Adam Bulletin Board
- Arthur Butz  
<http://pubweb.acns.nwu.edu/~abutz>  
Northwestern University
- Michael Hoffman, 11  
<http://www.hoffman-info.com>  
Netlink, Inc.
- John Ball's Air Photo Evidence  
<http://www.air-photo.com>  
Tantalus Communications Inc.
- Student Revisionists' Resource Site  
<http://www.wsu.edu:8080/~lpauling>  
Washington State University
- Reflections upon the Holocaust  
<http://homel.gte.net/mgiwer/hololindex.html>  
GTE Intelligent Network Services
- Revisionist Productions  
<http://www.eskimo.com/~ralphi>  
Eskimo North
- AAARGH  
<http://www.abbe.com/aaargh/engl/engi.html>  
Ahmed Rami
- Revisionistisk materiale/ Ole Kreiberg (in Danish)  
<http://www.login.dknetdk1-olWrevision.html>  
DKnet

## Political Anti-Semitism

- Politics and Terrorism/ Norman Elliott  
<http://www.wflinet.com/~politics>  
Florida Internet Corp.
- Politically Incorrect/ Dennis Nix  
<http://www-smartnet.ney-jenix>  
Smartnet

## Aryan Racism

- National Alliance/ William Pierce  
<http://www.natall.com/>  
Illuminati Online
- Stormfront/ Don Black  
<http://www.stormfront.org/>  
JBX Designs
- National Socialist White People's Party  
<http://www.nswpp.com/>  
NetCorps
- New Dawn  
<http://www.nb.net/~newdawn/>

- The National Business Network Inc.  
independent White Racialists  
<http://www2.cybernet.net/~odin1>  
Cybemex, Inc.
- Yggdrasil's White Nationalist Library  
<http://www.88net.net/ygg/>  
88net Communications
- Occupied America/ Kevin Alfred Stiom  
<http://ourworld.compuserve.com/~Aomepages/americal>  
Compuserve
- Volksfront  
<http://www.aracnet.com/W-intimll>  
aracnet.com
- First Amendment Exercise Machine/ Robert Frenz  
<http://www.bluemoonnetl-frenzl>  
Blue Moon Online System
- Schutz Staffel / Computer Abteilung  
<http://flashback.sel-sscal>  
Flashback, Sweden
- White Aryan Resistance/ Tom Metzger  
<http://www.resist.com/>  
Clearlight Communications
- White Pride and Racial Diversity  
<http://www.whitepower.com/>  
Jaxx Communications
- American Times Today  
<http://www.atoday.com/>  
Victoria Internet Providers, Inc.
- Alpha  
<http://www.alpha.org/>  
Surf Network, Inc.
- Freedom site  
<http://alphaficnet.com/~freedom/>  
Victoria Internet Providers, Inc.
- The Occidental Pan-Aryan Crusader  
<http://www.crusader.net/>  
Community Connexion
- JWS Militant Knights of the Ku Klux Klan  
<http://www.mindspring.com/~awolljwsknights.html>  
MindSpring Enterprises
- Church of the Creator/ Rudy Stanko  
<http://www.mindspring.com/~creativitylCreator/>  
MindSpring Enterprises

## European National Socialism

- British Nationalists  
<http://www.ngwwwmall.com/~frontierlbnp>  
New City Global Mall
- Nation of Europa  
<http://www.demon.co.uk/natofeu1>  
Demon Systems Ltd.
- Burgerforum Europa  
<http://www.c2.net/~bs-org/>  
Community ConneXion
- Thule Netz  
<http://www.thulenet.com/>  
Canada On-line Inc.

- Der Aufbruch/ Ernst Ellett  
<http://ourworld.compuserve.com/homepages/-Emst-Ellertl>  
Compuserve
- Islamic Anti-Semitism**
- Radio Islam  
<http://Avww.flashback.sel-rislarW>  
Flashback, Sweden
- To The Light  
<http://A.vww.sinet.itllslamA>  
Servizi Integrati S.c.r.l.
- Al-MoharerAl-Australi/FouadElhage  
<http://lwww.ozemail.com.aul-fouadindex.html>  
OzErnaIl Internet
- Christian Anti-Semitism**
- Scriptures for America/ Peter Peters  
<http://logoplex.conzresourcesfsfa>  
Logoplex
- G.O.A.L. Reference Library  
<http://www.me/vig.org/>  
E-Net Information Services
- CHRISTIAN IDENTITY ONLINE/ Ron Schoedel, III  
<http://lwww.alaskfi.netl-schoedelI>  
Internet Alaska
- Be Wise As Serpents  
<http://www.pixi.com1-bewise/>  
Pacific Information Exchange
- American Christian Ministries/ Ben Williams  
<http://www.linkamerica.conz1acm>  
Link America
- Alfred Olsen's hjemmeside  
<http://www.powertech.nolaolsenlxtI>  
Powertech, Norway
- Aryan Nations/ Richard Butler  
<http://Avww.stormfront.orglan.htnV>  
JBX Designs
- Northwest Kinsmen  
<http://www.cris.conV-nwkl>  
Concentric Network
- Euro-Christian Defence League  
<http://www.ftcnetconil-fiteedotn/ecd11>  
Fairview Technology Centre
- Skinhead Racism**
- Plunder & Pillage  
<http://Avww.excaliber.conVthorlhome.htmI>  
Excaliber BBS
- Bootgirl88  
<http://www.concentric.netl-Bootgirl/>  
Concentric Network
- Sieg Heil88  
<http://members.gnn.conVSiegHeil88/>  
GNN
- Oi! SKINHEADS N.J. Oi!  
<http://members.gnn.contlinisfaxlkinns2.htmV>  
GNN

## WWW Sites Tracking Anti-Semitism on the Internet

- HateWatch  
<http://hatewatch.org> - comprehensive listing of "hate" sites (anti-Semitism, racism, homophobia, etc.)
- Nizkor/Ken McVay  
<http://nizkor.almanac.bc.cal> - most active and comprehensive site for combatting Holocaust denial
- Simon Wiesenthal Center  
<http://www.wiesenthal.com1> - has a response to Holocaust deniers and a section tracking hate on the Internet called CyberWatch.
- Anti-Defamation League  
<http://www.adl.org1> - a wealth of information on anti-Semitism in general, not just anti-Semitism on the Internet.

*continued from p. 9*

A more fruitful approach to combatting anti-Semitism on the Internet is to contact the Internet Provider of the site. In some cases, the provider may not even be aware of the nature of the material. If the provider does not have guidelines for Web sites, the policy guidelines of Prodigy and Geocities and several other providers can be presented as an efficient way of ensuring that offensive materials which can tarnish the provider's image can be removed.

As providers close down unwanted sites, these sites occasionally migrate to new homes. Naturally, they often gravitate to IAPs which already have anti-Semitic sites. Thus, a number of "mega-sites" of anti-Semitism have developed, hosting the mate-

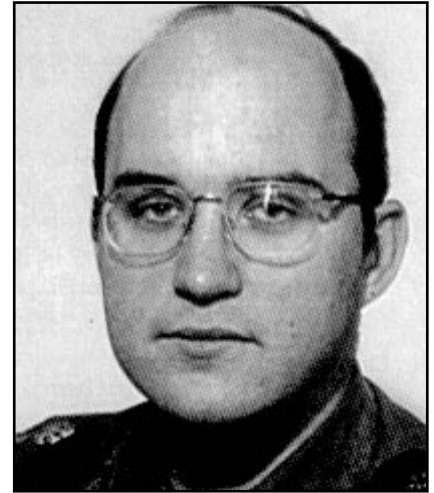
rials of a number of organizations and individuals. Stormfront and Alpha in the United States, as well as the "Freedom Site" in Canada and Flashback in Sweden, are the leading examples of this new trend.

It is unknown how many people are visiting these sites in the Internet, and we have no profile of the visitors. It is possible, perhaps even probable, that most of the visitors are not at all sympathetic to the ideas expressed therein.

A few of the sites maintain counters of the number of visitors, but these are also unreliable: they can be easily manipulated by the site maintainer and we cannot know how many of the visits are actually by the maintainer himself.

# The Hebron Agreement

Daniel Reisner



**O**n Friday, 17th January 1997, retired Chief of Staff Dan Shomron and Palestinian negotiator Saeb Erakat, the two heads of the Israeli-Palestinian Steering Committee, met in a Jerusalem hotel for the final act of the "Hebron negotiations" the official signing of the Protocol Concerning the Redeployment in Hebron.

The extremely low-key ceremony was attended by several Israeli and American ..survivors" of the grueling negotiations. Noticeably absent from the ceremony were representatives of the media, who had been ardent followers of the negotiations from their beginning, staking out potential negotiation sites daily in the hope of receiving inside information relating to the ups (and downs) of the negotiations.

Thus ended over three months of extremely intensive, day and night discussions. Negotiators from both sides greeted the signing of the Protocol with

an intense sense of relief, coupled with a feeling of accomplishment, dimmed somewhat by the understanding that the conclusion of the Hebron negotiations only signified the commencement of a new, and probably even more difficult, stage in the Israeli-Palestinian negotiations.

The "Hebron negotiations" actually resulted in two principal, and entirely separate agreements. The first - an extremely detailed Protocol concerning the Israeli redeployment in the city of Hebron (which is complemented by an additional agreement on the establishment and operation of a temporary international presence in the city). The second a document titled "Note for the Record", which sets the framework for the continuation of the Israeli-Palestinian peace process.

In retrospect, it would appear that these two agreements, coupled through political necessity, represent the connecting links between two distinct phases in the Israeli-Palestinian peace process. On the one hand, the Hebron Redeployment Protocol enabled the implementation of the final stage of the Israeli redeployments called for in the Interim Agreement. on the other hand, the Note for the Record outlines the next chapter in Israeli-Palestinian negotiations, including the timetable for the commencement of the further redeployments in the West Bank and for the

renewal of the permanent status negotiations.

It is the purpose of this article to acquaint the informed reader with the principal points of these agreements. For obvious reasons, special emphasis shall be placed on those elements of the agreements which will probably play a significant role in the future negotiations between the two sides.

## The Hebron Redeployment Protocol

The city of Hebron is the only city in the West Bank to be granted a separate chapter in the Interim Agreement (Article VII of Annex I to the Interim Agreement) titled "Guidelines for Hebron". This preferential status is derived from the fact that Hebron is unique in the context of the Israeli-Palestinian negotiations in three principal, extremely problematic, aspects:

1. Hebron is the only city having both Palestinian and Israeli residents (the permanent Israeli residents in the city, residing in the Old City, number several hundred).

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2. The city of Hebron has a history of attracting extremists, including those opposed to the Israeli-Palestinian peace process.
3. In the heart of the city is situated the Tomb of the Patriarchs, an extremely important holy site of special historical and religious significance to Jews and Muslims alike.

It is unsurprising, taking into account these complexities, and further recalling the chain of horrendous suicide bus bombings perpetrated by extremist Palestinian terrorists in the beginning of 1996, and the armed clashes between the Palestinian police and Israeli forces of September 1996, that the Israeli Governments (both before and after the 1996 elections) found themselves unable to implement the Hebron redeployment in accordance with the original intended timetable (March 1996).

In the light of the above, the two main goals of the Israeli negotiating team in the Hebron Protocol negotiations were: first - to implement the chapter concerning Hebron in the Interim Agreement whilst ensuring, as far as possible, the continued security and well-being of the Israeli residents of the city; second - to re-energize the Israeli-Palestinian negotiations, and in so doing rebuild the trust between both the leadership and the negotiating levels.

Many questions have been raised concerning the relationship between the Hebron protocol and the Guidelines for Hebron contained in the Interim Agreement. From a legal perspective, the answer is relatively simple and is derived from the term "implementation". The Hebron Protocol is intended solely as an implementing instrument for the Interim

Agreement's guidelines which, as is the nature of guidelines, are of a more general nature, lacking the level of detail required for the actual implementation process. In many aspects, this relationship is reminiscent of the relationship, in business transactions, between a general memorandum of intent and the detailed transaction agreement which usually follows. While both serve the same purpose - to formulate

**The Hebron Protocol is intended solely as an implementing instrument for the Interim Agreement's guidelines which, as is the nature of guidelines, are of a more general nature, lacking the level of detail required for the actual implementation process.**

the elements of the deal - the first is usually short and general, whilst the other is lengthy and detailed. In effect - both documents complement one another, together enabling the execution of the transaction.

The basic principle of the Hebron redeployment, as set out in the Interim Agreement, is the establishment of two separate areas within the city (with the understanding that the establishment of these areas will not divide the city). The first and largest of these areas, comprising approximately 80% of the

city (area H-1), would be transferred to the control of the Palestinian authorities, who would be responsible for both security and civil related matters, similarly to the other Palestinian cities in the West Bank. The second area (area H-2), would enjoy a unique status in that the Israeli authorities would retain responsibility for security and public order, and for all matters related to the Israeli residents, while the Palestinian authorities would be responsible for all civil matters relating to the Palestinian population residing in this area.

Within this framework - the Hebron Redeployment Protocol's principal provisions include the following:

1. Enhanced security coordination and cooperation - including the establishment of a Joint Coordination center, and the enhancement of the activities of Israeli -Palestinian Joint patrols.
2. Agreed limitations on the use of rifles by the Palestinian Police - it has been agreed that the 100 rifles allowed under the Interim Agreement shall be used only by designated Palestinian Rapid Response Teams. In addition, it was further agreed that use of such rifles in the vicinity of the areas under Israeli responsibility would require prior Israel] agreement. In the remainder of area H-1, Israel shall be informed of such use.
3. Increased security, in the parts of area H-1 which pose a potential threat to Israelis - this includes the continuous operation of two Israeli-Palestinian Joint Mobile Units in these areas (an additional Joint Mobile Unit will operate in area H-2), and a Palestinian undertaking to ensure the prevention of entry of armed persons and rioters into these

dination between the two sides, Israel shall be notified of Palestinian security activities in these areas.

4. Israeli responsibility for the overall security of Israelis - the Protocol specifically refers to Article XII of the Interim Agreement, which recognizes that Israel "will have all the powers to take the steps necessary" to meet the responsibility for the overall security of Israelis, throughout the West Bank. These powers obviously include the ability, when necessary, to carry out independent security activities for the protection of Israelis in Area H-1.
5. Jewish Holy Sites in area H-1 - the Protocol ensures the freedom of access to, and worship in, the four Jewish Holy Sites situated within the Palestinian-controlled area H-1.
6. Opening the Shuhada road and the wholesale market - Israel has agreed to open the Shuhada road, which serves as one of the main traffic routes in the Old City, and the wholesale market, both situated in area H-2. The two had been closed due to security reasons (both are situated adjacent to the Israeli populated localities in the city, thereby posing a substantial security risk). The opening of the road has been facilitated by the undertaking of the U.S. Government to completely renovate the road, at substantial expense, thereby improving its safety and security.
7. Building limitations in area H-1 - the Palestinians have undertaken to impose limitations on Palestinian construction and building activities in the vicinity of the Israeli populated localities in area H-1, thereby

decreasing potential friction and security threats.

8. Continued municipal services - as the Israeli residents of Hebron are dependent, to a large extent, on the Palestinian Hebron Municipality for essential services, the Protocol ensures that such services shall continue unchanged.
9. Transportation and infrastructure related activities - the Protocol further provides for coordination and cooperation mechanisms relating to infrastructure works in area H-2, which may disturb daily life in the area; similarly - with a view to decreasing friction, the Protocol preserves the existing status quo concerning traffic arrangements in area H-2.
10. Temporary International Presence (TIPH) - a separate agreement, signed on 21st January, 1997, provides for the establishment and operation in Hebron of a multinational team of observers from Norway, Italy, Denmark, Switzerland and Turkey; the TIPH will function for a period of three months, renewable for an additional period of three months unless otherwise agreed.

It is important to note that, while most of the above-mentioned issues were touched upon or referred to in the Interim Agreement's Guidelines for Hebron, the Redeployment Protocol (totaling eleven pages in length) contains the level of detail and specification which the two sides deemed necessary in order to enable the actual implementation of the redeployment.

An interesting anecdote pertaining to the Protocol relates to the speed of its

implementation, as opposed to the length of time it took to negotiate. Article I of the Protocol states that - "This redeployment will be completed not later than ten days from the signing of this Protocol." In spite of this fact, while the Protocol signing ceremony was set for midday, Friday, the 17th of January, the Israel Defense Forces actually completed the redeployment from area H-1 during the early morning hours of that same day, some seven hours prior to the Protocol's official signature.

### The Note for the Record

The Note for the Record (NFR) of January 15th is not, from the formalistic viewpoint, a bilateral Israeli-Palestinian agreement, but rather was formulated in the form of a Note, prepared by the U.S. Special Middle East Coordinator Ambassador Dennis Ross, to summarize the verbal agreements of Prime Minister Netanyahu and Chairman Arafat.

The NFR, complemented by two separate letters sent to the two leaders by U.S. Secretary of State Warren Christopher, lays down the principles and agenda for the continuation of the Israeli-Palestinian peace process.

In its operative provisions, the NFR is divided into two distinct parts: a chapter detailing Israeli commitments, and a chapter detailing Palestinian commitments.

The Israeli commitments under the NFR are the following:

1. To carry out the first phase of the further redeployments during the first week of March;
2. To deal with prisoner release issues

- the Interim Agreement (pursuant to this undertaking, Israel released remaining Palestinian female prisoners and detainees, two of whom had been convicted of murder, on 11 February, 1997);
3. To resume negotiations on outstanding Interim Agreement issues (eight topics were mentioned - Safe Passage of Palestinians traveling between the West Bank and the Gaza Strip: the Gaza Airport; the Gaza Port; the international passages connecting the Gaza Strip and the West Bank to Egypt and Jordan economic issues; financial issues; security issues; and a people-to-people program, envisaged in the Interim Agreement as a mechanism for confidencebuilding between the two peoples);
  4. To resume the permanent status negotiations within two months of the implementation of the Hebron.

The Palestinian undertakings in the NFR are as follows:

1. Completion of the process of revising the Palestinian national Charter, so as to make it consistent with the Israeli-Palestinian agreements;
2. Fighting terror and preventing violence (which includes specific undertakings for the strengthening of security cooperation; prevention of hostile propaganda; systematic and effective combating of terrorist organizations and infrastructure; apprehension, prosecution and punishment of terrorists. implementation of the provisions of the Interim Agreement in relation to transfer of suspects and defendants; and confiscation of illegal firearms);

3. Adherence to the provisions of the Interim Agreement concerning the size of the Palestinian Police (this undertaking relates to the inconsistency between the size of the Palestinian Police and the provisions of the agreements);
4. Adherence to the provisions of the Interim Agreement in relation to the location of Palestinian governmental offices and activities (this relates to Palestinian attempts to carry out governmental activity in Jerusalem).

**The new timetable, agreed upon in the NFR and its supporting documents and understandings, provides for the further redeployment process to commence in March 1997, and to be completed by not later than "mid-1998".**

Perhaps the most important principle, underlying all the provisions of the NFR, is the concept embodied in its opening paragraph - "...the two leaders reaffirmed their commitment to implement the Interim Agreement on the basis of reciprocity..." (emphasis added - D.R.). In other words, if read from the negative viewpoint - both sides have agreed that their undertakings under the NFR are contingent on the other sides' continued adherence to its undertakings. The same sentiment is echoed in the letter from the U.S.

Secretary of State to Prime Minister Netanyahu, in which he states - "We intend to continue our efforts to help ensure that all outstanding commitments are carried out by both parties in a cooperative spirit and on the basis of reciprocity".

One issue, addressed in the NFR and worthy of special focus, is the further redeployment process. Under the Interim Agreement - Israel is obligated to carry out three phases of further redeployments ("further" in the respect that they are additional to the redeployments specifically provided for in the Interim Agreement). While the Interim Agreement did not specify the size of each such phase, it did lay down the timetable for their implementation (first phase - September 1996; second phase - March 1997; third phase - September 1997).

Due to the events which occurred during 1996, this original timetable proved untenable, forcing both sides to readdress the issue during the Hebron negotiations.

The new timetable, agreed upon in the NFR and its supporting documents and understandings, provides for the further redeployment process to commence in March 1997, and to be completed by not later than "mid-1998". (The term "mid-1998" is agreed to encompass the months of June-August 1998). In effect, the new timetable constitutes a 12 month change in the original schedule (the original 7th September 1997, as opposed to the new potential end date of 31st August 1998).

Another aspect of the further redeployment process, clarified as a result of the Hebron negotiations, was the question who would decide on the size of each phase. As has been previously



View of the Cave of the Patriarchs, Hebron.

Interim Agreement is silent as regards the size of each phase, although it does provide that the end-result of the process shall be Israel's retaining responsibility for the Israeli Settlements, specified military locations and other issues related to the permanent status negotiations.

In accordance with the provisions of the Interim Agreement, it has been Israel's position that the determination of the size of each phase (including the determination of the specified military locations referred to in the Interim Agreement) is a unilateral Israeli responsibility, not requiring negotiation. During the Hebron negotiations, it was made clear (including in written form) that this Israeli interpretation is shared by the Government of the United States, and would therefore form the basis for the

implementation of the further redeployment process.

In conclusion, and without derogating from the importance of the various provisions of the NFR, it is probably safe to state that the most important aspect of the NFR is its very existence, serving as proof of the determination of both sides to continue the peace process, in spite of all difficulties and obstacles, and constituting a key milestone in the difficult road of the Israeli-Palestinian peace negotiations.

### Conclusions

In one of the numerous meetings, which took place during the final days of the negotiations, Yasser Arafat invited Ambassador Dennis Ross to participate in the Christmas celebrations in

Bethlehem. A Palestinian negotiator later pointed out to an Israeli colleague the humour in the fact that a devout Muslim had invited a Jew to celebrate a Christian holiday.

This amusing anecdote well exemplifies the extremely serious fact that, in the Middle East, issues of religion, security and politics are totally intertwined. The Hebron negotiations were no exception to this rule, raising extremely complex questions, and requiring both parties to make difficult decisions. It is only to be hoped that the agreements resulting from these negotiations will facilitate the advancement of the Israeli-Palestinian peace process, and will serve as a substantial step towards the end of the Arab-Israeli conflict, in general.



# The Holy Places in Jerusalem, Legal Aspects (Part Two)

Shmuel Berkovitz

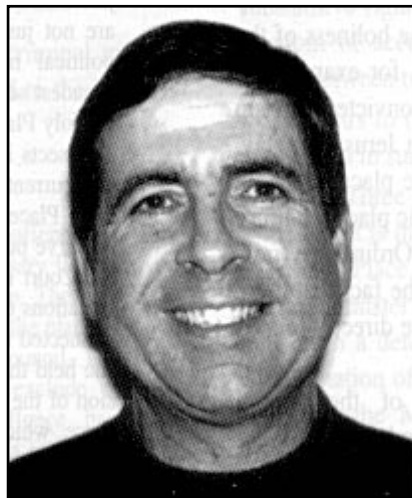
**A**rticle Two of His Majesty's Order in Council Regarding the Holy Places - 1924 ("the Order in Council"), provides that the Courts have no jurisdiction to hear "any cause or matter in connection with the Holy Places". However, in the light of the importance placed by democratic regimes on enforcing fundamental principles, including the principle of the rule of law, on the supervision by the Court of the manner of enforcement of the law by the executive branch and the need to preserve public order, the Supreme Court has rejected unconditional acceptance of the provisions of the aforesaid Article Two. This approach has been strengthened by the presumption "that the jurisdiction of the Court should not be excluded, and that where there are two possible interpretations, the interpretation which should be chosen is the one which preserves jurisdiction and not the one which excludes it" (HCJ 267/88).

## Judicial Competence to hear Disputes and Rights Connected with the Holy Places

Where a party denies the jurisdiction of the Court to hear any matter by reason of it being connected to a Holy Place, the Court must decide two issues:

1. Whether the place which is the subject of the dispute, is a "Holy Place".

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2. Whether the dispute is "connected" to that place.

The first question requires an in-depth examination of the term "Holy Place". This examination is outside the scope of this article. The second question requires an examination of the nature of the connection between the dispute and the place which is the subject of the Court's deliberations. It seems to me, that the dispute must be directly connected to the holiness of the specific Holy Place; in other words, that had the place not been holy, the dispute at hand would not have erupted; for example, a dispute between

two religious sects concerning each one's right to worship in a certain Holy Place. However, a dispute between a certain Christian sect and a person renting a room in a monastery, or between a building owner and lessees using the building as a synagogue over the amount of the rent, etc., are not matters directly connected to the holiness of the place, and such disputes could occur irrespective of the nature of the place.

The question of the nature of the required connection between the "issue" and the "Holy Place" for the purpose of removing it from the competence of the Court arose in relation to the competence of the Courts to deal with criminal offences relating to the Holy Places.

In HCJ 222/68 Justice Berenson held that the provisions of Article Two of His Majesty's Order in Council does not apply to criminal acts which are committed in Holy Places:

"provided that they are not directly related to the holiness of these places. Should a person be exonerated who, without author

isation empties the charity box in a synagogue, or runs wild and attacks the worshipers in the synagogue, merely because he committed these deeds in a religious building, even though the acts had nothing to do with their being committed in a religious building and are not related to the holiness of the place? Those who recently stole the gold crown in the Church of the Holy Sepulchre were brought to trial in a Court, and no one even considered arguing - and in my opinion could not argue - that they could not be tried because of the Order in Council."

However, in practice, I am also not aware of any case where a criminal trial was not instituted against an offender, simply because the offence was "directly" related to the holiness of the place where the offence was committed. Thus, for example, in Cr/App 51/76 the District Court of Jerusalem convicted a group of people who prayed on the Temple Mount on Jerusalem Day, for behaving in a manner prohibited in a public place, as being likely to cause a "breach of the peace" in a public place, contrary to Section 193(l)(d) of the Criminal Law Ordinance (now Section 216(a)(4) of the Penal Law) - despite the fact that there was no doubt that their prayers in the place were directly related to the holiness of the place.

This question arose again in the trial of the Jewish Underground. Inter alia, the members of the Underground were charged with conspiring to commit a felony, namely, the placing of explosives in the Mosque of the Dome of the Rock with the intention of destroying it (contrary to Section 499(l) of the Penal Law). The defendants argued before the District Court of Jerusalem, that the Court was not competent to try this offence in the light of the provisions of the Order in Council - 1924. The District Court dismissed this claim holding that:

"it appears to me that with regard to the offence before us, we should adopt the interpretation of [Supreme Court] President Agranat... if one excludes the competence of the police and the Courts in cases such as this, i.e., the demolition by explosives of a large building located in a Holy Place, one will create anarchy, no law no order, and it is inconceivable that the legislator intended this. As President Agranat put it: 'the aforesaid Order in Council is incapable of excluding the competence of the Courts to try offences which were intended to prevent the infringement of public order in the various Holy Places'."

The most important judgment relating to this matter was delivered by Justice Barak (as he then was) in H CJ 267/88. In that case the former Chief Rabbi, S. \*Goren, was put on criminal trial in respect of a structure which he erected, without building

permission, in memory of the Holocaust, on the roof of his Yeshiva building in the Western Wall square. Rabbi Goren denied the competence of the Court for Local Affairs to try him in the light of the Order in Council. This contention was rejected and Rabbi Goren petitioned the High Court of Justice against the decision of the Court. The High Court of Justice dismissed his petition. Justice Barak adopted the reasoning of the Judge Prokazia in the Court for Local Affairs who had held:

"The purpose of Article Two was and remains to exclude the jurisdiction of the Courts to hear and determine matters which are not justiciable because of their religious and international-political nature, and this relates, fundamentally and in its broadest sense, to determinations of rights and claims connected to Holy Places, in terms of their relationship to the various religious sects in the country'. Moreover, Judge Prokazia added that 'concurrently with the desire to preserve existing rights in the Holy Places, at the root of the Order in Council is the desire to preserve public order in the Holy Places. In order to ensure this, the Court is competent to try criminal charges, which relate to violations of the Holy Places, provided that they are not directly connected to the holiness of the Holy Places'. For this purpose, she held that the existence of a religious motive in the commission of the criminal offence does not create the link to the Holy Place, which is sufficient to negate the jurisdiction of the Court to enforce the law. In the view of the Judge: 'the Court has jurisdiction to try criminally every act committed in a Holy Place, even if motivated by a religious purpose, subject to the case where the trial and the judgment entail, inescapably, a decision concerning those questions which Article Two provides are not justiciable, i.e., questions touching claims and rights to the Holy Places.' In applying this approach to the charge before her, the Judge held that a hearing of it did not entail legal determinations concerning claims or rights relating to a Holy Place, and accordingly dismissed the claim of lack of material jurisdiction."

Justice Barak thereafter explained the ratio decidendi for the correct decision of the Court for Local Affairs:

"Where a murder has been committed in a Holy Place, or property belonging to a Holy Place has been stolen - is the Court competent to hear such matters?"

Indeed, from a literal point of view, these criminal trials are I connected' to the Holy Places, but we are not looking for a literal construction but a legal interpretation. This interpretation gives the language of the law the meaning necessary for implementing its purpose. Looking at the purpose of the legislation, the inescapable conclusion is that the jurisdiction of the criminal Courts is not excluded merely because of a connection to a place. As we have seen, the purpose of the 1924 Order in Council was

to exclude the Court's jurisdiction to determine the substantive rights and claims connected to the Holy Places. A criminal trial in respect of an offence, whose sole connection to the Holy Place is merely that of location, does not result in any determination of the substantive rights and claims related to that Holy Place. Moreover, the purpose of the 1924 Order in Council was to ensure that public order and good behaviour would prevail in the Holy Places. The exclusion of the jurisdiction of the Courts will seriously hinder this purpose... accordingly, the commission of an offence in a Holy Place is not sufficient to create the necessary link between the criminal case and the Holy Place for the purpose of excluding the jurisdiction of the criminal Courts."

However, is the jurisdiction of the Court in criminal matters excluded where the offence is directly connected to the holiness of the place where it is committed?

Justice Barak answered this as follows:

"A religious motive for committing a criminal offence in a Holy Place per se is insufficient to create the necessary link between the criminal trial and the holiness of the place. The reason for this lies - like in the case of the "connection to the place" - in the legislative purpose of the 1924 Order in Council. In implementing this purpose there is no room to exclude criminal jurisdiction in cases where a criminal offence has been committed for religious motives. The religious motive alone is insufficient to give rise to a determination of the rights or claims relating to the Holy Places. On the contrary, exclusion of such jurisdiction would be detrimental to the duty of the State - which is one of the purposes of the 1924 Order in Council - to ensure public order in the Holy Places."

However, if judgment in the trial also requires a determination of the substantive rights in the Holy Place where the offence was committed, the Court has no jurisdiction to hear it. This is also the case in respect of civilian trials: the Court will only not have jurisdiction to hear a dispute before it, in those cases where it is necessary in order to adjudicate the dispute that the Court determines the substantive rights in the Holy Place, in relation to which the dispute has arisen.

According to case law, all matters falling within the ambit of the Protection of Holy Places Law, whether civil or criminal, are within the jurisdiction of the Courts. In contrast, every other matter, which is not mentioned in the Protection of Holy Places Law, is not within the jurisdiction of the Courts. The High Court of Justice has held, that such matters are within the responsibility of the executive branch. The Holy Places have a long history of complex problems, of international diplomatic and religious

significance. Accordingly, governmental and not legal action is most appropriate for dealing with disputes touching such places, where such disputes concern issues which are not regulated by the Protection of Holy Places Law. The High Court of Justice has also held that the enactment of the Basic Law: Jerusalem, in 1980, has not affected this decision. Against this background and in view of the principle laid down in H CJ 267/88, a further question must be considered: does the Court have jurisdiction to hear matters referred to in the Protection of Holy Places Law, even in cases where the judgment requires a determination of the substantive rights in a Holy Place, such as a dispute concerning freedom of access (referred to in the above Law) to a Holy Place, between two sects fighting over rights to that place?

It appears to me that the rule set down in H CJ 267/88 should apply even in such a case.

Article Three of the aforesaid Order in Council provides that if the Court is in doubt whether the matter before it is connected to a Holy Place, it must transfer the question for determination by the Minister of Religious Affairs, and to adjourn the case until such a determination is made. The Court must accept the determination of the Minister. The High Court of Justice further held that the Minister must also examine the nature of the connection between the "issue" and the "place" and the holiness of the place in accordance with the legal tests set for this purpose for the Courts. If the Minister determines that the dispute is indeed "connected to the Holy Place", as aforesaid, the Court must accept this determination, halt the proceedings and transfer the matter before it for handling by the government, by means of the Minister for Religious Affairs. Of course, the manner in which the Minister applies the legal tests in every case brought before him for determination, is subject to the review of the High Court of Justice. In other words, a party who is not satisfied with the decision of the Court to transfer the determination of the question of the connection of the issue to a Holy Place, to the Minister, may appeal against that decision to the Court of Appeal. However, if he wishes to attack the decision of the Minister himself, he must petition the High Court of Justice.

In the light of the decision in H CJ 222/68, the High Court of Justice has dismissed all the petitions in which it has been asked to order the authorities to enable Jews to implement in practice their right to pray on the Temple Mount.

It will be recalled that in H CJ 222/68, the Supreme Court held that the right to worship is a separate right from the right to freedom of access, and as the right to worship is not referred to

in the Protection of Holy Places Law, the Courts are not competent to consider it.

This position has softened somewhat in relation to the right to worship of individuals. Following the decision in HCJ 67/93, it appears that an individual's right to worship may be part of the fight to freedom of access, so that the former right is implemented "during" the course of implementation of the latter right, and indeed the High Court of Justice has seen itself as competent to consider the implementation of both rights despite the provisions of Article Two of the Order in Council and the decision in HCJ 222/68. Nevertheless, the primary consideration of the High Court of Justice is the responsibility of the authorities to preserve public order in the Holy Places, This has long been the principle ground permitting the Court to adjudicate in matters connected to the Holy Places. Indeed, even in the leading case (HCJ 222/68) the Court held that the Order in Council does not exclude the competence of the Court to consider the preservation of public order and try criminal offences, even where these are connected to the Holy Places.

In the name of the government's duty to preserve public order, the High Court of Justice has also intervened in disputes directly concerned with the Holy Places, such as the historical dispute between two Christian sects (the Copts and the Ethiopians) concerning the occupation of two chapels adjacent to the Church of the Holy Sepulchre which also provide access to it. The High Court of Justice held that: "in the event of the commission of the offence of forced entry into a Holy Place, the Court will act to preserve public order in the State and to protect the actual possession of the person who occupied the place before the entry

In the name of the preservation of public order, the High Court of Justice has also heard cases concerning the right of an individual Jew to worship on the Temple Mount; the right of public worship of Jews near one of the gates of the Temple Mount; and prayer arrangements at the Western Wall.

It should be emphasized that in the name of this duty, the ordinary Courts are also competent to intervene in cases connected to the Holy Places. Thus, for example, in the recent Hirbawi case, the Magistrate's Court in Jerusalem held that it had jurisdiction to grant a temporary injunction prohibiting the members of the Coptic Church from entering the cellar, the rights to which were in dispute, in order to freeze the existing situation until determination of the dispute itself, even though the Coptic Church argued that the cellar was a Holy Place.

On the other hand, one of the two main grounds (in addition to

lack of jurisdiction to hear disputes connected to Holy Places) for the dismissal of all the petitions asking to implement the right of worship of Jews on the Temple Mount, was the fear that granting the requested relief would itself cause a breach of the public order.

The question therefore arises: what is the relative weight to be granted to the right to freedom of worship (or any other right) or the government's duty to assist in its implementation compared to the duty to preserve public peace and order?

The leading case on this matter is HCJ 292/83, where the Supreme Court considered the petition of the Temple Mount Faithful to order the Commander of the Jerusalem Police to enable them to pray on Jerusalem Liberation Day (11.5.83) near the Mugrabi Gate, which is the western entrance to the Temple Mount. In this decision the High Court of Justice held that implementation of the right to freedom of worship, like other rights, is not absolute but limited:

"in so far as necessary and vital for the preservation of the safety of the public and public order... it is proper that the police adopt all reasonable measures at their disposal in order to prevent an impairment of public safety, without impairing the right to conscience, belief, religion and worship. Accordingly, if there is fear of violence by a hostile crowd against worshippers, the police must act against this violence and not against the worshippers. However, if in view of their limitations reasonable police measures are incapable of removing the actual impairment to public safety, there is no choice but to limit freedom of conscience and religion, as required in order to preserve public safety."

The principle set down is that freedom of worship, like other freedoms, "must retreat before considerations of public safety only where the risk of impairment of public safety is of the level of 'near certainty'." In applying these principles to the case at hand, the High Court of Justice upheld the petition of the Temple Mount Faithful and ordered the Commander of the Jerusalem Police to enable them to pray near the Mugrabi Gate on Jerusalem Day. At the same time, the Court clarified that the Temple Mount Faithful had no "absolute right to pray near the Mugrabi Gate in every circumstance and at all costs. They have a right to pray by the Mugrabi Gate, provided that this prayer does not give rise to a near certain risk of impairment of public safety."

As noted, the High Court of Justice held that implementation of the right to worship is outside the jurisdiction of the Courts

but within the responsibility of the executive branch. However, the manner in which the executive branch treats this right is undoubtedly subject to review by the High Court of Justice, as are other actions of the authorities, in accordance with accepted criteria of reasonableness, extraneous considerations, discrimination, etc., and indeed, in practice, the High Court of Justice has often reviewed the decisions and actions of the executive branch even in relation to the implementation of the right to worship on the Temple Mount, in accordance with these criteria.

Finally, in HCJ 222/68, Deputy President Zilberg held that with regard to the implementation of the right to worship of Jews on the Temple Mount, the Minister of Religious Affairs should promulgate regulations (by virtue of Section 4 of the Protection of Holy Places Law) which would determine the place and times of prayer "because implementing the law without such regulations is likely to lead to a serious breach of public order." At the same time, the Deputy President clarified that he was not sure that the Minister of Religious Affairs could be forced to promulgate such regulations, as the Protection of Holy Places Law does not oblige the Minister to issue such regulations but merely provides that he is "entitled" to do so.

And indeed the Minister of Religious Affairs has not promulgated such regulations to this day, some 30 years after the enactment of the law authorizing their implementation; whereas on one occasion, the Israeli Ambassador to the UN expressly declared that 'non promulgation of such regulations is intended to prevent violation of the religious feelings of the Muslim public and to prevent incidents between the religious sects.'

Two petitions designed to force the Minister to issue regulations have been dismissed. The High Court of Justice has held that "the subject of regulating the right to pray of Jews on the Temple Mount is a sensitive and complex matter, and the timing of the promulgation of such regulations should be left to a time which the Minister feels is appropriate for resolving this question." Accordingly, as by virtue of the decision in HCJ 222/68 the right to worship is outside the jurisdiction of the Court, the Court also has no jurisdiction to make an order regulating the implementation of a right which it is not competent to consider.

In this connection it should be recalled that the issue of prayer by Jews on the Temple Mount, is not only problematic from the point of view of public order, but also as a matter of Jewish Halacha, and indeed most of the Rabbinic and Halachic authorities (including the Chief Rabbis with whom the Minister is required to consult under the aforesaid Section 4) completely forbid entry by Jews on the Temple Mount.

### **The Meaning of the Term "Holy Place"**

It is evident that the Holy Places have a unique position in Israeli law. Such places enjoy the protection of special laws, various activities there require the authorization of ministers of the government of Israel, disputes in connection therewith are likely to be outside the competence of the Courts, certain acts committed there are criminal acts and the sites enjoy various tax waivers. Against this special background, there are likely to be regular demands to recognize a variety of places as holy. Accordingly, in order to identify those places which may appropriately obtain this status, and identify the religion, for which that place is holy, we must establish a clear definition of the term "Holy Place". However, astonishingly, in no Israeli law, nor in any Mandatory law (nor even in the Order in Council Concerning the Holy Places or the Protection of Holy Places Law) is there any definition of the term. Similarly, the Penal Law does not use the term "Holy Place" but a similar phrase "place of worship", which too is left undefined.

Israeli case law too, does not provide a conclusive definition of the term "Holy Place" although it has been held that for a place to be defined as "holy" it must be proved that "some people regard the said place, at least for a certain period of time, as a holy place, or in the alternative... that the nature of the place is so clear and certain, that the Court may take judicial notice of its said character as a Holy Place".

In my view, since the term "Holy Place" is a religious term, its definition will be found in the sources of the religion, whose believers proclaim that that place is holy. This is particularly true in the absence of a statutory definition of the term, as the secular legislator must be deemed to turn to religious law in order to complete the factual background against which the legislator has determined the legal consequence, namely, the special status of the Holy Place.

Notwithstanding this, the secular legislator is not obliged to adopt the definition of the term "Holy Place" and grant the special status offered by law to the countless places declared to be holy by a particular religion, where those places are not in fact used for religious worship. It is suggested, therefore, that express legal provision be made that such status should only be granted to a "living" holy place, i.e., only to such places as are actually being used for religious worship by members of the religion which proclaim its holiness. The Antiquities Law - 1978 will suffice to safeguard the other Holy Places.

# Can the Law Survive a Change in Political Sentiments?



Moshe Wertheim

**F**or generations, peace between Arabs and Israelis was a dream people thought would never come true.†After more than 100 years of clashes between two†national entities, on the same territory, with different cultures and different life styles, standards of living wide apart, several wars and endless bloodshed - peace seemed a far cry away, a dreamlike vision.

But in Washington D.C. on 28 September, 1993, an interim agreement was signed between Israel and the Palestinian Authority.

A few months later, on 9 April, 1994, a protocol on economic relations was signed in Paris, forming an integral part of the major agreement.

All matters relating to commerce and industry and the economic interaction between Israel and the Palestinian Authority were dealt with in this protocol. The basic principle was laid down in the preamble: "in order to establish a sound economic base for these relations, which will be governed in various economic spheres by the principle of mutual respect for each other's economic interest, reciprocity, equity and fairness."

The underlying principle governing the relations between the parties in this sphere may also be found in Article IX, Annex V, under the caption "Industry" which reads:

"There will be free movement of industrial goods free of

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any†restrictions, including customs and import taxes between the two sides, subject to each other's legislation."

The mechanism is free movement of industrial products. The goal is to enable comprehensive free trade which will lead Israel and the Palestinian Area into a true common market. In order to enable trade and safe consumption, most goods will have to conform to legislation concerning safety, health and protection of the environment. Indeed, paragraph I expresses all this in a concise manner: "free movement between the two sides, free of any restriction and import taxes, subject to each others legislation." The final words refer to the extensive regulations which will be needed in order to effect the objective of "free movement between the two sides". They relate to labeling, standards, quality control, origin, identification, health and environment restrictions, etc. They should be interpreted in the context of enabling the implementation of the principle of free movement and not as contradicting it and rendering it meaningless.

The principle of free movement between Israel and the Palestinian Areas while protecting safety, health and the environment, is fundamental to other articles of the Protocol on Economic Relations; for example:

1. Article VIII (Agriculture) provides that there will be free movement of agricultural produce, free of customs and import taxes between the two sides, subject to the arrangements detailed in that article. All these arrangements are aimed at preventing the introduction and spread of animal disease and of plant pests and diseases.
2. Article X (Tourism) provides that tourist buses shall be

allowed to enter and proceed on their tours within the area under the jurisdiction of the other side, provided that the buses conform to international standards. These standards are designed for the safety of the passengers.

Various articles in Annex III of the Interim Agreement - the Protocol Concerning Civil Affairs, include provisions having a similar effect; for example:

1. Article XII (Environmental Protection) enables the Palestinian side to transfer chemical wastes to authorized Israeli sites, pending the establishment of appropriate sites in the Palestinian Areas.
2. Article XV (Gas, Fuel and Petroleum) deals with the transportation of gas and fuel products in order to facilitate such transportation in a manner which ensures safety and environmental protection.

While no customs or other restrictions, other than those aimed at protecting health and safety, apply to the movement of goods between Israel and the Palestinian Areas, the importation of goods from third countries into the Palestinian Areas is subject to the same system of licensing and taxation as is imposed on importation into Israel.

Article III (Import Taxes and Import Policy) of the Economic Protocol gives the Palestinian Council limited power. At the beginning it may determine its own policy only with respect to lists of specific goods, in limited quantities. With respect to all other goods -

"both sides will maintain the same import policy and regulations including classification, valuation and other customs procedures, which are based on the principles governing international codes, and the same policies of import licensing and of standards for imported foods, all as applied by Israel with respect to its importation. Israel may from time to time introduce changes in any of the above, provided that changes in standard requirements will not constitute a non-tariff barrier and will be based on considerations of health, safety and protection of the environment in conformity with Article 2.2 of the Agreement on Technical Barriers to Trade of the Final Act of the Uruguay Round of Trade Negotiations." (paragraph 10).

Paragraph 15 of Article III states that:

"The clearance of revenues from all import taxes and levies between Israel and the Palestinian Authority will be based on the principle of the place of final destination".

Therefore, the Palestinian Council receives all import taxes levied on goods which are imported from third countries and destined for the Palestinian Areas even if the importer is an Israeli.

While importation of goods from other countries is subject to import policies, licensing, taxation and customs procedures, the movement of goods between the two sides should be free and without restrictions and limitations.

In short, it may be noted that both sides agreed that it is important for their economies to enable free movement of goods between them, without customs barriers and other economic restrictions and, in order to achieve this goal, it was considered essential that towards third countries, Israel and the Palestinian Areas would come within the same "envelope" for customs and import purposes. Therefore, Israel, the West Bank and the Gaza Strip are all in one customs area; the border - for customs and import purposes - is the same for Israel and for the Palestinian Council, and the Israeli policy and regulations applying to imports intended for the Israeli market and for the Palestinian market will be identical.

The legislative powers invested in the Palestinian Authority or, for that matter, in the Government of Israel, gave the necessary latitude and the allowable margin necessary for normal trading within the territories, enabling each side to adjust the standards pertaining to various products, in order to protect customers and to comply with international standards, etc.

While these kinds of rules and regulations, designed to protect the consumer, are legitimate, other kinds of restrictions, hampering the free movement of goods between the two sides, are contrary to the Interim Agreement.

Mutual sensitivity and awareness of each other's needs is expressed throughout the Agreement, as in Article IX (paragraph 3):

"Each side will do its best to avoid damage to the industry of the other side and will take into consideration the concerns of the other side in its industrial policy."

Other important provisions in Article IX prohibit indirect tax rebates of benefits and other subsidies to sales in trade between the two sides (paragraph 2c) and demand that both sides will cooperate in the prevention of deceptive practices and trade in goods which may endanger health, safety and the environment (paragraph 4).

Close attention was given to the symmetry of legislative powers as, for example, in Article IX:

"The Palestinian side has the right to employ various methods in encouraging and promoting the development of the Palestinian industry by way of providing grants, loans, research and development assistance and direct tax benefits. The Palestinian side has also the fight to employ other methods of encouraging industry resorted to in Israel" (paragraph 2a).

In summary, it is clear that the parties intended and established clearly in their agreement closely integrated economies. It will lay open the large Israeli market to Palestinian products, allowing them full and quick growth in many areas where they have comparative advantages. At the initial stage Palestinian labour intensive products such as: in agriculture, building materials, textiles, packaging materials, wood products, leather goods, etc. can become leaders in the Israeli market.

Israeli products should have the same privilege inasmuch as they can compete with Palestinian products or with allowable imports. The list of these products cleared for free import is extensive and growing. Eventually importation under peace conditions will be one and the same in both areas.

So much for economic realities and the cooperative spirit of the parties at the time of drafting and signing the covenants of the agreement.

Between the conclusion of the Agreement and the present, the political climate has changed. The Palestinian Authority did not live up to Israel's expectations in preventing terrorist strikes, Cut-offs and other preventive measures were taken and the resulting economic strain aggravated an already highly charged situation. With secessionist sentiments running high among the Palestinians, the "Paris Protocol" or the "economic codex" began to be regarded distastefully. Plans were laid down to empty its covenants from any practical application, to isolate the Israeli economic presence as much as possible, speed up the establishment of independent ports of entry for imports, particularly by sea (Gaza port); by air (Rafah airfield); and in general lean more in the direction of the Arab neighbours, even if this means slower economic progress.

The first forerunning cloud of the coming cold wind came as a circular signed by the Assistant Under-Secretary in the Ministry of Economy and Trade, Mr. Samir Huleileh on 6 January, 1996. It stated that an agreement on economic matters had been signed and the Palestinians have the authority under this agreement to

create a "unified integrated trade policy and system controlled by them". It then went on to inform all international companies that they need registration within the P.N.A. territory. This circular was followed on 16 March, 1996, by a communique signed by the same official. It was clear, blunt and left little room for interpretation. It said:

"The Palestinian Authority's Ministry of Economy and Trade wishes to present the following explanatory remarks on the issue of commercial representation in the West Bank and the Gaza Strip. While we are actively involved in the organization of our domestic market and the establishment of our regional and international trade relationships, the following remarks are the Ministry's guidelines in its efforts to promote Palestine and the Palestinian business community as business partners in this region:

1. The West Bank and the Gaza Strip have always and continue to be a separate territorial and political entity.
2. The West Bank and the Gaza Strip maintained their distinct legal jurisdiction, since they were never annexed to Israel even when Israel administered the West Bank and the Gaza Strip, as an occupier, between 1967-1994.
3. While Israel was administering the West Bank and the Gaza Strip, existing laws continued to apply in this area distinct from laws applied in Israel. The court systems were also different and decisions were rendered independently. Thus, two parallel legal structures existed.
4. Contractual agreements were entered into by and between Israelis and Palestinians, each of which had their own binding effects. Agreements made with third parties, which applied in Israel, did not necessarily apply to the West Bank and the Gaza Strip and vice versa.
5. In 1993, the Declaration of Principles was signed between the PLO and Israel followed by several Agreements. As a result, Israel has ceased its administration of the West Bank and the Gaza Strip.
6. The essence of the Agreements is rooted in the establishment of a Palestinian self-government authority leading to the establishment of an independent Palestinian State.
7. Pursuant to the Agreements, the Palestinian Authority has assumed full responsibility and control over legal and civil matters in the West Bank and the Gaza Strip. These include, but are not limited to, economic spheres, such as taxation, trade, industry, banking, commercial and corporate transactions and the judiciary.
8. The Palestinian Authority is now responsible for the regulation of all commercial and corporate activities including representatives to foreign companies and businesses in the West Bank and the Gaza Strip.
9. A corporate entity cannot function as representative to a foreign company in the West Bank and the Gaza Strip



unless it is registered in the Companies Register of the Palestinian Authority which is separate from the Israeli register. Intellectual property can only acquire protection in the West Bank and the Gaza Strip if it is also registered in the Palestinian Authority registers.

10. Each corporate representative has to comply with Palestinian Authority regulations in the sale and distribution of products within the West Bank and Gaza Strip including matters of labelling, health and safety regulations.
11. Foreign citizens, companies or other entities can only operate in the West Bank and the Gaza Strip if they have an explicit authorization and/or registration with the relevant Palestinian Authority department according to prevailing laws and regulations.

We trust these explanatory points can help in clarifying the distinctions between the Palestinian and Israeli markets and hope that the necessary steps will be taken by your company to appropriately adjust to the changing political, economic and legal realities in light of the recent Palestinian-Israeli peace agreements.

We also trust that supporting a viable Palestinian economy, competent and strong Palestinian business community, in full cooperation with the regional and international partners, would be the cornerstone for a sustainable peace in Palestine and the Middle East.

Thank you in advance for your cooperation." (Signed for the P.N.A.)

To render the Agreement impotent and non-effective, bureaucratic measures and artificial "conflict of laws" were created. One of the "legal tools" was a long forgotten and never enacted law which may be referred to as the "Agents Law". It was a Jordanian law which was made public after approval by the Jordanian Government, subject to approval by the Jordanian National Council.

This approval was interfered with by the Six Day War and as the legislative process was incomplete, this law never became a part of the Jordanian laws that were retained as part of the substantive law in the West Bank.

The Military Administration did not implement the law and no claim has ever been raised by an interested party to apply the law or any part of it. In Jordan, the law was ratified in March 1968 and amended several times even before its ratification.

The Palestinians in the West Bank were not particularly keen on the law, which made it mandatory for an applicant to be a Jordanian citizen or if he registered a company it had to be a

company registered in Jordan and the majority of its shareholders had to be Jordanians. Naturally, no such limitations were applied by the Israeli administration and the Palestinians in the West Bank never saw any boon or even usefulness in this law, which can therefore, rightfully, be called: "the law that never was".

The desire to frustrate the Paris Agreement by an ostensibly legal excuse "revived" it and it was recalled from the archives to serve this purpose.

But even if it were a living, workable law, Israel would expect that any law existing in the West Bank from the Jordanian era will be abrogated or modified to conform with the Oslo Agreement.

The principle that a state is responsible for ensuring that its government, its constitution and its laws enable it to carry out its international obligations is fundamental in international law. It applies to the Palestinian National Authority inasmuch as the Palestinians claim to be a rightful party to international agreements.

The U.S. Secretary of State Bayard declared in 1887 that if, after having signed an international agreement, a government would not adapt and reconcile its own laws, then "the rules of international law would be but the shadow of a name and would afford no protection either to the state or to individuals". In 1949, the International Law Commission of the U.N. provided: "Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law and it may not invoke its constitution or its laws as an excuse for failure to perform this duty."

There is an abundance of decisions of international courts and tribunals recognizing this principle. (See, e.g. Case Concerning Certain German Interests in Polish Upper Silesia (Merits) P.C. I.J., Ser. A, No. 7 at 19, 22, 42 (1926)).

All through the twentieth century this principle has been reestablished and repeatedly appears in many decisions. By concluding an international agreement, it says, a government authority undertakes, if necessary, to bring its domestic legislation into line with the international commitments it has assumed. The principle or, as it is called, "The Doctrine of Adoption" is by no means new and the common law in England stated in the eighteenth century that "the International Law is part of the law of the land". On the other hand, therefore, by promulgation of a law which is clearly contrary to international law, the government concerned commits a violation of international law, for

which the state concerned is responsible under international law. (See: Vienna Convention on the Law of Treaties, cit. 884.)

In the case of Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig, the ruling was that a state cannot rely on its own constitution in order to avoid obligations it has assumed in a valid international agreement.

The "Agents Law", which is administrative in nature and of questionable validity altogether, is certainly not a part of the Palestinian Constitution and even if it were, it is a Palestinian undertaking to repeal or amend it accordingly.

The communique of 16 March, 1996, reflected a total change from the "Paris Protocol" and stated both principal and practice that will quickly lead to economic secession from the basic concept of a "customs union". Blocking entry of Israeli products to the West Bank and Gaza will inevitably be followed by some counter measures in kind by Israel and instead of the vital bond which needs to be created between the economies, a widening breach will follow.

I believe that Israel missed a historic opportunity to create a "customs union" with the West Bank and Gaza along the lines of the Oslo and Paris Agreements during the years of "occupation". Today, the "adjusting stage" will be harder. There are mutual complaints by both parties. One cannot turn away from complaints showing evidence that reimbursement of V.A.T. on Israeli products sold in the Autonomy was not swiftly processed and paid to the Palestinian Authority as per the Paris Protocol. While the V.A.T. on imported goods through Israeli ports of entry is reimbursed more or less on time, the other regretfully lagged behind - inevitably creating the practice of advancing imports and impeding Israel -Palestine trade. This situation should be corrected without delay. It is a bureaucratic weakness which can easily be interpreted by Palestinians as intentional and premeditated policy.

The loss of Palestinian jobs in Israel because of the frequent cut-offs is nothing short of a tragedy. It results in distress and misery to thousands of Palestinian families and on the Israeli side the creation of large resident communities of foreign workers.

The grievances are many and painful.

Never, however, was a step taken on either side to openly challenge the official agreements of Oslo and Paris. Trying to legalize a misdemeanor is somewhat different from repudiating the law altogether.

The restrictions on free trade, the delays in V.A.T. disbursements by Israel, the "non-tariff" impediments resorted to by the Palestinians, the "Agents Law" being one of them, are dangerous harbingers of a situation which is basically undesired by both parties. It is not too late and they should be "nipped in the bud" before developing into economic warfare.

The true and bona fide observance of agreements reached and signed, their final ratification by proper adjustment of the domestic legislation, is as desired as it is a legal obligation. Strict adherence to law may act as a bridge. It will offer relief to injured feelings and a legal bond will therefore help both parties through a very hard time.

## To Right A Wrong

Dr. Yohanan Manor, former General Director of the Information Department of the World Zionist Organization and current member of the "Anti-Semitism Monitoring Forum" of the Israel Government Secretariat, has published an important book: *To Right a Wrong*, Shengold Publishers Inc. N.Y. 1996. The author describes in full the history of UN Resolution 3379 equating Zionism with racism and the process of its revocation. The author also gives credit to the Association's international Project CASAZ which was initiated to combat this resolution and greatly contributed to its repeal.

## Just Received

Alon Kaplan (ed.), *Israeli Business Law: an Essential Guide*. Kluwer Law International. Netherlands, 1996.

The Association wishes to congratulate Adv. Dr. Rahel Rimón, Co-ordinating Editor of *JUSTICE*, on being awarded her PhD in law. Adv. Rimón has obtained her degree from the Institute of Maritime Law in Southampton University, England, with a thesis entitled *Reform of Admiralty Jurisdiction in the State of*

### Editor's note:

Due to the preference given in this issue of *JUSTICE* to issues related to the Hebron Agreement and the efforts to retrieve Jewish gold and deposits in Swiss banks, the regular columns of Jewish Law and From The Supreme Court of Israel have been deferred to our next issue.

# Europe vs. Intolerance

Peter Leuprecht

**T**he historical and philosophical roots of the contemporary movement for European unification go back largely to the fight and resistance against Nazism and fascism. For those, who in the dark days of the Second World War, dreamt of, and fought for, a new and better Europe, for those who after 1945 started making this dream a reality by building on the ruins of the War, the construction of Europe was a great humanist project. For them, respect for human dignity and human rights was an essential element of the new international and European order to be established after the victory.

The first European organisation, the Council of Europe, was to be the incarnation of this vision of Europe and the guardian of the noblest values of Europe's inheritance: pluralist democracy, the rule of law and human rights.

## The Council of Europe and its Basic Values

Under its founding treaty, the Statute, which was signed in London on 5 May 1949, the Council of Europe's aim is to build European unity on the basis of these three and interconnected principles. Compliance with them is both the chief requirement for admission of a country to the Council of Europe and the main and lasting obligation of all its members.

The Council of Europe has to its credit remarkable achievements in the field of human rights, in particular the European Convention on Human Rights, undoubtedly the most effective international human rights treaty, with its unique supranational control machinery.

As a result of the far-reaching changes that have occurred in Central and Eastern Europe since 1989, the membership of the Council of Europe has grown rapidly in the last few years. It is increasingly becoming a pan-European organisation, with now 40 member States.

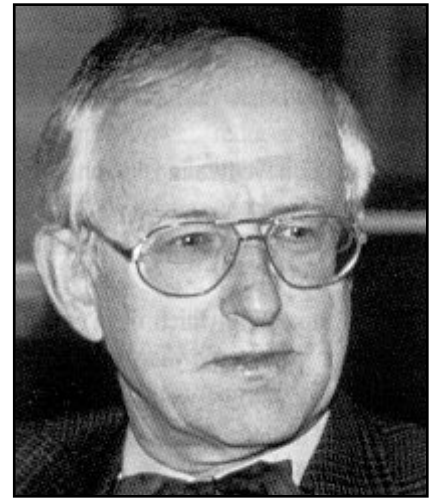
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## The Resurgence of Racism, Xenophobia, Anti-Semitism and Intolerance

When the Heads of State and

Government of the member States of the Council of Europe met for the Vienna Summit in October 1993, they solemnly declared:



"The end of the division in Europe offers an historic opportunity to consolidate peace and stability on the continent. All our countries are committed to pluralist and parliamentary democracy, the indivisibility and universality of human rights, the rule of law and a common cultural heritage enriched by its diversity. Europe can thus become a vast area of democratic security. This Europe is a source of immense hope..."

Yes, it is a source of hope, but it is also threatened by terrible dangers and confronted with formidable challenges. One of them is intolerance in its different forms.

If Europe had learned the lessons of its past, it would not have been necessary for the Heads of State and Government gathered in Vienna to adopt a Plan of Action to combat racism, xenophobia, anti-Semitism and intolerance. Indeed, the scourge of intolerance has, in various ways, some of them unimaginably horrible - religious persecutions and massacres, inquisitions, crusades, pogroms, genocide - done such hideous damage in our continent that it seems inconceivable that we should still have found no way of checking it, once and for all.

After the absolute evil of the Shoah, Europe's and especially the Council of Europe's founding fathers set out to do everything in their power to guard against barbarism. "Never again!" they swore. And yet...

At a time when Europe is free and united, more than 50 years after the end of the Second World War, the "foul beast" of intolerance is raising its ugly head everywhere once again. None of our countries are spared. Some have racist crimes and murders, some have aggressive nationalism and the persecution of minorities, and some have had killings in the name of "ethnic cleansing".

The situation we live in is one huge paradox: on the one hand, freedom, democracy and human rights have made undeniable progress; on the other, we see the age-old, primitive hatreds being reborn.

This is something which the Council of Europe finds hard to accept. For over forty years, we have been working to build democracy in Europe, to define and enforce human rights, to promote the rule of law. Of course, we know particularly since the last World War - that civilisation is never safe from barbarism - but we are also convinced that democracy, the rule of law and human rights are our only bulwark against hatred, violence and war.

The scourge of intolerance had been addressed at the European political level on occasions prior to the Vienna Summit. For example, the Committee of Ministers of the Council of Europe adopted a Declaration on Intolerance on 14 May 1981. Even earlier, the Council of Europe's Parliamentary Assembly put forward, in 1966, a draft model law intended to guide national policy and law makers towards the criminalisation of incitement to racial hatred. More than this, it may be noted that the work of the Council of Europe since its inception has been rooted in the need to promote the equality and dignity of all human beings, and the various intergovernmental activities of the Organisation have over the years testified to a continuing commitment to deal effectively with intolerance of which hate speech is one of the most pernicious forms.

However, the Vienna Declaration and Plan of Action mark a new and important step in attempts to eradicate the evils of racism, xenophobia, anti-Semitism and intolerance. The political commitment of the Heads of State and Government to take decisive action against intolerance must be viewed against the background of a resurgence of aggressive nationalism and ethnocentrism as well as deliberate attempts to foster hatred against

individuals and groups on account of their race, nationality or ethnic origin or religion.

The changes in Central and Eastern Europe have also brought with them new tensions and, regrettably, open hostility and bloody conflict. We now grapple with the new problems which have accompanied the taste of freedom. The fall of the totalitarian regimes in Central and East European countries has meant that the lid has been lifted off what were always potentially explosive situations but which were contained by the iron grip of totalitarian communism. The black box of forced coexistence has been opened with alarming consequences.

The tragedy which besets certain regions of former Yugoslavia, and in particular Bosnia and Herzegovina, is only too illustrative of the evils of inflammatory, mindless and vicious speech. The media have been the prime vector for its dissemination. Commentators have noted that the media in the former Yugoslavia were primary contributors to the descent into open war.

Western Europe is by no means immune to the new wave of racism and intolerance. In certain countries, e.g. Germany, there have been appalling racist murders. Certain political parties are indulging in racist and xenophobic propaganda. The discourse of representatives even of "middle of the road" political parties is becoming contaminated. The courageous report entitled Political speech and race relations in a liberal democracy, concerning an inquiry into the conduct of the Tower Hamlets Liberal Democrats, shows an example of such contamination. The report states inter alia: "Political speech was abused in the competition for the popular vote by exploiting or encouraging racial prejudices". According to the report, the politicians concerned were not racist, "in the sense that their conduct was based upon racial prejudice or a desire to stir up racial prejudice. Rather what they did was the product of populism: a belief that the end (winning power so as to govern in the interests of everyone) justified the means (bidding for votes of discontented white voters by pandering to their resentment and anxiety about the Bangladeshi section of the local community)".

### **The Complex Issue of Hate Speech**

The role of the media in the conflict in the former Yugoslavia demonstrates how expression and information can degenerate into a vehicle for hate propaganda. However, although the evils of hate speech and the consequences which it can engender can

be easily documented, we must not overlook the complexities of dealing with the problem.

For the member States of the Council of Europe, legislative attempts to curb hate speech must be reconciled with the fundamental right of freedom of expression and opinion. For certain commentators, interference with this freedom in the interests of the protection of the rights and freedoms of ethnic, racial or religious minorities cannot be justified. The proponents of this perspective would argue that the appropriate means for countering hate speech is to expose its evil through the presentation of opposing views and opinions. In the final analysis, the tolerant view will prevail.

It is worth rereading what Sir Karl Popper, the great advocate of "open society", has written about the "paradox of tolerance":

"Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them ... We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant. We should claim that any movement preaching intolerance places itself outside the law, and we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder, or to kidnapping, or to the revival of the slave trade, as criminal."

In my view, the right approach is to strike the appropriate balance between free speech and the protection of the rights and freedoms of others. According to this perspective, legislative curbs on hate speech are justified on the basis of the protection of superior interests and values, in particular the requirements of tolerance, democratic security and peaceful co-existence of different cultural, ethnic, religious and other groups within society. We are in fact confronted with a conflict between two human rights: the right of freedom of expression and the right not to be a victim of discrimination and prejudice.

The complexity of the problem is also illustrated by the need to ensure that the "reconciliation" or balancing approach is not used to protect the dominant culture from dissent on the part of minority groups within the society. Laws prohibiting incitement to hatred or intolerance can only too easily be used as pretexts for suppressing the political views of those outside the dominant culture. They may be used to penalize members of oppressed communities who advocate change. Thus, in South Africa legislation against incitement was, in the past, used to stifle growing

black opposition; in the former Soviet Union it was turned against dissident movements and human rights activists; in Turkey it is used against proponents and advocates of the Kurdish minority.

The difficulties inherent in finding a definition of hate speech are considerable. There are of course obvious examples of unacceptable discourse. However, there are also grey areas which straddle the expression of a contentious point of view and a direct or indirect encouragement to racial hatred.

Finally, one has to put the question to what extent criminalizing expression can suppress or reduce racism and discrimination. The law can only play a limited part in creating a human and tolerant society. I do, however, believe that it must make its contribution. Law is at the same time a mirror of society and a means of shaping it.

## Regulation of "Hate Speech"

### *A. International legal approaches to the issue of hate speech*

Law makers at the international and European levels have sought to address the issue of incitement to hatred, intolerance, xenophobia, etc. The matter has been clearly addressed in Article 4 of the **International Convention on the Elimination of All Forms of Racial Discrimination**. This Convention was adopted by the General Assembly of the United Nations in 1965 as a response to a revival of anti-Semitism and international concern regarding apartheid. Article 4 provides:

"States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise

- participation in such organisations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite discrimination."

It may be noted in passing that the provisions of Article 4 make specific reference to the need to find a compromise between the provisions of Article 4 and the general principles laid down in the Universal Declaration of Human Rights. One such principle is the freedom of expression and information contained in Article 19 of the Declaration.

**The International Covenant on Civil and Political Rights**, Article 20, paragraph 2, proclaims:

"any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

**The Universal Declaration of Human Rights** does not make any specific reference to the prohibition of incitement to racial hatred. Whilst Article 19 of the Universal Declaration sets forth the right of everyone "to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", it will be recalled that the underlying principle of the Declaration is that "all human beings are born free and equal in dignity and rights" (Article 1). Article 30 of the Declaration may be seen as providing a justification for curbing hate speech where such may aim at the destruction of the rights and freedoms of others.

**The European Convention on Human Rights** is based upon the same fundamental philosophy as the Universal Declaration, namely the recognition of the equal dignity of all human beings.

Like the Universal Declaration, the issue of hate speech has not been specifically drafted into the European Convention. Article 10 guarantees:

"the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

However, the specific absence of any reference to hate speech in the Convention is compensated for by the possibility which is given to Contracting Parties to proscribe such in accordance with the strict requirements of paragraph 2 of Article 10.

Article 17 of the European Convention on Human Rights may

also be considered as a possible justification for steps taken to eradicate the evils of hate speech. As with Article 30 of the Universal Declaration, Article 17 states:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

**The European Convention on Transfrontier Television**, in force since 1 May 1993, makes specific reference to the issue of incitement to racial hatred. Article 7, paragraph 1, of this Convention states that the presentation and content of trans-frontier television services shall not "give undue prominence to violence or be likely to incite to racial hatred".

This particular provision was derived in part from the international undertakings assumed by the member States under the International Convention on the Elimination of All Forms of Racial Discrimination.

#### **Provisional conclusion**

The international, including European, instruments tend towards the "reconciliation" or balancing model. Freedom of expression and information may thus yield in certain well-defined conditions to the need to protect the rights and freedoms of others and thus pave the way for measures designed to curb hate speech.

#### *B. Domestic law and practice regarding the issue of hate speech*

An extreme position is that of the United States of America where the balance is clearly drawn in favour of freedom of speech.

As far as Europe is concerned, Article 10 of the European Convention on Human Rights, taken together with Article 17, provides a legal framework for States wishing to take measures to curb incitement to hatred, xenophobia, anti-Semitism and intolerance. As is shown by the case law of the European Court and European Commission of Human Rights, the measures taken must be reconciled with the fundamental freedom which is guaranteed in the first paragraph of Article 10.

Some European countries have enacted specific legislation or included provisions in their criminal codes, so as to address the issue of hate speech. An overview of comparative law and practice in this area is to be found in the analysis commissioned by

the non-governmental organisation "Article XIX" and which appears in the publication *Striking a balance: hate speech, freedom of expression and non-discrimination*. In 1994, the European Commission against Racism and Intolerance (cf. below) commissioned the Swiss Institute of Comparative Law to produce a report on the legal measures taken by Council of Europe member States to combat racism and intolerance. This very comprehensive overview is available as Council of Europe document CRI(95)2 rev. I shall limit myself to mentioning just a few examples of domestic legislation.

**In Austria**, Article 283 of the Criminal Code has made it a crime publicly to incite the commission of hostile activities against religious, national or ethnic groups. Special criminal provisions have been introduced against the dissemination of Nazi propaganda.

**In France**, Articles 187 and 416 of the Criminal Code, amending earlier legislation, make it an offence to incite to discrimination, hatred or violence against a person or a group of persons on grounds of origin or because of belonging to a given ethnic group, nation, race or religion.

**In Norway**, Section 135 of the Criminal Code makes it an offence for persons to disseminate information to the public which threatens or subjects to hatred or contempt a person or group on account of their religion, creed, race, colour of skin or national or ethnic origin.

In Sweden, the Freedom of the Press Act prohibits the expression of threats against, or contempt for, a population group "with allusion to its race, skin colour, national or ethnic origin or religion".

**In the United Kingdom**, the absence of a formal constitutional guarantee of free speech and of detailed codes of law make it difficult to develop a principled protection of human rights in conflict. The Public Order Act makes it an offence to use threatening, abusive or insulting words or behaviour with the intention of stirring up racial hatred or in circumstances where racial hatred is likely to be stirred up. It is an offence to publish any such material. In Northern Ireland, it is an offence to incite to religious hatred.

### *C. The approach followed by the European Court and European Commission of Human Rights*

As I have indicated, States have taken action to curb incitement to racial hatred. The international instruments referred to above encourage them to do so. The Declaration and Plan of

Action adopted by the Heads of State and Government on the occasion of the Vienna Summit equally highlight the value of regulating incitement to racial hatred, xenophobia, anti-Semitism and intolerance.

However, governments do not have *carte blanche* to enact laws and regulations in this area. They must situate normative initiatives within the framework provided by Article 10 of the European Convention on Human Rights. Any attempt to curb hate speech is an interference by a public authority in the freedom of expression and freedom of information. Justification for regulation must be found within the provisions of paragraph 2 of Article 10. The case law of the Convention's organs has over the years illustrated the extent to which free speech is to be regarded as a cardinal feature of genuine democracies. The high water mark of judicial recognition of freedom of expression and freedom of information is to be found in the landmark ruling of the European Court of Human Rights in its *Handyside* judgment:

"Freedom of information, as secured in paragraph I of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress ... Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broad-mindedness without which there is no "democratic society"."

The Convention's organs are most reluctant to tolerate restrictions on the power of ideas which challenge accepted orthodoxies or even the constitutional order. This reluctance is exemplified in the figour of the criteria which the European Court has formulated for gauging the legality of any particular limitation on free speech. The case law has confirmed over the years that any such limitation:

- must be "necessary in a democratic society" in the sense that it replies to a convincingly established "pressing social need";
- must be proportionate to the aim envisaged;
- must pursue a legitimate aim which is envisaged in the provisions of paragraph 2 of Article 10, one of which is "the protection of the reputation or rights of others";
- the limitation must be laid down in law, in a way which is precise, foreseeable and accessible.

The European Commission has on a number of occasions been

led to adjudicate in this area. On these occasions the Commission has considered the scope of Articles 10, 14 and 17 of the Convention in coming to conclusions as to admissibility and merits.

In Application No 6741-74 (*X v Italy*), the Commission was of the view that a measure designed to incriminate participation in a scheme aimed at resuscitating the Fascist Party was necessary for the protection of public safety and the rights and freedoms of others.

In Application No 8348/78 and 8406/78 (*Glimmerveen and others v Netherlands*), the chairman of an extremist party sought a ruling from the Commission that his conviction for circulating leaflets condemning the presence of immigrant workers constituted a violation of Article 10. The courts in the Netherlands had found the content of the leaflets to be an incitement to racial discrimination. The Commission ruled that the application was inadmissible. In so doing, the Commission had recourse to the provisions of Article 17 of the Convention. The Commission did not therefore rule on the issues raised under Article 10. No enquiry was thus made as to whether or not the criminal provisions in question were necessary in a democratic society for the protection of public order, the rights and freedoms of others or any of the other relevant criteria contained in paragraph 2 of Article 10.

In Application No 9235/81 (*Künen v. Federal Republic of Germany*), the applicant complained that the authorities had prevented him from exhibiting brochures proclaiming that the Holocaust was a Zionist fabrication. The Commission held that the restriction on the publication of the brochures could be justified on the basis of the need to protect the rights and freedoms of others.

In the case of *Jersild v. Denmark* (Application No 15890/89), the European Court of Human Rights held, by 12 votes to 7, that the conviction of a journalist for allowing members of an extremist group in Denmark to put forward their racist views over the air constituted a violation of Article 10 of the Convention (Judgment of 23 September 1994). The point in dispute was whether the measures taken by the Danish authorities against the applicant were "necessary in a democratic society". The Court emphasised "the vital importance of combating racial discrimination in all its forms and manifestations". It felt, however, that "taken as a whole, the feature could not objectively have appeared to have as its purpose the propagation of racist views and ideas".

According to the Court, it had not been convincingly established that the interference in the journalist's freedom of expression was "necessary in a democratic society" in particular, the means employed were disproportionate to the aim of "protecting the reputation or rights of others".

In a joint dissenting opinion, four judges, including the President and the Vice-President of the Court, stated that "the majority attributes much more weight to the freedom of the journalist than to the protection of those who have to suffer from racist hatred". They felt that it would have been "absolutely necessary to add at least a clear statement of disapproval to the interview in which the racist statements were made". According to the four judges, "the protection of racial minorities cannot have less weight than the right to impart information".

In another joint dissenting opinion, three judges - clearly hinting at judges from the more recent Council of Europe member States in Central and Eastern Europe - stated:

"While appreciating that some judges attach particular importance to freedom of expression, the more so as their countries have largely been deprived of it in quite recent times, we cannot accept that this freedom should extend to encouraging racial hatred, contempt for races other than the one to which we belong, and defending violence against those who belong to the races in question".

They emphasised in particular that "the journalist responsible for the broadcast in question made no real attempt to challenge the points of view he was presenting, which was necessary if their impact was to be counter-balanced, at least for the viewers".

Personally speaking, I must confess that I find the arguments of the minority more convincing than that of the majority of the Court.

### **Beyond the Legislative and Judicial Approach**

One of the results of the Vienna Summit was the creation of the European Commission against Racism and Intolerance (ECRI). Its mandate is to:

- review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance, and their effectiveness;
- propose further action at local, national and European level;
- formulate general policy recommendations to member States;



- study international legal instruments applicable in the matter with a view to their reinforcement where appropriate."

The ECRI which has been operating since March 1994 already has a great deal of valuable and practical work to its credit.

While it is true that the Declaration and Plan of Action adopted at the Vienna Summit place a premium on the value of legislation and regulations so as to eliminate racism and discrimination, including the spread of hate speech, the Heads of State and Governments have also prioritised non-normative strategies.

Specific emphasis, has been placed on preventive strategies, in particular awareness, creation and information concerning the evils of intolerance. A broad European Youth Campaign has been launched "to mobilise the public in favour of a tolerant society based on the equal dignity of all of its members and against manifestations of racism, xenophobia, anti-Semitism and intolerance". Why a youth campaign? Because young people are both the most vulnerable and the easiest to mobilise. Values or prejudices take hold and more or less set hard between the ages of 18 and 20. These and even younger age groups are the ones we tried to persuade and involve through the campaign.

The campaign conducted under the logo "All different, all equal" had a strong national and local dimension: in more than 30 countries, national committees, comprising governments, parliamentarians, local representatives, youth organisations, anti-racist movements and minorities were hard at work on schemes to mobilise and educate. The European aspect of the campaign covered the production of teaching aids, training courses, support for pilot projects and major public events.

The Plan of Action has also prioritised the need for a strategy to reinforce mutual understanding and confidence between people. In this respect, it was decided to promote education in the fields of human rights and respect for cultural diversity and to strengthen programmes aimed at eliminating prejudice in the teaching of history by emphasising positive mutual influence between countries, religions and ideas in the historical development of Europe.

The Council of Europe is again devoting particular attention to history teaching and, in this context, to the teaching of the history of the Shoah, which I regard as indispensable.

The preventive strategy is of cardinal importance in counteracting the dangers of hate speech. The latter can only thrive in a climate of mutual suspicion and distrust.

The Plan of Action makes specific reference to the contrib

tion which the media can make to the development of mutual understanding and trust in pluricultural, multi-ethnic societies. For this reason, the Heads of State and Governments requested "the media professions to report and comment on acts of racism and intolerance factually and responsibly and to continue to develop professional codes of ethics which reflect these requirements".

The stress placed on self-regulation on the part of media professionals is apposite. For the Council of Europe, responsible journalism, publishing and broadcasting is first and foremost a matter for the professionals themselves.

The Council of Europe has developed important programmes of co-operation and assistance for Central and East European countries in the media field.

In this context, it organises training seminars, workshops, etc., for the benefit of journalists in Central and East European countries. These practical initiatives carried out by professional organisations in collaboration with the Council of Europe address matters such as the ethics of journalism. They are of primary importance in providing journalists in the Central and East European countries with perspectives on how they should report in multi-ethnic, pluricultural societies.

Particular programmes have been implemented for sustaining independent media in former Yugoslavia.

## Conclusion

Europe, confronted with an alarming resurgence of racism, xenophobia, anti-Semitism and intolerance, has a duty of memory, a duty of vigilance and a duty of resistance.

Memory is essential. If Europe wants to know where it is going, it must be aware from where it comes. Europe also comes from Auschwitz. We cannot possibly build a better future on a foundation of ignorance or denial of the past.

If European society is to remain an open, democratic and tolerant society, it will have to be extremely vigilant and determined to resist those who preach and practice racism and intolerance.

If the Europe we are trying to unite is to be solidly built, it must be built on the basis of genuinely shared values, on a shared ethic - the ethic of equal dignity.

# Working to Retrieve Lost Jewish Assets in Europe

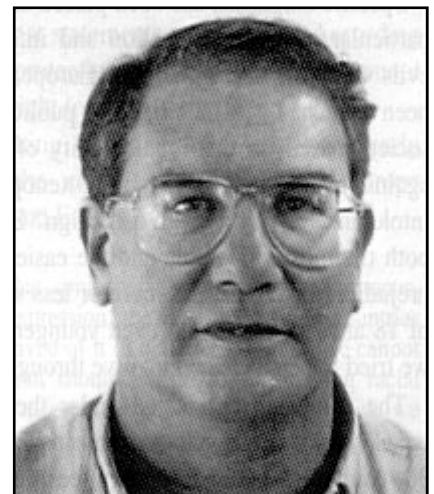
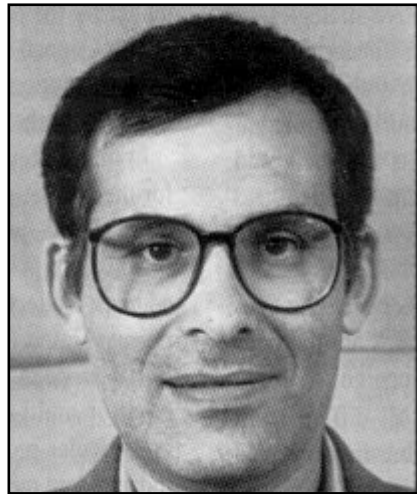
Aaron Abramovich and Yehouda Ofrath

**W**hen the Iron Curtain was lifted from Eastern Europe in 1989, the opportunity arose to redress the situation of Jewish communities which for fifty years had been severed from the Jewish people in the free world. During those five decades, Jewish communal life in Eastern Europe almost ceased to exist, although the communal and public institutions and properties, which had served the communities for centuries, remained in place. These properties belonged to Jewish communities and public Jewish organizations. Their fate was sometimes similar to the fate of hundreds of thousands of individual private properties which were abandoned after their Jewish owners were killed and left no heirs to their property. Most of the communal properties, however, continued to be used - but by others and for purposes different from the original aims which they were meant to serve.

Furthermore, thousands of Jewish

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communal and other public properties belonging to Jewish communities which were annihilated during the Holocaust were taken over by the national and municipal authorities of the countries which themselves witnessed the Holocaust.

With the transition by the governments in Eastern Europe to a democratic system, it became possible to claim Jewish properties, both of communities and individuals, which had first been confiscated by the Nazi regime and later by the Communists.

At the beginning of 1993, the leading world Jewish organizations established the World Jewish Restitution Organization (WJRO) which was

assigned to deal with claims against the Eastern European countries in respect of Jewish property of every description, individual, communal, public and private.

Soon after its establishment, WJRO also commenced dealing with dormant and heirless assets in Switzerland.

WJRO also became very active in other Western European countries, such as Norway, Sweden and France, exerting efforts to restore Jewish communal properties to foundations composed of local Jewish communities and WJRC.

The World Jewish Restitution Organization is registered in Israel as a non-profit organization (Amuta) in accor-

dance with the Amutot Law, 1980; its Founding Members are nine leading world Jewish organizations.

### Scope of Activities

Prior to its incorporation as an Amuta, WJRO came to an agreement in principle with the government of Israel concerning cooperation and coordination between WJRO and the government of Israel.

The WJRO began its activities in April 1993. Since then, it has conducted negotiations with the governments of Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Lithuania, Latvia, Estonia, the Ukraine, Switzerland, Norway, Sweden and France. The WJRO has signed agreements with the leadership of a number of Jewish communities to cooperate in preparing and submitting claims, and has organized a network of local activists in some of these countries, engaging them in searching the national and local archives in order to locate and identify the properties to be claimed.

There exists a distinction between those states which were allies of Nazi Germany during World War II, i.e. Hungary, Romania, Bulgaria, Slovakia and Croatia, where provisions of relevant Peace Treaties deal with the restoration of spoliated properties, and states such as Poland, the Czech Republic, the former Yugoslavia and the Baltic States Lithuania, Latvia and Estonia - which were under German occupation. However, the case presented by WJRO against all Eastern European countries, is based on the legal and equitable argument that these countries should be required to restore property illegally seized from the original legal owners during the occupation.

The case of the heirless bank deposits and accounts in Switzerland and of communal property in the countries of West Europe is altogether different - as is explained below.

At the end of World War II, some Eastern European countries, such as Hungary, Romania, Poland, Bulgaria and Czechoslovakia, introduced decrees of restitution. However, these decrees have proved to be inadequate and have not in fact been implemented.

According to the Peace Treaties signed in 1947 between the Allies and Hungary and Romania, the governments of the latter were obliged to restore properties seized from persecuted citizens, mainly of Jewish origin, or to pay them fair compensation where restoration was impossible. The Treaties also provided for the transfer of heirless and unclaimed property of persecuted persons, including those of communities and associations representing such persons.

The collapse of Communism in Central and Eastern Europe and later the disintegration of the Soviet Union was followed by a re-ordering of socio-economic structures and the "defrosting" of history. Legislation envisaging the restoration of property was seriously contemplated. For the first time, in some of those countries there was also open discussion as to where responsibility lay for the plight of their Jewish neighbours and countrymen. Heads of state, and other national leaders, have in some instances issued apologies for their countries war time role.

Generally speaking, in most of the states of Central and Eastern Europe a similar pattern evolved, the effect of which was to limit restitution to property

seized during Communist rule (rather than during the Nazi period), and even then only to restore property to citizens permanently domiciled in the country. What lay behind this policy was readily evident. The lion's share of nationalized Jewish property would remain in State or municipal hands, or in the hands of the people or entities occupying the property.

Most Jewish holdings were seized during World War II well before the Communists swept to power. Moreover, few Jews survived the Holocaust. Of those who emerged from the inferno only a very small number remained in their countries of origin and retained their original citizenship. Linking domicile and citizenship to restoration of property would effectively wipe out the vast majority of Jewish claims. Some countries, those with large pre-war German minorities or other national minorities which were expatriated, or those which benefited from the realignment of borders at the expense of Germany, or other neighbours, ironically justified this policy as the only means of preventing Germans from staking claims. Moreover, many of the countries in question have sought to restrict property restitution to individuals only - thus invalidating the claims of Jewish communities, and also barring the possibility of Jews retrieving heirless Jewish property.

### The Legal Basis for the Restitution Claims

Discriminatory treatment of Jews in restitution legislation is the rule rather than the exception. These discriminatory provisions are incompatible with the principles of human rights enshrined in the international agreements to which many of these countries have adhered,

which rule out discrimination. *inter alia*, by reason of social or national origin.

The question of human rights can hardly be ignored. General principles of international law and elementary justice demand the restoration of property wrongfully taken. Human rights and respect for the enjoyment of private property without discrimination are principles enshrined in Protocol No. I of the European Convention for the Protection of Human Rights.

Those states which were allied with Germany during the war can hardly be allowed to continue to benefit from property seized from Jews in whose murder they were clearly accessories, if not prime perpetrators. According to Articles 25 and 27 of the Peace Treaties between Hungary and Romania and the Allied and Associated powers, the two defeated countries are obliged to restore the property of those persecuted. Where the property is heirless, it is to be applied for the relief and rehabilitation of the survivors.

At the same time, those countries which were under German occupation must be pressed to turn over properties which were sized by the occupant and never restored after liberation. The normal legal principle of *bona vacantia* which applies to heirless property under civil law can hardly be expected to apply in the extraordinary situation which arose out of the genocide and despoliation of the Jews of Central and Eastern Europe. The countries where these atrocious crimes were committed cannot be allowed to reap material benefits from these criminal acts.

### The Model of Operation

In many East European Countries, and

in Norway, the remaining Jewish communities are small - sometimes comprising no more than a hundred people. The Jewish communal properties,<sup>1</sup> however, are numerous, consisting in many case of huge buildings which served a variety of purposes before the war. This discrepancy is typical almost everywhere in Eastern Europe.

Faced with this situation, WJRO developed a scheme of action, centering on the institution of agreements with the Jewish communities - and where a federation of such communities exists, with that federation - on how to claim and eventually administer the restored properties. The basic elements of such agreements are as follows:

1. Whenever possible, the agreement is between WJRO and the federation of the Jewish communities representing all the Jewish communities in the country.
2. The agreement is for the establishment of a foundation, as in most of the countries there are laws concerning foundations which, *inter alia*, benefit from tax-exemption status.
3. All properties restored are to be registered in the name of the foundation, which will own them.
4. A board is established for the foundation, comprising representatives of WJRO and the local Jewish communities.
5.
  - a. The welfare, religious, educational, cultural, and related needs of the local Jewish communities are to receive priority in the allocation of income.
  - b. Income in excess of these needs is to be used for the welfare,

religious, educational, cultural, and related needs of Jews originating from the local Jewish community (but no longer resident there) and for other Jews.

- c. The formula also provides for the preservation and maintenance of Jewish cemeteries and religious artifacts.
6. The board is to be responsible for the management of the property owned by the foundation.

The agreement is an affirmation of the rights of the autonomous local Jewish community and the WJRO to benefit from restored communal property.

### Legislation on Restitution of Properties

As a result of U.S. diplomatic and political efforts, countries in Eastern Europe initiated legislation on the restitution of Jewish communal properties. The WJRO is active in this field, negotiating with heads of states, political leaders, ministers and members of parliament on ways of providing for a just restitution of properties which belonged to the Jewish communities and Jewish organizations.

The problems are the same in each country: the annihilation of a large number of prosperous Jewish communities during the Holocaust; huge numbers of properties-, scarcity of existing Jewish population; and Jews from these countries, who survived and now live outside these countries, in Israel and elsewhere. The legislative model in some cases is that which deals with the restitution of properties to the churches. While the common element in the case of church and synagogue is clear, the fundamental difference also shines out: the

properties of the church, once restored, will find their living claimants. The properties of Jewish communities are in most cases the only, silent, survivors of the community which once used them.

A recurrent flaw in the legislation on restitution of Jewish properties is that it makes the existing local Jewish communities the heir of all the properties in the area of their "jurisdiction", even when such communities consists of a hundred people, and even when there are no Jews left at all in certain other communities.

This is where WJRO exerts its efforts to be named in the law as the lawful claimant, jointly with the Jewish federation of communities, of all these communal and public Jewish properties. WJRO contends that it represents Jews all over the world and that together with the Jewish local communities it has the task of preserving the religious and cultural heritage of that particular Jewry, while not forgetting the day to day needs of the Jews who survived and remained in their communities of origin.

The cases of Slovakia, Poland and Hungary are illustrative of the process:

### Slovakia

Slovakia probably represents WJRO's most significant success. After considerable negotiation between the Slovak authorities and WJRO, a law was passed on 27 October 1993 providing for the partial recovery of property seized from religious communities. In the case of the Jewish community, the law provides for recovery of property seized since 2 November 1938. It should be noted that Slovakia, under the leadership of Father Josef Tiso, was a German satellite which on its own initiative orchestrated proceedings for the extermination and

spoliation of its Jewish minority. Although considerable time will elapse before the law can be implemented, its very enactment sets a precedent for other states in the region. The community, in cooperation with WJRO, has already drawn up an inventory of over 300 properties (including some 30 synagogues) which the Jewish community can claim under the provisions of the new law. Many of the claims will be processed by local courts with the work facilitated by WJRO.

**In the immediate post-war period vast quantities of Jewish property were unclaimed, largely because most of the owners and their heirs had been murdered when seeking recovery of their properties, while those who survived had left the country.**

### Poland

The question of the restitution of Jewish property in Poland is particularly charged with emotion. Out of a Jewish population of 3.5 million persons before the Holocaust, only about 400,000 survived. Jews constituted some 10% of the population of inter-war Poland - and that country was the heart of East European Jewry. In many important cities Jews accounted for a third of the inhabitants and often were overrepresented in the ownership of urban real estate. In Warsaw, for example, Jews

owned about 40% of all residential property. In many smaller, provincial towns Jews accounted for over 50% of the populations and upwards of 90% of property owners. Moreover, Jews owned a significant portion of Polish industry, particularly textiles, chemicals, rubber, food, building materials, and paper, and were active in other branches. In 1938 Jewish firms employed more than 40% of the total industrial labour force.

In the immediate post-war period vast quantities of Jewish property were unclaimed, largely because most of the owners and their heirs had been murdered when seeking recovery of their properties, while those who survived had left the country. In accordance with a decree on abandoned property of 8 March 1946, this property devolved to the State.

After the Communists were swept from power in 1989 the question of restitution and reprivatization was immediately raised. A special Office of Ownership Transformation - later granted ministerial status - was created to deal with such matters.

The first large scale restoration of private property returned to the dominant Roman Catholic Church a large proportion of its many holdings. This aroused wide spread anti-Church sentiment. Since then, property has also been restored to a number of other churches including the Orthodox and Evangelical Ausburg Churches.

Since the issue of privatization of expropriated property was first raised, several legislative proposals have been submitted to the Sejm by parliamentarians and the government. each envisaging a different formula.

The most recent is a new draft law which recognizes the legal right of "Jewish religious legal entities" to own and dispose of movable and immovable properties and to freely administer them.

As a result of the efforts of WJRO, the law will provide that the Jewish communities may exercise such rights either independently or through a foundation established by them with the participation of WJRO or with other legal entities. When the bill becomes law, it will be the first enactment to mention WJRO by name, giving it recognition as the representative organization recipient, jointly with the local communities, of those properties which were left by those who were brutally murdered during the Holocaust.

Yet the draft law has its failings: it leaves unsettled the question to whom will devolve the properties of extinct communities. In meetings lately held in Israel, the Prime Minister of Poland declared that the law will provide that properties of extinct communities will devolve upon the nine Jewish communities and the Jewish organizations mentioned in the law. At the time of going to press, the law has entered its final stages of reading in parliament and it seems that the declaration of the Prime Minister was misleading - the problem of these properties remains unresolved.

Another problem is that the law disregards changes in the use of the properties - for example, synagogues which were transformed for other purposes may be deemed to be properties which should not be restored to the Jewish community.

One of the most important flaws of the proposed draft law is that it protects the rights acquired by any third person. The draft law disregards the fact that many such "third persons" are either the munic-

ipality or a governmental agency, or a public institution which received the property by way of transfer by the State. WJRO is working towards a change in the attitude of the Polish parliament to this problem. "Third party rights" are presently used in many cases as; a shield against a just claim for restitution. WJRO is attempting to remove that shield and limit the protection of third persons. The problem of "third party rights" recurs in almost all the countries where Jewish properties were transferred to others. It is WJRO's contention that such rights were acquired on unsound grounds and that such properties should be restored to their original owners or their successors.

#### **Hungary**

WJRO participated in the negotiations with the government of Hungary which led to the signing in Budapest, on 2 July 1996, of a Memorandum between the government of Hungary, Jewish communities and organizations, and WJRO.

The intention of the Hungarian government in signing the Memorandum was to execute the relevant Article of the Paris Peace Treaty. For that purpose it agreed to establish, subject to the approval of parliament, a public foundation which will be administered by representatives of the government, Jewish organizations, including WJRO, and eminent public persons.

The start funds of the foundation will be immovable properties, valuable museum pieces and compensation coupons in the value of four billion Huf.

The MAZSIHISZ - which is the body representing the Jewish communities in Hungary - agreed for its part to contribute to the foundation some of the properties which will be received in restitution or as compensation for Jewish

communal and religious properties. WJRO has expressed its intention of providing a financial contribution to the foundation.

### **Banking Accounts and Heirless Assets in Switzerland Background**

As the situation of the Jews in Central and Eastern Europe became more precarious during the 1930s, Jews in those countries began to transfer properties to neutral countries, and in particular to Switzerland, regarding them as safe havens for their remaining assets.

After the war, all the western countries recognized the principle that properties which had belonged to victims of Nazi persecution and which remained unclaimed or heirless should not inure for the benefit of the countries where these properties were situated, but should serve the purposes of rehabilitation and resettlement of the survivors of the Holocaust.

Provisions to that effect were enacted in the Restitution Legislation in the Western Zones of Occupation in Germany, in the Treaties of Peace of 1947 between the Allied and Associated Powers and Hungary and Romania (Articles 25 and 27), in other treaties and in laws of relevant countries.

The Final Act of the Paris Conference on Reparations of 14 January 1946, provided that governments of neutral countries would be requested to make available for rehabilitation and resettlement of non-repatriable victims of German action, assets of victims of Nazi action who had since died and left no heirs. This provision was directly aimed at Switzerland among other "neutral" relevant countries.

Numerous multilateral agreements ensued, one of which was concluded between the Five Powers (U.S.A, France, U.K. Czechoslovakia and Yugoslavia).

The objective of the Agreements and the many diplomatic efforts of the following years, was to move the government of Switzerland to enact legislation which would enable potential claimants to enforce their title to these properties, and make it possible for Jewish organizations to receive heirless and unclaimed assets in order to utilize them for rehabilitation and resettlement purposes.

The Swiss Bankers Association acted against these moves, arguing that such legislation would interfere with the principle of bank secrecy and that there were in fact less heirless assets than presumed.

Nevertheless, in 1962 a law for the registration of property of foreign or stateless persecuted persons was enacted, inter alia requiring the registration of deposits. Nevertheless, loopholes in the law allowed depositories to escape the provisions under the contention that they had no knowledge that the depositors of assets held by them had been victims of persecution. The results of the registration were extremely meager; the law was not properly observed and only 26 out of about 500 banks conducted internal investigations.

### **WJRO's Intervention**

For years, the problem of the dormant accounts itself became dormant. In 1993, the World Jewish Congress and WJRO started to tackle this problem vigorously, exerting public and political pressures on the banks in Switzerland and on the government of Switzerland. They were, and are, helped by the U.S. Senate Committee on Banking, chaired by

Senator Alfonse U. D'Amato who initiated hearings and investigation on these matters.

### **The Memorandum of Understanding**

The first important result of these efforts was a Memorandum of Understanding (MOU) signed in New York on 2 May 1996, between WJRO and the World Jewish Congress, as representatives of the Jewish Agency and Allied Organizations, on one side and the Swiss Bankers Association, on the other side.

Pursuant to the MOU, an Independent Committee of Eminent Persons has been appointed, chaired by Mr. Paul A. Volcker, the former Chairman of the Federal Reserve Board of Governors of the U.S.A., and comprising six members three appointed by WJRO and three by the Swiss Bankers Association.

In accordance with the MOU, the Independent Committee has appointed a group of three international auditing companies which are mandated to investigate the Swiss banks for dormant accounts and other assets and deposits. The Swiss Bankers Associations undertook in the MOU to assure the auditors unfettered access to all relevant files in all the banks.

### **Federal Decree Concerning the Investigation of the Fate of Assets Deposited in Switzerland as a Consequence of National-Socialist Rule**

Faced with persistent pressures to redress the situation of the assets deposited in Switzerland as a result of Nazi persecution, which became heirless or dormant, on 13 December 1996 the Swiss National Council enacted a law

ordering a historical and legal investigation of this problem. The law refers to properties of any description and wherever located.

WJRO submitted its comments to the draft law. Although they were not accepted, on the grounds that Swiss parliamentary sovereignty does not allow Swiss legislation to be affected by comments from outside Switzerland, WJRO believes that these comments may have an influence on the implementation of the Decree and the investigative procedure envisaged by it.

The object of the Decree is to establish a committee of independent experts, nominated by the Swiss Federal Council, which shall investigate the volume and fate of assets of all kinds which were accepted by physical or legal persons in Switzerland, belonging to persons who became victims of Nazi rule and about whom reliable information is not available, and whose assets have not been claimed by legitimate claimants, or, which originated from members of the Nazi party.

The investigation will also cover the government measures taken by Switzerland since 1945 involving the said assets.

Persons and institutional depositories of such assets are obliged to grant access to all relevant documents. All relevant documents are required to be kept intact and it is forbidden to destroy such documents or make them less accessible. Penalties are provided for breach of these provisions. The investigators are bound by official secrecy.

The sole rights to all materials relating to the investigations belong to the Federal Council which will publish the results of the investigation.

In a letter to the Legal Committee of the State Council, WJRO set out its major reservations to the provisions of the Decree:

- The Decree aims primarily at historical research and does not deal with measures for claims relating to assets which may eventually be discovered.
- Interested parties and representative Jewish organizations should be given opportunities to present their claims and cases; in fact, the Decree does not open the door to them.
- The Decree defines the assets and persons involved too narrowly, thus creating the possibility that major areas will not be investigated.
- The "raw materials" of the investigation will not be publicly accessible, and only the final conclusions will be published. WJRO assumes that the „raw materials" will be useful for the establishment of claims for restitution of the relevant assets and that they should be made accessible.

**Fund for Needy Victims of the Holocaust**

The government of Switzerland

resolved, by executive ordinance issued on 26 February 1997, to establish a "Fund for Needy Victims of the Holocaust/Shoa". The object of the Fund is "to support needy people who were persecuted for racist, religious, political or other reasons, or became victims in other ways of the Holocaust/Shoa as well as to support their needy descendants".

The Fund Executive comprises seven members - four, including the President, from Switzerland, and three recommended by WJRO. The appointments of the members of the Fund and its President are made by the Federal Council.

The tasks of the Executive of the Fund are to decide on the use of Fund monies; to adopt rules of procedure and regulations on the implementation of the Fund's objectives and report on the Fund's activities to the Federal Council and to the public.

The Fund Council is composed of 18 members, appointed by the Federal Council, nine of whom are recommended by WJRO. Among the members of the Fund Council will be representatives of

domestic and foreign institutions and organizations which deal with the interests of the beneficiaries. The Fund Council has the task of advising the Fund Executive on criteria and applications.

The Fund will provide one-time or repeated financial services to persons who need its services. The applications for services will be made by institutions and organizations which deal with the needs and interests of the beneficiaries.

The decision to establish the Fund followed public reaction to publication by WJRO and the World Jewish Congress of historic evidence concerning Switzerland's role during World War 11 and its aftermath, in dealing with assets transferred by Jews to Switzerland in the belief that Switzerland would be a haven for those assets. The creation of the Fund is only one of the means through which Switzerland will answer the claims made against it by WJRO and other organizations on behalf of the victims and their descendants.

**Elyakim Rubinstein Appointed Israel's Attorney-General**

Judge Elyakim Rubinstein, member of the Presidency of the Association, has recently been appointed Attorney-General of the State of Israel. Judge Rubinstein was formerly Legal Advisor to the

Ministry of Foreign Affairs and the Ministry of Defence, Secretary of the Cabinet and Judge of the District Court of Jerusalem. The Association congratulates him and wishes him success in his new office.



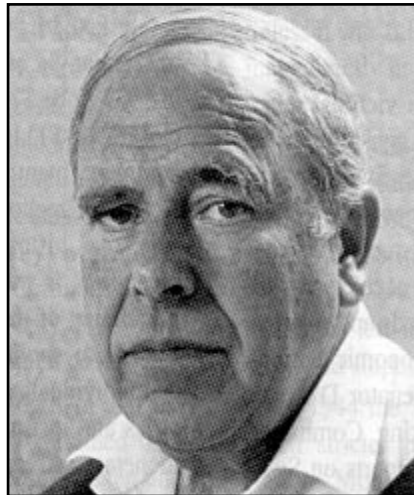


# Nazi Gold and Neutral Countries, The Role of Switzerland and the Swiss National Bank

Daniel Lack

Readers of *JUSTICE* have been well informed of the controversial role which neutral countries, notably Switzerland, played in WWII in dealing with gold bullion ostensibly purchased or otherwise obtained from the Reichsbank but which the latter's officials had for the most part resmelted and restamped with pre-war dates to disguise it as "legitimate" monetary gold, in reality plundered from the vaults of the Central Banks of occupied European countries. More recently, evidence has come to light that purchases of such gold ingots could well have contained non-monetary or private gold belonging to institutions or individuals, principally composed of Jewish victims, the primary targets of Nazi racial and religious persecution. (See: *Nazi Gold: The Legal Dimension* - David Wolfson in *JUSTICE* No. 11 December 1996).

The role of the Swiss authorities and in particular the Swiss National Bank (SNB), together with the authorities of other neutral countries, has been placed in the spotlight during recent months, in no small measure due to the fargoning and extensive enquiry of a historical and legal nature to be conducted by the Bergier Committee of experts appointed following the Federal Decree of 1 March 1997, to establish what happened to the assets deposited in Switzerland as a result of the policies and actions of



the Nazi regime. (See analysis of the draft Federal Decree in *Heirless Jewish Assets In Swiss Banks*, Balance Sheet for 1996 - Philippe A. Grumbach. *ibid.*).

The announcement by the Federal Council on 25 February 1997 of the creation of a special Humanitarian Fund for the relief of victims of the Holocaust and their descendants in need, to be financed by the contributions of the three principal Swiss banks in the amount of SFrs 100 million (plus further contributions from private sources representing for the most part other Swiss economic and industrial sectors) and to be managed by a Board composed equally of representatives of

Jewish and other victims, has been welcomed by a broad consensus of all interested parties, as a major step forward.

Uncertainty as to whether and if so, how and to what extent the Swiss Confederation would contribute to this fund, was dispelled by the declaration made to a joint session of the two chambers of the Swiss Parliament on 5 March last by Arnold Koller, President of the Confederation. In a wide ranging address reviewing the role of Switzerland in WWII, he announced the Federal Council's decision to create a separate and distinct Swiss Foundation for Solidarity, destined for such broad humanitarian purposes as benefiting future victims of genocide and other grave human rights abuses, victims of natural disasters and poverty. This grandiose project has had a surprise effect in wresting the initiative from critics of the Swiss Government's conduct in its relations with the Nazi regime primarily during the

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war and how it dealt with its legacy in the aftermath. It calls for the new Fund to be financed from the interest of a capital sum of SFrs 7 billion (\$4.7 million) based on a revaluation of the gold reserves held by the Swiss National Bank which would gradually be sold to raise this sum. It is estimated that once fully constituted, the Fund would produce interest of approximately SFrs 300 million. The Fund for Solidarity, would not as such contribute to the Special Humanitarian Fund for the victims in need of the Holocaust but the SNB is to be authorized to make a special contribution of SFrs 100 million to it. The Federal Council plans to devote one half of the Solidarity Fund for humanitarian projects in Switzerland and one half for global humanitarian purposes.

### The Problem of Nazi Gold

The resulting improved climate between Nazi victims' representatives, primarily the Jewish organizations constituting the World Jewish Restitution Organization and the Swiss authorities, is to be welcomed. Amongst its members, the World Jewish Congress and the Jewish Agency for Israel have been noted for their active campaign for obtaining accelerated and improved measures for ascertaining unclaimed and heirless assets still held by Swiss banks and other economic entities, against the background of the revelations by Senator D'Amato of New York, Chairman of the Senate Banking Committee, based on US wartime records and intelligence reports on Swiss economic and financial cooperation with Nazi Germany. Hopefully, the reduction of tension following the recent positive initiatives of the Federal Council, will enable the critical question of Nazi gold and how it found its way into Switzerland and other neutral countries, to be examined in a more dispassionate light.

A recent report compiled from the British archives at the Public Records Office by its Library & Records Department of September 1996, (ISBN 903359 67 7) has provided interesting material on the subject of the search for Nazi gold, some of the gaps in which can only be filled by Swiss governmental archives to which the Bergier Commission will be granted unimpeded access. It discloses in its foreword:

"that during WWII Nazi Germany acquired over \$500m of gold by seizing the national reserves of Occupied countries and the assets of organizations and individuals. The Jewish Community was a particular target. Much of the gold looted by Germany - whether gold bullion, coins or jewellery - was melted down and

resmelted into ingots marked with the Reichs bank stamp, concealing its origins,

Britain and her allies knew that large amounts of this gold were exported from Germany to the neutral countries such as Portugal and Switzerland, in payment for goods and foreign exchange. They also suspected that the Nazi regime used these channels to conceal looted gold and other property. The Allies tried to discourage the neutral countries from trading with Germany and the Axis powers, but could bring no sanctions to bear which could not also damage their own war effort."

Germany's economic position at the commencement of hostilities was known to be relatively weak compared to its military might. The financing of Nazi Germany's war economy had sorely taxed its reserves including its gold reserves. In addition to Germany's official gold reserves reported by the Reichsbank in 1939 to be \$71m (but estimated by the Bank of England to be closer to \$111m) Germany had acquired by the time of commencement of hostilities in 1939 through its annexation of Austria, Czechoslovakia and Danzig an additional \$97m (ibid p.1). As historians have established from abundant documentation, it was part of Nazi Germany's systematic policy of plundering of the territories it invaded and occupied throughout Europe to spoliage and dispossess central banks, private firms and individuals and foremost among them Jews, Jewish communities and institutions of all their gold, both monetary and nonmonetary, silver, jewellery, art treasures and valuables of all kinds with which to stoke the raging furnaces of the Nazi war effort.

According to estimates of the British Ministry of Economic Warfare quoted in this report, during the period from 1939 to 1945, some \$550m in gold was looted in this manner. About \$150m was sold to pay for imports or to purchase foreign currency, the latter acquired with the assistance of banks in neutral countries such as Portugal, Spain, Sweden and Switzerland (ibid p. 2).

It is true however that of all the neutral countries including Turkey, Switzerland was the only one which was landlocked and surrounded after the French debacle by occupied Nazi territory. Britain and the Allies realised that a balance had to be struck between their wartime policy of seeking to restrict Swiss exports to Germany and other forms of economic cooperation with their enemy, with the harsh reality that too intense pressure for this purpose would compel German occupation of Switzerland or force it out of sheer necessity, to cooperate even further with

Nazi demands while depriving the Allied powers of access to Swiss specialized exports and Swiss currency.

The compilers of the Public Record Office report, record in some detail how booty capable of conversion into acceptable financial assets including gold bars, was dealt with in Germany. Booty taken by the Wehrmacht went directly to the Reichshauptkasse (Treasury) whereas assets plundered by the SS or Schtzstaffeln were dealt with by the Reichsbank only. While it was not the sole practice, these sources indicate that in the main when Nazi Germany sold gold to neutral countries in order to acquire foreign currency, it exported resmelted gold, usually stamped with a pre-war date so as to disguise its true origin. But not only Allied sources knew of Germany's true gold reserves and by the time the fortunes of war turned in the Allies' favour in 1943, more than just the British Ministry of Economic Warfare, the Bank of England and the British Treasury in collaboration after 1941 with the US Board of Economic Warfare, the US Treasury and the State Department which shared these gold statistics and other economic intelligence data. It must also have been known to the neutral countries and especially Switzerland, Germany's neighbouring trader, that by then Germany's gold resources must have been exhausted and could only have come thereafter from looted gold plundered from Occupied countries.

As the war progressed, the Allies, especially Britain and the US whose combined intelligence sources had ascertained how German gold had found its way to Portugal, Spain, Sweden and Switzerland, were no longer prepared to be so tolerant to neutral countries considered to be aiding and abetting the enemy.

### **Allied Measures Aimed at Discouraging the Transfer of German Gold and Other Assets to Neutral Countries**

After a round of consultations, seventeen Allied powers issued on 5 January 1943 the Inter-Allied Declaration against Acts Of Dispossession Committed in Territories under Enemy Occupation or Control (ibid. p. 4) They declared their intention to "combat and defeat the plundering by the enemy Powers of the territories which they have overrun or brought under enemy control... [reserving their right] to declare invalid any transfers or dealings with, property, rights and interests of any description whatsoever which are or have been situated in the territories which have come under occupation or \*control, direct or indirect, of the Governments with which they are at war." (as cited

in Cmd. 6418 of 1943 op. cit.). While technically this declaration covered the flow of gold to neutral countries, it was felt that they should be expressly warned that Germany had exhausted all its previous gold stocks and that any further gold shipments which they received must be known to them to be toot.

At the end of 1943, the US issued a declaration on gold to the effect that the US would not recognize the transfer of title to looted gold which the Axis disposed of on world markets, nor buy any gold from other countries, unless they were satisfied that it did not come from Axis countries. (ibid. p. 6). The British Government's statement was not issued till 22 February 1944 to the effect that the Treasury would not buy any gold from countries which had not discontinued their relations with the Axis unless it was fully satisfied that the gold in question did not originate directly or indirectly from an Axis country. (T 2361911 ibid. op cit.).

However concern was still expressed by the Allies at reports that Switzerland continued to receive gold shipments from Germany throughout 1943. On seeking assurances from the British authorities in London as to the effect of the Gold Declaration with respect to Switzerland, the Swiss Embassy there was left in no doubt as to the negative manner in which such gold shipments would be regarded after the war.

By 1944 the Allied governments were determined to apply a much stricter policy reflected at the Bretton Woods United Nations Monetary and Financial Conference of 1-22 July 1944 which led to two decisions affecting neutral countries. The first was a call on neutral countries to take immediate measures to put and end to the transfer of enemy assets including looted gold to their territories. The second was the setting up of the "Safehaven" project which had as its avowed purpose preventing the enemy from having access to its assets abroad irrespective of whether it consisted of its own property or was looted (ibid. p. 7 citing Cmd 6546 of 1944). Monthly Safehaven reports were issued of this pooled intelligence and some have been cited in the recent hearings before the Senate Banking Committee by Senator D'Amato. In August 1944, the Swiss authorities in Berne were requested in a joint demarche taken by the British and US Governments to provide an undertaking that they would not acquire or receive for deposit gold in which any person in occupied territories or Germany or associated countries had any interest and to bar the receipt or acquisition of such gold by anyone within Switzerland's jurisdiction, including specifically the Swiss National Bank (ibid. op. cit.)

In January 1945 it was decided to send a note to the other neutrals. Portugal, Spain, Sweden and Turkey advising them of the decision reached at Bretton Woods and that the United Nations countries should, where this had not already been done, implement the February 1944 Gold Declaration (*ibid.* p. 8)

While the Swiss authorities in Berne did not reply to the combined British and US note of August 1944, they could see the writing on the wall and that the fortunes of Nazi Germany were distinctly not prospering. As from the end of 1944, and following negotiations with British and US delegations in Berne, the Swiss Government took the following measures: issuing a decree of 20 December blocking all Hungarian, Slovak and Croatia assets in Switzerland, and blocking German assets in Switzerland by order issued by the Swiss Federal Council on 16 February 1945.

As the end of hostilities rapidly approached, the Swiss Government's cooperation with the Allies intensified, culminating in an agreement of March 1945, following which Switzerland terminated its Trade and Payments Agreement with Nazi Germany (*ibid.* p. 9).

### **The Provisions of the Final Act of the Paris Conference on Reparation of 21 December 1945 and its Effect on German Assets in Neutral Countries**

It is beyond the scope of this article to analyze the intricate problems of the settlement of the reparations claims against German assets as decided amongst the eighteen Allied countries represented at the Paris Conference held in the context of the tripartite agreement reached earlier in Potsdam on 1 August between the US, the UK and the USSR.

The terms of reference of the Conference was to arrive at an agreement on reparation from Germany, on the establishment of an Inter-Allied Reparation Agency (IARA) and the restitution of monetary gold. (See generally HMSO Cmd. 6721). Clearly claims connected with gold were to prove the most complex and intractable because of the possibility of disguising its origin with relative ease while at the same time maintaining its intrinsic value.

For these reasons, the distinction between monetary and non-monetary gold is at once difficult, arbitrary and misleading. The definition of monetary gold was attempted in connection with the questionnaire issued to the members of the IARA in connection with making their returns, preparatory to filing claims with

the Tripartite Gold Commission established in September 1946, administered by the UK, US and France and charged with the restitution of monetary gold, pursuant to Part III of the Paris Reparations Conference. Part 111, following the general principle retained elsewhere in this Agreement, provided that all monetary gold found in Germany as well as any monetary gold which might be recovered from a third country (the allusion here was intended to include also neutral countries) would be pooled for distribution as restitution among the countries participating in the pool in proportion to their respective losses of gold through looting or wrongful removal to Germany. The definition of monetary gold taken from this questionnaire for the purposes of the Commission refers to "All gold, which at the time of its looting or wrongful removal, was carried as part of the claimant country's monetary reserve, either in the accounts of the claimant Government itself or in the accounts of the claimant country's central bank or other monetary authority at home or abroad." However, it should be noted that the definition was cast in deliberately narrow terms in order to separate governmental from private claims, the dimensions and complexity of which could not at that point be ascertained.

The Tripartite Commission was responsible for the distribution of the gold from the gold pool which owes its origin to the Foreign Exchange Depository in Frankfurt, where gold was centralized that had been collected after its discovery by the occupying forces in Germany and Austria. The gold was transferred from Frankfurt and deposited in the Bank of England and the Federal Reserve Bank in New York. Since the end of WWII and up to the present, the Tripartite Gold Commission has been making periodical distributions to the eligible country beneficiaries in accordance with the terms of the Paris Reparations Agreement. Its work will soon draw to a close.

Confining the examination to the relevant provisions of the Reparations Conference affecting assets in neutral countries, it should be noted that it was agreed that each signatory would be entitled to its due percentage share of German assets in the neutral countries.

Article 6 C. provided that German assets in neutral countries should be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the UK and the US pursuant to arrangements to be negotiated between those countries and the neutral states. The net proceeds of these operations would be credited to the IARA for distribution on reparation account.

## Allocation of a Reparation Share to Non-Repatriable Victims of Nazi Persecution

Although not directly germane to an examination of the question of gold and other German assets located in neutral countries, in view of the interest of the readers of JUSTICE as to what provisions were made for the relief of nonrepatriable victims of German persecution under these arrangements, primarily but not exclusively Jews, it is of interest to note that Article 8 of the Final Act of the Paris Reparation Conference was devoted solely to this question. It recognized that large numbers of persons had suffered heavily at the hand of the Nazis and stood in dire need of aid to promote their rehabilitation but would be unable to claim the assistance of any government receiving reparation from Germany. Accordingly, five Allied powers, France, the United Kingdom, Czechoslovakia and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees were charged with working out a plan which subsequently became known as the "Five Power Agreement" of 14 June 1946.

Under Article 8A of the Paris Agreement, all non-monetary gold found in Germany and a further sum limited to \$25m was to be allocated to this category of Nazi victims. Article 8B provided that \$25m should be met from a portion of the proceeds of German assets in neutral countries available for reparation. Under Article 8C, Governments of neutral countries were to be requested in addition, to make available for this purpose assets in such countries of victims of Nazi persecution ("action") who had since died and left no heirs. The amounts made available under Articles 8A and B were to be administered by the Inter-Governmental Committee on Refugees or its successor. It was provided that the fund thereby constituted should not be used for the compensation of individual victims but for their rehabilitation or resettlement (Article 8H).

Under the Five Power Agreement referred to above, Paragraph A stated inter alia that "...Since all available statistics indicate beyond any reasonable doubt that the overwhelming majority of eligible persons under the provisions of Article 8 (of the Paris Reparations Conference) are Jewish, all assets except as specified under Paragraph B below (10% of \$25m priority on proceeds of German assets in neutral countries, 10% of non-monetary gold and 5% of the heirless funds) are allocated for the rehabilitation and resettlement of eligible Jewish victims of Nazi action among whom children should receive preferential assistance..."

Paragraph E of the same Agreement states: "Furthermore,

pursuant to Paragraphs C and E of Article 8 (of the Paris Reparations Agreement) in the interest of justice the French Government on behalf of the Five Governments concluding this Agreement are making representations to the neutral Powers to make available all assets of victims of Nazi action who died without heirs. The Governments of the USA, the UK, Czechoslovakia and Yugoslavia are associating themselves with the French Government in making such representations to the neutral Powers. The conclusion that ninety-five per-cent of the "heirless funds" thus made available should be allocated for the rehabilitation and resettlement of Jewish victims, takes cognizance of the fact that these funds are overwhelmingly Jewish in origin, and the five per-cent made available for non-Jewish victims is based on a liberal presumption of "heirless funds" non-Jewish in origin. The "heirless funds" to be used for the rehabilitation and resettlement of Jewish victims of Nazi action should be made available to appropriate field organizations. The "heirless funds" to be used for the rehabilitation and resettlement of non-Jewish victims of Nazi action should be made available to the Inter-Governmental Committee on Refugees or its successor organization for distribution to appropriate public and private field organizations. In making these joint representations, the signatories are requesting the neutral countries to take all necessary action to facilitate the identification, collection and distribution of these assets which have arisen out of a unique condition in international law and morality."

Subsequently on 21 June 1946, the French Government sent a letter of instruction to the Director of the Inter-Governmental Committee on Refugees on behalf of all the Five Powers designating the American Jewish Joint Distribution Committee and the Jewish Agency for Palestine (as it was then called) as the appropriate field agencies for the rehabilitation and resettlement programs for Jewish victims.

Paragraph E of the Five Power Agreement has been cited in full as being relevant and possibly helpful, though in a changed context, as a possible guideline for the implementation of Swiss humanitarian and other measures recently decided in principle in this connection, particularly with respect to surviving Holocaust victims still in need of assistance.

In addition, reverting to the gold question proper, two unanimous resolutions agreed by the signatories to be included in the Final Act of the Paris Reparations Conference should be cited in this context. The Conference unanimously resolved that the neutral countries should be prevailed upon by all suitable means,

to recognize the reasons of justice and of international security policy which motivated the Powers exercising supreme authority in Germany and the other Powers at the Conference in their efforts to extirpate the German holdings in the neutral countries.

The second resolution dealt specifically with gold transferred to neutral countries and stated that the Conference had resolved in conformity with the policy expressed by the United Nations Declaration against Axis Acts of Dispossession of 5 January 1943 and the United Nations Declaration on Gold of 22 February 1944, that the neutral countries be prevailed upon to make available for distribution in accordance with Part III of the Final Act (cited above) all looted gold transferred into their territories from Germany.

### **The Washington Accord of 25 May 1946 between Switzerland and the Allies**

The provisions cited above provided the backdrop to the invitation of 11 February 1946 extended to the Swiss Confederation to send a delegation to Washington the following month. While the Swiss Federal Council contested the Allies legal right to dispose of German assets located in Switzerland, it was realised that there were important Swiss interests at stake motivating the search for a negotiated solution namely, securing the release of Swiss assets frozen in Germany and the US and the removal of Swiss enterprises from the Black List of prohibited traders (see generally pp. 1213 of historical note of the British Public Record Office)

As was expected, gold was the main point of contention. The Swiss delegation contested Allied estimates of German gold reserves in 1939. The Swiss delegation which included Mr. Hirs of the Swiss National Bank (SNB) rejected the notion that the SNB knew it was acquiring looted gold from Nazi Germany. Only the Federal Council had authority to decide on the restoration of gold that might have been looted, Thus, the Swiss Confederation was only prepared to make an offer of Sfrs 250m. Detailed evidence, for example, provided from exchange of documents between the Reichsbank and the Banque de France relative to Belgian gold taken from France to Dakar and thence to Berlin indicating that the Reichsbank had remelted the Belgian gold, altered the numbers on the ingots and shipped the greater pail to Switzerland, were rejected, as were Allied economic warfare reports providing detailed information on gold transactions between Nazi Germany and Switzerland, as being inconclusive. A report of the interrogation of Dr. Puhl of the

Reichsbank providing information of his dealings with the SNB indicated that he believed the Swiss bank authorities knew that the gold involved was looted. Mr. Hirs of the SNB let it be known at a particular stage that the figure of SFrs 500m represented the total amount of gold of German origin held by Swiss banks. The Swiss position was that it could not accept responsibility for all looted gold transferred from Germany to Switzerland, part of which had been shipped to third countries.

Finally, the Swiss offer was accepted. The SFrs250m payable out of German gold in Switzerland (ibid. p. 14) was subsequently transferred to the Federal Reserve Bank in New York during 1947 and was the first payment to the Tripartite Commission set up in 1946.

The spokesman of the SNB Mr Werner Abegg is quoted (see Reuter's report from Zurich of 7 Jan. 1997) as having referred to a 1985 report in connection with denial by the SNB of allegations made in a 1946 US intelligence document that the Swiss authorities had encouraged Nazi Germany to restamp looted gold bars to hide their origin. According to this source, the SNB acknowledged in the 1985 report that it had bought 1.2 billion Swiss francs worth of gold from Germany between 1939 and 1945. This figure was also referred to in a TV program broadcast by Television Suisse Romande on the evening of 6 March in the well known documentary series Temps Present, entitled L'honneur Perdu de la Suisse, in which the same figure is quoted as being attributable to Swiss historians of this period. The figure was also advanced of SFrs 20m representing the amount of profit made on these transactions.

The results of the Washington Agreement may be summarized as follows:

- Switzerland paid SFrs 250m in gold in New York on 6 June 1947;
- The 18 Allied governments waived any further claims for themselves and their central banks against the Swiss Government and/or the Swiss National Bank with respect to gold acquired by Switzerland from Germany during the war;
- Switzerland undertook to liquidate German assets in Switzerland belonging to German nationals in Germany;
- Switzerland transferred 50% of the proceeds to the Allies and was allowed to retain the other 50%;
- Owners of liquidated assets were entitled to be compensated in German currency (one half provided by the Allies and the other half by Switzerland);
- A Joint Commission composed of Switzerland, US, France,

and the UK, was appointed as an advisory body for the implementation of the provisions of the Agreement and sat from September 1946 to June 1948;

- The US undertook to unblock Swiss assets in the US in accordance with a mutually agreed procedure;
- Blacklisting of Swiss firms was cancelled with effect from July 1946.

The above summary should be supplemented with a reference to the fact that pursuant to the agreements on German assets in Switzerland between Switzerland and the Federal Republic of Germany of 26 August 1952 and between Switzerland and France, the UK and US of 28 August 1952, Switzerland paid SFrs 121.5m to the International Refugee Organization,

## Epilogue

Fifty two years after the events, judgmental conclusions should be avoided. Statements of regret by the then President of the Confederation, Mr. Villiger before a joint session of both chambers of the Swiss Parliament in 1995, on the occasion of the commemoration of the fiftieth anniversary of the end of WWII, with regard to some of the highly criticized decisions of the Swiss authorities during the war period, especially as regards the discriminatory treatment of Jewish refugees who had the good fortune to be granted asylum, has contributed to an improved climate of understanding with the Swiss Jewish Community. The more acceptable posture of the present generation of Swiss political leaders and parliamentarians has helped to alleviate bitter memories of the war years. The speech of President Armand Koller before the joint session of both Chambers of the Swiss Parliament on 5 March last, announcing imaginative humanitarian initiatives of generous dimensions, has undoubtedly enabled the Swiss Confederation to regain the moral high ground from which it had been displaced by memories of troubling decisions taken by the Swiss authorities during the war years.

Does the alleged new information about gold transactions between Nazi Germany and Switzerland introduce a serious possibility of renegotiating the Washington Agreement of 1996 as being of relevance today, as suggested in November 1996 and again on 17 February this year by a visiting delegation of two UK parliamentarians? This would not seem likely, although Berne has not turned down the proposal of a fact-finding conference of interested parties to help elucidate the facts. The

preference for awaiting the preliminary findings of the Bergier Commission would however seem to have been retained at this stage.

Of more immediate interest is the recent agreement reached by the three members of the Tripartite Gold Commission, France, UK and the US to suspend further distributions from the remaining unallocated \$68m which it still holds, till fresh evidence to the effect that monetary gold bars had been resmelted with private gold on a far greater scale than has been previously suggested, has been carefully investigated. Subject to evaluation of this evidence and certainly if it is substantiated, the suggestion has been made that the last undistributed amount should be paid to a humanitarian fund to alleviate the plight of still surviving Holocaust victims. Moreover, the results of a US government enquiry based on both archival and previously unconsidered documentation, is expected imminently,

One of the most extraordinary aspects of the gold and related issues going back to this darkest chapter of human history, is the realisation that the moral, social and political dimensions of these events have not yet been fully grasped. Historians and sociologists engaged in assessing these implications still have a monumental task to perform and their findings are keenly awaited.

## Holocaust Teaching in Italy

The Association is gratified to announce that Dr. Oreste Bisazza Terracini, President of the Italian Chapter of our Association, has made progress in his efforts to promote Holocaust teachings in Italian schools. In a letter dated 10 January 1997, the Minister of Education of Italy, Luigi Berlinguer, stated that he agreed with the need to "insert the tragedy of the extermination of six million Jews, perpetrated by Germany during the Second World War, in the school books" and noted that the history courses, which have now been renewed, are intended to achieve the same purpose.

## Mordechai Markus Pardes 1930 - 1997

"Maitre Pardes", as Mordechai Markus Pardes was affectionately known to his peers and to his many friends, was a brilliant lawyer, a wise counsellor, a great European, a dedicated and engaged Jew and a pillar of support to Israel, state and nation. He served with distinction and for many years as Legal Adviser of the Embassies of Israel in Brussels, and was, as all past ambassadors would attest, a man of conscience and of confidence.

Markus Pardes enjoyed a very unique position in European and in Belgian Jewry. Born in Berlin to a distinguished Rabbinic family, a hidden child in war torn Belgium, an ardent young youth leader in the post war Zionist movement, Markus Pardes developed a deep understanding of history and destiny. He asserted himself as a great advocate of what he believed to be a most necessary dialogue with the European authorities, be they state or church. He convincingly claimed that the premise of this dialogue had to be that the advent of a sovereign Israel unequivocally altered and transformed the existential base of world Jewry and that it acted within its historic rights in requesting the restitution not only of material assets, but first and foremost of its dignity - so lamentably denied throughout the long years of Christian inspired European history. He will for ever be remembered for his courageous contribution to the withdrawal of the Carmelites from Auschwitz, which was due to the many efforts in which he discreetly acted as both pivot and inspiration.

The man was a proud, God fearing and practising Jew, a central figure in the World Conference of Jewish Lawyers, the deliberations of which he valued highly as consultations leading to action. He was a scholar, a lover of Jewish arts and a creative promoter of Jewish liturgical music. People trusted him and entrusted to him the execution of their bequests to charities in Belgium and to philanthropic endeavours in Israel, knowing that his guidance and legendary integrity were coupled with an intimate knowledge of both communal and Israeli social needs.

His sudden and untimely disappearance is a great loss. He is survived by his wife and life long companion, and his children in Brussels and in Haifa who may be consoled in the knowledge that the deeds of Markus Pardes live after him and that his legacy will be upheld by his many admirers.



*Itzhak Meir*

*Former Ambassador of Israel to Belgium*

# WORLD COUNCIL MEETING

**London, England, 1-3 June, 1997**

**Enclosed is the programme for the London Conference as well as registration form for the Conference.**

**For hotel accommodation please contact ISRAM: 40, Aliyat Hanoar Street, Tel Aviv, P.O.Box 18240, Tel Aviv 61181.**

**Telephone: +972 3 6961111. Fax: +972 3 6966677**

**As accommodation at various functions is limited, we cannot guarantee participation for late registrants.**

**Please send your deposit in the amount of E100 per participant without delay.**

**For further information: Please contact The International Association of Jewish Lawyers**

**and Jurists, 10 Daniel Frish Street, Tel Aviv 64731. Telephone +972 3 691673, Fax: +972 3 6953855.**