

Editorial Board:

Judge Hadassa Ben-Itto
Adv. Itzhak Nener
Adv. Myriam Abitbul
Dan Pattir
Adv. Rahel Rimon
Prof. Amos Shapira
Dr. Mala Tabory
Dr. Yaffa Zilbershats

Editor-In-Chief:

Dan Pattir

Co-ordinating Editor:

Adv. Rahel Rimon

Graphic Design:

Ruth Beth-Or

The photograph on the front cover is provided courtesy of Turnowsky. The map on the inside back cover is provided courtesy of Martin Gilbert.

Views of individuals and organizations published in JUSTICE are their own, and inclusion in this publication does not necessarily imply endorsement by the Association.

JUSTICE is published by:

**The International Association
of Jewish Lawyers and Jurists**

10 Daniel Frish St., Tel Aviv 64731, Israel.
Tel: 972-3-691-0673
Fax: 972-3-695-3855

© Copyright (1994) by IAJLJ

Printed by Shmuel Press Ltd.
27 Shoken Street, Tel Aviv,
Tel: 972-3-682-2056.

TABLE OF CONTENTS

President's Message / Hadassa Ben-Itto - 2

Jerusalem: The Legal and Political Background / Ruth Lapidotli - 7

LAW

Basic Law: Jerusalem, Capital of Israel - 1980 - 14

DOCUMENT

The Washington Declaration - 15

WORLD COUNCIL MEETING

Vatican Session: Opening Remarks - 17

Vatican - Israel Relations: The Jewish Perspective / David Rosen - 22

Vatican-Israel Relations: The Catholic Perspective / Anoclo Macchi - 26

"The Good Olive Tree and the Wild Olive Branch" / Remi Hoeckman - 28

Christian - Jewish Dialogue in the Shadow of the Shoah / Hans Herman Henrix - 31

Lecture Highlights - 35

Legal Aspects of the Peace Process - 38

Statement issued by World Council Meeting - 39

FROM THE SUPREME COURT OF ISRAEL

Freedom of Commercial Speech - 41

CURRENT AFFAIRS

EIYakim Rubinstein appointed Legal Advisor to the Israel Ministry of Defence - 40

Judge Richard Goldstone appointed Chief Prosecutor in Bosnia- Herzegovina War Crimes Tribunal - 40

The Association Urges Governments of the Free World to Act Now against International Terrorism - 44

I Terrorist Bombing of Argentinian Jewish Centre - 44

PRESIDENT'S MESSAGE



In my Keynote Address at World Council Meeting of Association, held in Rome in June of this year, I suggested to our assembled members that we are at fault by grouping all existing evils under one umbrella. It is fashionable today not to fight "anti-Semitism" or "11 ethnic discrimination" or "hatred towards strangers", as separate evils. We must fight all these evils grouped together, we are told "as they all stem from one source, they are all the result of bigotry and intolerance". I suggested that by doing so we follow an easy road and we miss the bigger issue. True, bigots and hooligans incite against Turks, Arabs and Jews in the same breath, but they do so for different reasons, and until we identify each one of these evils, we shall only be paying lip service and not tackling the real problems.

The problem does not start with the skinheads and the hooligans, just as wars do not start on the battlefield, pogroms against Jews did not start on the streets of Kishinev, and the Holocaust did not start with Hitler. They ended there. Those who drew up the charter of UNESCO said it all. They said: "wars start in the minds of men". They have a purpose, they have an end in mind, they have a plan and words are their weapon. They speak and they write and they publish, and thus they poison the minds of the hooligans, who do their dirty work. This has been proved again and again, and we do not learn the lesson.

We try and jail a few primitive misled loudmouths, and we let the Farachans in America, and the Faurisons in France, and the Irvings in England and the Ahmed Rahmis in Sweden, continue to spread their poison. We allow the politicians who manipulate them, and the publishers who invade the world with the virus of hatred, distribute their merchandise undisturbed, under the umbrella of democracy and freedoms which they do not respect, which they plan to abolish but which they use, or rather misuse, for their unholy aims.

It is fashionable to argue that "Holocaust" has many faces, it is not only what Hitler did to the Jews. By arguing that so called "our Holocaust" was different from what is done to others, we are accused of ignoring or minimizing the suffering of others. "The skinheads also attack Turks" they say, as if this makes it more legitimate to attack Jews. Even we Jews don't like to be singled out, it is more convenient to have company, as it were, so even some of us argue that we should not exaggerate in "crying wolf", "this is not Jew hatred as a separate phenomenon, it is part of a wave of hatred against all kind of minorities" we are told. The international community adopts this attitude, and thus has for decades refused to single out anti-Semitism as a separate evil. Even when at long last the Commission of Human Rights, after much pressure, reluctantly agreed to condemn anti-Semitism, it insisted on diluting it by making it part of a list of evils.

After all that has happened anti-Semitism still does not deserve to be clearly and separately condemned by the world, as represented by its professional diplomats in the elegant halls of the United Nations.

But, it is different and it is separate, and by saying so we do not diminish the suffering of other groups or our commitment to fight other forms of xenophobia, discrimination and hatred. Ethnic cleansing is as abhorrent to us as it is to the rest of the enlightened

world, and so is any form of genocide. We must commit ourselves to combat these phenomena constantly and vigilantly, day and night, not only as members of the human race but also as Jews, for such acts and such ideas are foreign and abhorrent to our philosophy, to our religion and to our national heritage. But we must also realize, and make others realize, that you cannot properly fight these evils without defining them and seeing them in their correct context.

The currently emerging attitude is false, and what is more, it is dangerous. We are not more enlightened and more humane by superficially "equalizing" all forms of human hatred, bigotry and violence of men against their fellowmen.

Unfortunately, prejudice is inherent in human nature. Many of our most revered writers and poets not only recognized this trend in human nature, but even shared it. Haven't we all enjoyed reading Rudyard Kipling. Many of us, in our youth, have pasted his poem "If" on our walls, but how many know what Kipling thought of the stranger among us. This is what he wrote in one of his poems:

**The stranger within my gate,
he may be true or kind,
but he does not talk my talk,
I cannot feel his mind.
I see the face and the eyes and the mouth
but not the soul behind.
The men of my own stock
they may do ill or well
but they tell the lies I am wonted to
they are used to the lies I tell.**

Whether Kipling thus presented his own attitude, as many propose, or whether he only described the attitude of the man on the street, this phenomenon, which has lately taken on monstrous proportions must be recognized for what it is: it is the hatred of what Kipling called "the stranger within my gate". Skinheads in German cities attack Turks who live in their midst. They do not have anything against Turks as a people, as long as they stay away from their neighbourhood. This is evil and we must fight it, but it has nothing in common with anti-Semitism, except the skinheads.

Jews are not hated because they are "within our gates". They were hated and discriminated against in the past, because they refused to abandon their religion in a Christian world, and they were later hated as a people, as a race. This is why anti-Semitism flourishes in countries where there are practically no Jews, like Poland today or Japan. That is why Hitler decided to exterminate all Jews, wherever they may be, and that is why some anti-Semites are very friendly with individual Jews, but hate them as a people.

Not only are Jews different from the proverbial foreigner, but they are sometimes totally assimilated in the society in which they live and are thus not labelled as "11 strangers" whose customs and way of life are different or offensive, they are hated only because they are Jews. Perversely, Jewless societies need Jews in their midst, because the most prominent role Jews play in human history is that of the proverbial scapegoat.

If there were no Jews, who would be so easily blamed for wars, revolutions, economical crisis, racial discrimination, communism, colonialism, apartheid, aids, the yen crisis and every other calamity that periodically befalls mankind. Jews have actually been blamed for all those catastrophes, and more.

In letting this poison constantly pollute the minds of an unsuspecting public, we sometimes forget that the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948, stated: "all are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination"!

Even more explicit is the International Covenant on Civil and Political Rights, adopted by the General Assembly in 1966. While Article 19 of the Covenant guarantees the right to freedom of expression, Article 20 provides: "any advocacy of national, racial or religious hatred that constitutes Incitement to discrimination, hostility or violence shall be prohibited by law".

Precedence of anti-racism over freedom of expression is carried even further by the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in December, 1965. in Article 4 of this Convention, which has been ratified and acceded to by most member states, the state parties "condemn all propaganda and all organizations 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". The state parties also undertake "with due regard to the principles embodied in the Universal Declaration of Human Rights" to "declare an offense 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", to "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and to "recognize participation in such organizations and activities as an offense punishable by law".

Is it still necessary in our generation, in this century, to prove that racist theories, that hate propaganda, that making a scapegoat of a people, can and did lead to the most atrocious acts of violence? Why then are democratic societies so reluctant to boldly adopt and courageously legislate, and more important, systematically apply and implement laws, which are one means of combating this evil? Police forces are up in arms to investigate one murder and bring one murderer to trial. Why do they drag their feet and ignore blatant hate propagananda, though it has been proved, again and again and again, that it leads to violence, that multiple potential victims are living in fear of their lives, and are the objects of brutal and offensive attacks on their human dignity? Why is the right of the victim to his dignity, to his honor and reputation, and to protection from vilification and potential violence less important then the right of a racist to directly or even indirectly infringe upon those rights by means which have been condemned by a large majority of the international community?,

These are the real weapons, they are being used for political aims, by groups who have a hidden agenda, and we have given them license to use these weapons. As long as

we go on defending the right of racists to spread their lies and their perverted theories, we should not be surprised at the eruption of violence on our streets.

In my Keynote Address, I further emphasized that the establishment of diplomatic relations between the Holy See and the State of Israel is the culmination of a process, long overdue, in which the Christian Church has publicly changed its attitude towards the Jewish people, and in doing so, has openly recognized and admitted the wrongs done to us, for 2000 years, by the Christian world. The most important source of anti-Semitism throughout the ages was the persistent accusation of deicide thrown against Jews by Christians. Jews were victimized on the basis of this accusation, which was not only the subject of learned writings, but a favourite theme of sermons, inflaming the minds of believers and serving an age-honoured incentive for persecution, vilification, inquisition, torture, murder and pogroms.

What has been instilled in the collective mind of the Christian world for so many generations, will not disappear easily. It will take much more than a declaration, to free the minds of Christians around the world from the imprint of religious prejudice against Jews. We expect the Church to not only officially "acquit" us of the old accusations, but to take an active part in combating anti-Semitism, and the vicious and obscene allegation that denies the Holocaust. As pulpits in churches around the world have been used for centuries to incite against Jews, we have a right to expect that they are now used to teach tolerance and understanding towards Jews and to outlaw any kind of anti-Semitism within the Church. Only in so doing will the foundation, which has been laid by the Holy See, serve as a real basis for the building of a new understanding between our people.

The full recognition of the State of Israel by the Holy See and the establishment of diplomatic relations is a recognition by the Christian world of the historical right of the Jews to a homeland of their own in the Holy Land. In view of our long history, this is much more than an act of diplomacy.

Christians and Jews, must not forget that in today's world, the greatest disseminator of anti-Jewish and anti-Christian propaganda, 'Is Moslem Fundamentalism. There is a rising tide of opposition to existing secular governments in the Arab world and there is a real danger that a huge geographic area could be taken over by fanatical religious Moslem movements. This should be an alarming prospect to every democracy in the world, as this movement aims for hegemony of Moslems, who may extend "protection" to Jews and Christians under their jurisdiction. There is no compromise, no recognition of equality, no pretense of recognizing, and no promise of respecting, concepts of human rights and democratic freedoms existing in the western world. The danger to Jews and to Israel is particularly ominous, for this movement makes no secret of the fact that to them Jewish statehood, Jewish self rule in any political sense, will never be tolerated. This is today the most dynamic form of anti-Jewish hostility, borrowing freely from European sources.

To end on a positive note: in spite of all the calamities befalling the world today, we shall mark this year, 1994, as the beginning of new hope in two most troubled areas in the world: the abolition of apartheid in South Africa, and the beginning of the imple-

mentation of the peace process between Israel and its Palestinian neighbours.

There is no real similarity between the two: in South Africa, a racist theory has held in bondage a large majority of the people, denying them, by law, the most basic human rights. We all hail the courageous leaders, both white and black, who decided to put an end to it at great risk and much apprehension. We wish the people of South Africa, and its new government, much success.

In the Middle East the problem has nothing to do with racism, though there has been a persistent effort, motivated by unholy reasons, to label it so. A long and bloody political struggle has unfortunately bred hatred and suspicion on both sides, and it will take monumental strength of will, patience and understanding, to implement what still looks like a very fragile enterprise. There has been much suffering on both sides, and much has been said and done by leaders and individuals which makes reconciliation that much more difficult. Much blood has been shed and too many bereaved families live in permanent sorrow and anguish. Soldiers like Ron Arad, who were taken prisoners in a battle, are still held incommunicado in blatant contravention of every international law, brutally ignoring the inhuman suffering, both of the prisoners and their families.

The leaders on both sides needed strength and courage to negotiate, sign and begin implementing an agreement, which meets with extreme opposition both by Israelis and by Palestinians, motivated by ideological as well as practical concerns, some groups openly threaten to use unlawful and undemocratic means to undermine the peace process. But, there is this difference: the Israeli authorities, on every level, condemn the use of violence and take steps, sometimes unpopular and painful ones, to curb it in their midst. Not so on the other side: there is no unequivocal condemnation of violence and terrorist acts, and there is no apparent concentrated effort to prevent them or punish them. This is not only in direct contravention of the agreement, but literally threatens to undermine its implementation.

It took courage to sign this agreement. It will take even greater courage to implement it. But, like any other contract, it must be implemented in good faith, so that a bridge of mutual trust can be constructed. Cessation of terrorist acts must be a firm condition, not to be circumvented or ignored. The deletion of those paragraphs in the Palestinian Covenant, that call for the abolition of the State of Israel must be carried out without delay. No underhand or devious tricks may be used to circumvent explicit paragraphs of the agreement, which were reached after much deliberation and compromise.

We do see a glimmer of light at the end of the tunnel, but we are not yet out of the woods.

As you see, there is much work to be done, and we can all make a meaningful contribution. Let us, here and now, commit ourselves to do so. This is our duty, this should be our agenda.

Hadassa Ben-Yitro

Jerusalem: The Legal and Political Background



Ruth Lapidot

At least in three respects Jerusalem differs from most other places: the city is holy to adherents of three religions, it is the subject of conflicting national claims by two peoples, and its population is heterogeneous to a considerable degree. These characteristics require some elaboration.

Jerusalem's Uniqueness

In the city one finds Holy Places of Christianity, since according to Christian tradition Jesus lived and was active in various locations in Jerusalem. Under the Islamic tradition, the al-Aksa Mosque and the Dome of the Rock situated on the Temple Mount are Holy Places, and for the Jewish people the whole city is holy, in particular the Old City.

It has been argued that some of the events which are associated by the various religions with Jerusalem could not, from an historical point of view, have actually occurred. However, where religious faith is concerned, historical accuracy is not relevant and it is sufficient that many people believe that a certain event took place. Religious belief in the sanctity of certain sites in Jerusalem has been exploited by various States and institutions

in order to achieve political goals.

As for the national aspect, united Jerusalem is the capital of the State of Israel, but the Palestinians also have claims on the city, at least the eastern part thereof, and seek to make it their capital.

Turning to the heterogeneous nature of the population, it is sufficient to stroll through the streets of the city to realize that it indeed consists of a mosaic of many and various peoples. Thus, for example, adherents of some forty different Christian communities live in Jerusalem.

These three features have a considerable influence on the character and the development of the city.

A Historical and Legal Survey

Jerusalem has a long and turbulent history. From 1517 onwards the city, together with the whole of Palestine, was under Ottoman rule. Jerusalem was never the capital of any Arab State. Since 1830 it has had a Jewish majority - at first merely a relative majority, but subsequently an absolute one.

The Holy Places in the city have often been a matter for dispute. In the 19th century there was bitter controversy when certain European countries extended their protection over the various Christian churches in Palestine, and over their Holy Places. Some of the Powers also established consulates in Jerusalem (France, Britain, Russia, Prussia, Austria, Sardinia, Spain and the United States). For the purpose of regulating the status of the various churches at the Holy Places, the Ottoman

Professor Ruth Lapidot is a Professor of International Law at the Hebrew University Jerusalem. This article is based on the Introduction to R. Lapidot and M. Hirsch, eds., *The Jerusalem Question and its Resolution: Selected Documents*. Dordrecht, Nijhoff, in collaboration with the Jerusalem Institute of Israel Studies. Jerusalem 1994.

government published a number of firmans, the most important being that of 1852. This firman dealt with certain Holy Places and determined the powers and rights of the various Churches in those places. This arrangement was generally known as the status quo, and has been applied to the Church of the Holy Sepulchre and its dependencies, the Convent of Deir al-Sultan, the Sanctuary of the Ascension (on the Mount of Olives), the Tomb of the Virgin Mary (near Gethsemane) in Jerusalem as well as the Church of the Nativity, the Milk Grotto and the Shepherds' Field near Bethlehem.

After the Crimean War, the status quo received international recognition by the Treaty of Paris of 1856 and was reconfirmed by the European Powers at the Congress of Berlin in 1878. In Article 62 of the Treaty of Berlin the term status quo was used for the first time, in the following provision: "[I]t is well understood that no changes can be made in the status quo of the Holy Places." During the period of the British Mandate the principle of the status quo was extended also to the Western Wall (also known as the Wailing Wall) and Rachel's Tomb.

The Balfour Declaration of 1917, by which Great Britain promised to assist in the establishment in Palestine of a national home for the Jewish people, did not explicitly refer to Jerusalem, nor did the Terms of the Mandate of 23rd July, 1922, which defined the powers and responsibilities of Great Britain as a Mandatory Power in Palestine. However, the Terms of the Mandate did deal with the question of the Holy Places. In Articles 13-15 it was provided that the Mandatory was responsible for the Holy Places and that it was bound to preserve existing rights in those places as well as ensure free access and worship, subject to requirements of public order and decorum. Moreover, Great Britain was requested to establish a special Commission which would "study, define and determine" the various rights and claims in connection with the Holy Places. This Commission was to be appointed with the approval of the Council of the League of Nations. In fact, the Commission was never set up, since the States concerned could not reach agreement as to its composition or powers. Shortly after the Mandate came into force, Britain provided in the Palestine (Holy Places) Order in Council of 1924 that matters concerning the Holy Places were not within the jurisdiction of the courts, but should be handled by the British High Commissioner.

During the time of the Mandate, the seat of the High Commissioner was in Jerusalem.

In 1947, after the Second World War, Great Britain requested

the General Assembly of the U.N. to consider the Palestinian question. The General Assembly appointed a special committee - the United Nations Special Committee on Palestine or UNSCOP - to investigate the matter, and following the recommendation of the majority of the Committee, the General Assembly adopted on the 29th November, 1947 its famous resolution on the future government of Palestine (Resolution 181 (II)). Part III of the resolution dealt with the City of Jerusalem. The General Assembly recommended the establishment of a corpus separatum (a separate entity) which would be under a special international regime and be administered by the U.N. through the Trusteeship Council and a Governor to be appointed by it. Powers of local government and administration were to be conferred on the local autonomous units that existed in the area. The city was to be demilitarized and neutral. For the purpose of maintaining internal order and especially for the protection of the Holy Places, a special police force consisting of members to be recruited outside Palestine was to be established. Legislative powers were to be conferred on a Legislative Council to be elected by the residents of the city on the basis of proportional representation. The U.N. Governor would have the power to veto laws inconsistent with the Statute of the city as well as the power to promulgate temporary ordinances in case the Legislative Council failed to fulfill its function. The city was also supposed to maintain a judiciary system.

In the economic sphere, the city was to have been united with the Jewish and Arab States which the General Assembly had recommended to set up. Residents of both States were to be guaranteed freedom to enter the city and the right to reside therein. It was intended to grant the citizenship of Jerusalem to all the residents of the city except for those who did not wish to have it. The resolution secured human rights in the city, including an education system in the Hebrew and Arabic languages. The Holy Places were to be preserved and protected, and continued respect for existing rights was provided for (i.e., preservation of the status quo). Similarly, freedom of access and worship subject to the requirements of public order and decorum was assured. In the absence of agreement between the different religious communities, the Governor was authorized to carry out urgent repairs in the Holy Places. Likewise, it was provided that taxes on Holy Places would not be increased. In addition to his powers and functions with regard to Jerusalem, the Governor was also to have authority to settle disputes between different religious communities anywhere in Palestine.

The special régime for Jerusalem was to have been in effect at the first stage for ten years, after which it was to have been reexamined by the Trusteeship Council of the U.N. in view of experience gained. Moreover, the residents were promised that they would be able to express, through a referendum, their wishes as to possible modifications of the régime of the city.

The special entity of Jerusalem was to have included Bethlehem in the south, Ein Kerem in the west, Abu Dis in the east, and Shu'fat in the north.

The resolution of the General Assembly received the consent of the national leadership of the Jewish community of Palestine but was categorically rejected by the Arabs, who immediately started attacking Jewish towns and villages, including the Jewish areas of Jerusalem.

On 14th May, 1948, when the British Mandate over Palestine drew to its end, representatives of the Jewish Community in Palestine proclaimed the establishment of the State of Israel. The Declaration of the Establishment of the State does not mention Jerusalem, but it foresees that Israel "will safeguard the Holy Places of all religions". Immediately after the establishment of the State, the armies of five Arab States invaded Israel. In the Jerusalem region the armies of Jordan (or Transjordan, as it was then called) and Egypt were operating. The battle for Jerusalem was a fierce one, partly because at a certain stage the Jewish areas were cut off from the coastal plain. The battle for the Old City ended with the surrender of the Jewish Quarter to the forces of the Jordanian Arab League.

Even before the fighting had died down, a special agreement was concluded under the auspices of the U.N. between Jordan and Israel regarding Mount Scopus. During the fighting that area had remained a Jewish enclave within the areas conquered by the Jordanian army. In that agreement the parties agreed to neutralize the Jewish enclave as well as the adjoining area of the Augusta Victoria hospital which was under Jordanian control, and to assign these areas to U.N. protection. Moreover, it was provided that Jewish civilian police should be allowed to guard the humanitarian institutions on the Mount (the Hadassah Hospital and the Hebrew University) and that the guards would be replaced from time to time by means of a convoy escorted by the U.N., which would be allowed to traverse the zone under Jordanian control.

When the fighting ended, Jordanian forces were in control of the eastern parts of the city, whereas the western sector was under Israeli control. In November of 1948, a truce came into

force throughout the city, and at the beginning of 1949 an armistice agreement was concluded between Israel and Jordan. Among other matters, it was agreed that a special committee would be established in order to formulate agreed plans inter alia on matters on which agreement in principle already existed, including free access to the Holy Places and the reopening of the cultural and humanitarian institutions on Mount Scopus (Article 8), but these commitments were not honoured by Jordan. Furthermore, the Jordanians demolished most of the Jewish Quarter of the Old City with its synagogues, and also destroyed a number of gravestones in the Jewish cemetery on the Mount of Olives.

The application of Israeli law to the western sector of Jerusalem was ensured by proclamations made by the Minister of Defence in 1948 and by the Areas of Jurisdiction and Powers Ordinance, 1948. That ordinance provided that the law in force in the State of Israel should also apply to any part of Palestine which the Minister of Defence would designate by Proclamation to be under occupation of the Israel Defence Forces.

The Armistice Agreement established a Mixed Armistice Commission (Article 11), with the participation of Jordan, Israel and a U.N. representative. This Commission dealt from time to time with matters concerning Jerusalem. Among other matters, it was agreed to partition the "civilian zone" - i.e., the zone in which the former High Commissioner's residence was situated (and which was previously a demilitarized zone between the lines). Moreover, the Commission dealt with the occupation by civilians of certain buildings within the no-man's land (the area between the lines to which access was prohibited). Although that occupation was illegal (under Article 4(3)), the Commission affirmed that the occupants of those buildings should receive municipal services from Jordan or Israel, as the case may be.

At the end of 1949, following on the renewed debate on Jerusalem in the General Assembly of the U.N., Israel's Prime Minister David Ben-Gurion announced in the Knesset that Jerusalem was an inseparable part of the State of Israel and its eternal capital; this position was approved by the Knesset.

In 1950 a conference of dignitaries from the areas conquered by Jordan in 1948 was convened in Jericho, and following their resolution the King of Jordan proclaimed the annexation of the West Bank and Jerusalem to his kingdom. This act was recognized by only two states - Great Britain and Pakistan, and Great Britain added a reservation that the recognition did not apply to Jerusalem. The members of the Arab League expressed their

opposition to these measures.

In the U.N. there were a number of debates on the future of Jerusalem during the years 1948-1952, and the Trusteeship Council drew up a draft statute for the city, but from 1952 until the Six-Day War in 1967 no significant discussions took place on the subject.

Apparently, foreign states were not prepared to recognize Jordanian or Israeli rule over the respective zones of the city under their control. Thus, for example, the foreign consuls in the city refused to apply to Jordan or Israel (as the case may be) for the grant of *exequatur*, i.e., permission to carry out their functions in the city. The refusal to recognize Israeli rule over the western sector of the city was apparent, for example, in the 1952 case of the *Heirs of Shababo et aliter v. Roger Heilen, the Consulate General of Belgium and the Consul General of Belgium in Jerusalem*: The driver of the Belgian Consulate had been involved in a fatal road accident that caused the death of Mr. Shababo. The latter's relatives sued the driver, the Consulate and the Consul General and claimed damages. The incident was the subject of four judgments of the Jerusalem District Court. Of particular interest is the first deliberation (not published), where the driver and his principals denied the jurisdiction of the Israeli courts over the accident since it had taken place in Jerusalem. That argument was dismissed by the Court. It seems, however, that although the international community has not recognized Israel's sovereignty over the western neighbourhoods of Jerusalem, it has nevertheless accepted the *de facto* applicability of Israeli law. In the view of the State of Israel, Israel acquired sovereignty over the western part of the city already in 1948, since, upon the departure of Britain, the area remained without a sovereign, and Israel took control of it by a lawful act of self-defence.

When the Six-Day War broke out in June, 1967, Israel contacted Jordan through the U.N. as well as the American Embassy, and made it clear that if Jordan refrained from attacking Israel, Israel would not attack Jordan. Nevertheless, the Jordanians attacked west Jerusalem and occupied the former High Commissioner's building. A few days later, Israel Defence Forces recovered the compound and dislocated the Jordanian army from east Jerusalem and from the West Bank.

When the fighting was over, the Knesset passed the Law and Administration Ordinance (Amendment No. 11) Law, 1967, authorizing the Government to apply the law, jurisdiction and administration of Israel to any area which was formerly part of

Mandatory Palestine. Likewise, the Municipalities Ordinance was amended so as to allow for the extension of the bounds of a municipality where a decision has been made as to the application of Israel's jurisdiction to a certain area, as referred to above. And indeed, the Government issued an appropriate order as a result of which Israeli law was made to apply to the eastern sector of Jerusalem, which was also included within the jurisdiction of the Jerusalem municipality. It should be pointed out, however, that in several spheres Israeli law granted east Jerusalemites certain facilities, by laying down special arrangements for them, as embodied in the Legal and Administrative Matters (Regulation) Law [Consolidated Version] 1970. A special arrangement has also been followed in matters of nationality. Israeli nationality is not imposed on residents of east Jerusalem, but it can be acquired by application on their part. In actual fact, only a small number of residents of the eastern sector of the city applied for Israeli citizenship, although apparently the numbers have increased recently. The new municipal boundaries were fixed as being from Atarot in the north to Rachel's tomb in the south, and from Ein Kerem in the west to the eastern slopes of Mount Scopus. The above measures were met with fierce criticism from the U.N. institutions.

The question arose at the time as to whether these acts constituted annexation of the eastern parts of Jerusalem. The then Minister of Foreign Affairs, Abba Eban, informed the U.N. Secretary General in writing in July, 1967 that they did not constitute annexation, but only administrative and municipal integration. On the other hand, from the point of view of Israeli law, it was held in a number of decisions of the Supreme Court that the eastern sectors of Jerusalem had become a part of the State of Israel. The 1970 case of *Ruidi and Maches v. Military Court of Hebron* illustrates this attitude.

In the opinion of the Government of Israel, Jordan never acquired sovereignty over the eastern part of the city since it took control of it in 1948 by an act of aggression, whereas Israel has a better right, since it conquered east Jerusalem in 1967 during the course of a war of self-defence. It should be pointed out that the international community has not recognized the annexation of east Jerusalem to the State of Israel.

On the 7th June 1967, immediately after the fighting had died down in Jerusalem, the then Prime Minister, Levi Eshkol, convened the spiritual leaders of all the communities in Jerusalem and assured them that "no harm whatsoever shall come to the places sacred to all religions", and that contacts

should be maintained in order to make certain that spiritual activities of the religious leaders in the Old City may continue. He also mentioned that upon his request the Minister of Religious Affairs had issued instructions according to which arrangements in connection with the Western Wall, Muslim Holy Places and Christian Holy Places should be determined by the Chief Rabbis of Israel, a council of Muslim clerics and a council of Christian clergy respectively. Together with the extension of Israeli jurisdiction and administration over east Jerusalem, the Knesset passed the Preservation of the Holy Places Law, 1967, ensuring protection of the Holy Places against desecration, as well as freedom of access thereto. The law has provided severe penalties for anyone violating its provisions. The interpretation of this law and its application provided the focus of a dispute between the Nationalist Groups Association (a Jewish group) who have sought to enter the Temple Mount area to hold public religious services there and the police who have sought to prevent this for reasons of preservation of security and public order. The Supreme Court has recognized the authority of the police in this matter.

On the 22nd November 1967, the U.N. Security Council adopted Resolution 242, which has usually been regarded as the main basis for peace negotiations between Israel and her neighbours. The resolution required Israel armed forces to withdraw from territories occupied in the recent conflict to boundaries to be agreed upon (the interpretation of the resolution has been a matter of disagreement between Israel and her neighbours). The resolution made no explicit reference to Jerusalem.

Nor is Jerusalem referred to anywhere in the Camp David Accords of September 1978 ("A Framework for Peace in the Middle East Agreed at Camp David" and "Framework for the Conclusion of a Peace Treaty between Egypt and Israel"), due to fundamental differences of opinion between the parties on this issue. However, each of the participants at the Conference defined its position in a letter sent to the other party via the President of the United States. Israel's Prime Minister, Menachem Begin, stated that in accordance with legislation of 1967, "Jerusalem is one city, indivisible, the Capital of the State of Israel", whereas Egypt's President Anwar el-Sadat, stated that "Arab Jerusalem is an integral part of the West Bank" and "should be under Arab sovereignty". At the same time, he determined that "essential functions in the City" ought not to be separated, and that a joint municipal council with an equal number of Arab and Israeli members could supervise the

carrying out of these functions. "In this way, the city shall be undivided". The President of the United States, Jimmy Carter, wrote that the position of the U.S. remained as stated by Ambassador Goldberg at the U.N. General Assembly in 1967 and subsequently by Ambassador Yost in the Security Council in 1969. There is, however, a difference between the speeches of the two Ambassadors. While they both stressed that the actions of Israel in the city were merely provisional and that the problem of Jerusalem's future should be settled by negotiation, Ambassador Yost added that east Jerusalem was occupied territory to which the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War applied. It is interesting that despite this basic approach, the United States has recognized Israel's *de facto* control of east Jerusalem for purposes of extradition (see *Attorney General v. Davis, 1988*).

In the course of the negotiations regarding regional autonomy for the Arab inhabitants of the West Bank and Gaza, which took place during 1979-1982, in the wake of the 1978 Camp David Accords with the participation of Egypt, Israel and the U.S., fundamental differences of opinion emerged over Jerusalem: while the Israeli delegation took the view that Jerusalem and its inhabitants were not included in the autonomy plan outlined in the Camp David Accord since they were part of Israel, Egypt argued that east Jerusalem was part of the West Bank and as such the autonomy régime was supposed to apply to it.

At the time those negotiations were in progress between the three States, a member of the opposition in Israel presented to the Knesset a private member's bill on the subject of Jerusalem. The law that was eventually passed in 1980, i.e., the Basic Law: Jerusalem, Capital of Israel, does not actually contain any innovation but merely repeats matters previously laid down. As to the designation of this statute as a Basic Law, it is uncertain what are the consequences of such a designation, in particular since the provisions of this law have not been entrenched.

Although in practice there is no innovation in the law, it nevertheless aroused resentment in the international community and in the Security Council. The latter severely reprimanded Israel for passing the statute which the Council considered to be contrary to international law. It determined that the Fourth Geneva Convention applied to east Jerusalem, and that the measures taken by Israel in the city were null and void and should be rescinded. It called upon member states with embassies situated in Jerusalem to withdraw them from the city. And indeed, the embassies, thirteen in number, left the city following

the resolution. In 1982, the Embassy of Costa Rica returned to west Jerusalem and was followed by that of El Salvador.

Jerusalem was mentioned in President Reagan's peace initiative of September 1982. As will be recalled, this initiative was announced in the wake of the war in Lebanon, and its purpose was to revive the peace process that began at Camp David in 1978. Regarding Jerusalem, the President declared that its status should be determined through negotiations, that the Palestinian inhabitants of the eastern part of the city should take part in the elections for the autonomy institutions, and that the city should remain undivided.

The Government of Israel turned down the plan, since it considered that it would bring about the re-partition of the city. A few days later, the Arab States made their response in the form of the Fez Declaration. The Fez Conference demanded "Israel's withdrawal from all Arab territories occupied in 1967, including Arab Jerusalem", removal of the Jewish settlements, and the establishment of an independent Palestinian State with Jerusalem as its capital, after a short transitional period of several months during which the territories should be supervised by the U.N.

In 1988 King Hussein announced the disengagement of the West Bank from Jordan in the sphere of law and administration. In the same year the Palestine National Council of the PLO proclaimed the establishment of the State of Palestine with Jerusalem as its capital. The proclamation was recognized by many States. However, a mere proclamation, even if followed by recognition by a large number of States, is not sufficient for the establishment of a State, unless the four prerequisites for the existence of a State are present - territory, population, effective government, and the ability to establish international relations.

In Israel's peace initiative of May 1989, Jerusalem is not mentioned. It will be recalled that this initiative recommended a number of steps for furthering the peace process: continuation and expansion of the Camp David peace process, establishment of peaceful relations between Israel and the Arab States, an international effort to resolve the problem of the residents of the Arab refugee camps, the holding of elections among the Palestinian Arabs of the West Bank and Gaza in order to elect a representation that would negotiate with Israel for a transitional period of self-rule. At a later stage a permanent solution would be agreed upon. One of the reasons for the failure of this initiative was the divergence of views on the participation of personalities from east Jerusalem in the negotiations leading to the elections.

The Government of Israel was opposed to such participation, fearing that it might be interpreted as a surrender of some rights over east Jerusalem, whereas the representatives of the West Bank insisted on the participation of representatives from east Jerusalem so as to emphasize that those sectors of the city were part of the West Bank, and that the interim arrangement should apply to them.

The Jerusalem issue was at the source of two crises in the year 1990 in two different contexts. First, in March of that year, U.S. President George Bush expressed his view that the Jewish neighbourhood of east Jerusalem had the same status as the Jewish settlements on the West Bank. The background to this statement was the considerable immigration of Jews from the Soviet Union to Israel. As a condition for granting loan guarantees for immigrant absorption, President Bush had required Israel to undertake not to settle immigrants from the Soviet Union in the settlements. The President sought to apply this condition also to the Jewish sectors of east Jerusalem. This statement of the President aroused considerable anger in Israel and among Jews in the U.S.; in response, the U.S. Congress passed a resolution recognizing Jerusalem as the capital of Israel. But apparently this was a resolution of the kind not binding on the President.

The subject of Jerusalem again reached the headlines in October of 1990, when Muslim worshippers on the Temple Mount, following false information that the Temple Mount Faithful were coming to lay the cornerstone of a new Temple, were incited and threw stones at Jewish worshippers at the Western Wall. In a violent clash between the police and Muslims on the Mount, 18 Palestinians were killed. A number of persons were injured among the Jewish worshippers and among the police. This tragic incident was investigated by an official commission of inquiry set up by Israel, and was considered in a resolution of the Security Council which in effect put all the blame for the incident on Israel. In this resolution there is no mention of the stone throwing by the Muslims which preceded the police action. The Security Council again called for the application of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Furthermore, it approved the intention of the Secretary General to send a mission to the region. The Government of Israel rejected the Security Council's resolution which it considered unbalanced and refused to receive the mission. The Council again censured Israel.

In October 1991, the Madrid Conference for Peace in the Middle East was convened, following which negotiations between Israel and her neighbours began. The problem of Jerusalem was especially relevant to the negotiations between Israel and the Palestinians (who attended as part of a joint Jordanian-Palestinian delegation). According to the invitation from the United States and the Soviet Union, the negotiations with the Palestinians were to deal at the first stage with the establishment of interim self-government arrangements for a period of five years while in the third year after the setting up of that régime negotiations on the permanent status would commence.

In order to avoid any infringement of the rights of Israel in Jerusalem, the Government of Israel demanded that Jerusalem should not be discussed in the negotiations and that no representatives residing in Jerusalem should participate in the Palestinian delegation. On the other hand, the Palestinian delegation demanded the participation of east Jerusalem delegates in the negotiations, the application to east Jerusalem of the regime of self-government to be negotiated and complete Israeli withdrawal from the eastern part of the city.

The invitation to the Conference did not refer to Jerusalem at all, nor was the city mentioned in the U.S. letter of assurances to Israel. It was, however, stated therein that "no party in the process will have to sit [at the negotiations] with anyone it does not want to sit with". On the other hand, in the letter of assurances sent to the Palestinians, the question of Jerusalem was discussed extensively. The United States promised that the composition of the delegation would not affect the claims of the Palestinians to Jerusalem. It expressed the view that the city should never again be divided, and that its final status should be determined by negotiations. The U.S. also stated that it did not recognize the annexation of east Jerusalem by Israel nor the extension of the municipal boundaries. It was the view of the U.S. that "Palestinians of east Jerusalem should be able to participate by voting in the elections for an interim selfgoverning authority".

As stated above, the position of the Government of Israel has been entirely different. However, just before the ninth round of talks in May 1993, Israel agreed that Feisal al-Husseini, a resident of Jerusalem, participate in the Palestinian delegation, and that the Palestinian residents of east Jerusalem vote in the elections to the self-governing authority.

In May 1993, the municipal boundaries of Jerusalem were

extended in order to increase possibilities for developing the city. The extension was towards the west.

On the 13th of September 1993 Israel and the Palestine Liberation Organization signed a Declaration of Principles. The parties agreed to negotiate on the establishment of "a Palestinian Interim Self-Government Authority, the elected Council (the 'Council'), for the Palestinian people in the West Bank and Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338" (Article 1). Prior to the establishment of the Council, there should already take place a large-scale transfer of authority in the Gaza Strip and in Jericho, as well as a limited transfer in the rest of the West Bank. The negotiations on the permanent settlement should begin two years after the selfgovernment starts to function in Gaza and Jericho. The above stages are to be accompanied by a redeployment of Israel's armed forces on the West Bank, and their withdrawal from the Gaza Strip and the Jericho area.

The Declaration includes two provisions concerning Jerusalem. It was agreed that "Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides" (Annex 1). However, the status of Jerusalem is not to be discussed in the negotiations for the interim arrangements but should be one of the subjects left for the later negotiations on the permanent settlement (Article V(3)).

On the 30th of December 1993 a "Fundamental Agreement was concluded by the Holy See and the State of Israel. The document does not deal expressly with Jerusalem, but some of its provisions are relevant to the city, e.g., the commitment to favour Christian pilgrimages to the Holy Land, the right of the Catholic Church to establish schools and to carry out its charitable function. Of great interest is the provision under which the parties affirmed their "continuing commitment to maintain and respect the 'status quo' in the Christian Holy Places to which it applies..." probably a reference to the status quo established in the 19th century. In addition, Israel undertook to protect and respect Catholic sacred places.

In a letter from Israel's Minister of Foreign Affairs to his Norwegian counterpart (October 1993), the role of certain Palestinian institutions in East Jerusalem was recognized, including those related to the Christian and Muslim Holy Places.

Under the 1994 Washington Declaration signed by Israel and Jordan, "Israel respects the present special role of... Jordan in

Moslem holy shrines in Jerusalem. When negotiations on the permanent status [of the West Bank and Gaza] will take place, Israel will give high priority to the Jordanian historic role in these shrines..."

Summary and Conclusions

In the section relating to Jerusalem's uniqueness, we referred to three special features of Jerusalem: the conflicting national claims, its sanctity and the heterogeneous nature of its population.

With regard to national aspirations, Jerusalem has been situated at the focus of the Israel -Palestinian conflict, and has perhaps been the sharpest and most intense expression of the conflict. Both peoples have regarded it as their national, cultural as well as social centre, and as the natural location for their national institutions.

In the sphere of sanctity, Jerusalem has also aroused very strong emotions. Here many more interested persons have been involved: the city has been holy not only for its residents and for those of Israel, the West Bank and the Gaza Strip, but also for many millions of other human beings Jews, Muslims, and Christians of various denominations. An additional problem has been involved in the fact that many sites have been holy to more than one religion - a phenomenon that has always been a source of friction.

Finally, the very heterogeneous nature of Jerusalem's population should be recalled. The dividing lines have been religious, ethnic, cultural, as well as socio-economic, in nature.

These dimensions of uniqueness demand caution, wisdom, tolerance and understanding from all those seeking to plan the future of the city.

For the text of the Washington Declaration, referred to in this article, see page 15. For map of Jerusalem see back cover.

LAW

Basic Law: Jerusalem, Capital of Israel - 1980

1. Jerusalem, complete and united, is the capital of Israel.
2. Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court.
3. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.
4. (a) The Government shall provide for the development and prosperity of Jerusalem and the well-being of its inhabitants by allocating special funds, including a special annual grant to the Municipality of Jerusalem (Capital City Grant) with the approval of the Finance Committee of the Knesset. (b) Jerusalem shall be given special priority in the activities of the authorities of the State so as to further its development in economic and other matters.
(c) The Government shall set up a special body or special bodies for the implementation of this section.

The Washington Declaration

July 25th, 1994

- A. After generations of hostility, blood and tears and in the wake of years of pain and wars, His Majesty King Hussein and Prime Minister Yitzhak Rabin are determined to bring an end to bloodshed and sorrow. It is in this spirit that His Majesty King Hussein of the Hashemite Kingdom of Jordan and Prime Minister and Minister of Defence, Mr. Yitzhak Rabin of Israel, met in Washington today at the invitation of President William J. Clinton of the United States of America. This initiative of President William J. Clinton constitutes an historic landmark in the United States untiring efforts in promoting peace and stability in the Middle East. The personal involvement of the President has made it possible to realize agreement on the content of this historic declaration. The signing of this declaration bears testimony to the President's vision and devotion to the cause of peace.
- B. In their meeting, His Majesty King Hussein and Prime Minister Yitzhak Rabin have jointly reaffirmed the five underlying principles of their understanding on an Agreed Common Agenda designed to reach the goal of a just, lasting and comprehensive peace between the Arab States and the Palestinians, with Israel.
1. Jordan and Israel aim at the achievement of just, lasting and comprehensive peace between Israel and its neighbours and at the conclusion of a Treaty of Peace between both countries.
 2. The two countries will vigorously continue their negotiations to arrive at a state of peace, based on Security Council Resolutions 242 and 338 in all their aspects, and founded on freedom, equality and justice.
 3. Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines. In addition the two sides have agreed to act together to promote interfaith relations among the three monotheistic religions.
 4. The two countries recognize their right and obligation to live in peace with each other as well as with all states within secure and recognized boundaries. The two states affirmed their respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area.
 5. The two countries desire to develop good neighbourly relations of co-operation between them to ensure lasting security and to avoid threats and the use of force between them.
- C. The long conflict between the two states is now coming to an end. In this spirit the state of belligerency between Jordan and Israel has been terminated.
- D. Following this declaration and in keeping with the Agreed Common Agenda both countries will refrain from actions or activities by either side that may adversely affect the security of the other or may prejudice the final outcome of negotiations. Neither side will threaten the other by use of force, weapons, or any other means, against each other and both sides will thwart threats to security resulting from all kinds of terrorism.
- E. His Majesty King Hussein and Prime Minister Yitzhak Rabin took note of the progress made in the bilateral negotiations within the Jordan-Israel, track last week on the steps decided to implement the sub-agendas on borders, territorial matters, security, water, energy, environment and the Jordan Rift Valley.
- In this framework, mindful of items on the Agreed Common

Agenda (borders and territorial matters) they noted that the boundary sub-commission has reached agreement in July 1994 in fulfillment of part of the role entrusted to it in the sub-agenda. They also noted that the sub-commission for water, environment and energy agreed to mutually recognize, as the role of their negotiations, the rightful allocations of the two sides in Jordan River and Yarmouk River waters and to fully respect and comply with the negotiated rightful allocations, in accordance with agreed acceptable principles with mutually acceptable quality.

Similarly, His Majesty King Hussein and Prime Minister Yitzhak Rabin expressed their deep satisfaction and pride in the work of the trilateral commission in its meeting held in Jordan on Wednesday, July 20th 1994, hosted by the Jordanian Prime Minister, Dr. Abdessalam al-Majali, and attended by Secretary of State Warren Christopher and Foreign Minister Shimon Peres. They voiced their pleasure at the association and commitment of the United States in this endeavour.

F. His Majesty King Hussein and Prime Minister Yitzhak Rabin believe that steps must be taken both to overcome psychological barriers and to break with the legacy of war. By working with optimism towards the dividends of peace for all the people in the region, Jordan and Israel are determined to shoulder their responsibilities towards the human dimension of peace making. They recognize imbalances and disparities are a root cause of extremism which thrives on poverty and unemployment and the degradation of human dignity. In this spirit His Majesty King Hussein and Prime Minister Yitzhak Rabin have today approved a series of steps to symbolize the new era which is now at hand:

1. Direct telephone links will be opened between Jordan and Israel.
2. The electricity grids of Jordan and Israel will be linked as part of a regional concept.
3. Two new border crossings will be opened between Jordan and Israel - one at the southern tip of Aqaba-Eilat and the other at a mutually agreed point in the north.

4. In principle free access will be given to third country tourists travelling between Jordan and Israel.
5. Negotiations will be accelerated on opening an international air corridor between both countries.
6. The police forces of Jordan and Israel will co-operate in combating crime with emphasis on smuggling and particularly drug smuggling. The United States will be invited to participate in this joint endeavour.
7. Negotiations on economic matters will continue in order to prepare for future bilateral co-operation including the abolition of all economic boycotts.

All these steps are being implemented within the framework of regional infrastructural development plans and in conjunction with the Jordan-Israel bilaterals on boundaries, security, water and related issues and without prejudice to the final outcome of the negotiations on the items included in the Agreed Common Agenda between Jordan and Israel.

- G. His Majesty King Hussein and Prime Minister Yitzhak Rabin have agreed to meet periodically or whenever they feel necessary to review the progress of the negotiations and express their firm intention to shepherd and direct the process in its entirety.
- H. In conclusion, His Majesty King Hussein and Prime Minister Yitzhak Rabin wish to express once again their profound thanks and appreciation to President William J. Clinton and his Administration for their untiring efforts in furthering the cause of peace, justice and prosperity for all the peoples of the region. They wish to thank the President personally for his warm welcome and hospitality. In recognition of their appreciation to the President, His Majesty King Hussein and Prime Minister Yitzhak Rabin have asked President William J. Clinton to sign this document as a witness and as a host to their meeting.

His Majesty **King Hussein**
Prime Minister **Yitzhak Rabin**
President **William J. Clinton**

In the World Council Meeting of the Association, which took place in Rome in June 1994, discussions focused on Relations between the Holy See, Israel and the Jews; Exploitation of Xenophobia and Anti-Semitism for Political Aims; Legal Aspects of Investments in and Trade with Israel; The Middle East Economy Following the Peace Process; and Claims for Restitution of Jewish Heirless and Communal Property in Eastern Europe. In this issue of JUSTICE we are publishing extracts from the discussions relating to the Vatican and the Jewish People; the other addresses will be reported on in the next issue of JUSTICE.

Vatican Session: Opening Remarks

Justice Moshe Landau, CHAIRMAN
Former President of the Supreme Court of Israel



"The venue of our meeting is of symbolical significance, here in Rome which, together with Jerusalem, prides itself on being an Eternal City; the historical juncture at which we shall conduct our discussions is a most auspicious one, under the impact of full diplomatic relations between the Holy See and the State of Israel which

were established only a few days ago. You have before you the Fundamental Agreement between the two parties which was concluded last December and forms the basis of this mutual recognition. I invite your close attention to it. It is a carefully drafted document in International Law which, as is stated in its Preamble, signifies the unique nature of the relationship between the Catholic Church and the Jewish people and the historic process of reconciliation and growth in mutual understanding and friendship between Catholics and Jews.

We have indeed travelled a long way, since the latter part of the 19th century when Moses Hess, one of the forerunners of modern Zionism, analyzed in his book *Rome and Jerusalem* the significance of the ideas represented by our two Cities; and since the beginning of this century of ours when Theodore Herzl, the founder of political Zionism, had to eat his heart out in order to obtain as much as an audience at the Vatican for his idea of establishing a national home for the Jewish people, secured under Public International Law. But as the Hebrew popular saying goes, which adapts a traditional formula: "Much has been achieved, but much still remains to be achieved".

There is, of course, more to it than reconciliation which means, I believe, bringing to rest amiably a past quarrel between two parties. There may have been a theological quarrel during the very beginnings of Christianity, within the Jewish communities of the Mediterranean littoral at that time. But then there came the indelible memories of past persecutions which led Jews to the stake for the sin of professing their religious faith. That religious fanaticism became a fertile breeding ground for the bestialities of racial anti-Semitism which, in the middle of the present century, led a vital part of the Jewish people, a part vibrant with Jewish life and holding great promise for the future, to the killing grounds and gas chambers of German-occupied Europe, because of the mere fact of their being Jews.

During the first years of the Hitler regime which commenced in 1933, the Holy See of that time kept silent for too long, almost until the very end, when it intervened, or tried to intervene, in order to save what remained of Jewry in Hungary and in other countries. In saying that, let us not forget the heroic deeds of those men and women of the Catholic Church who saved Jews at the risk of their own lives, by hiding them in their Monasteries and their Convents.

The stark facts of history which I have mentioned still await an adequate response, beyond the condemnation of anti-Semitism 'anywhere, at any time and by anyone', as it says in Article 2 of the Agreement. Thus I understand the statement in the Agreement, to quote again from its Preamble, that it provides a sound and lasting basis for the continued development of the present and future relations between the two parties to it. That is, I think, why it is there described as being a First Agreement which, I understand, is to initiate a continuing process of clarification. Let me express the hope that this morning's discussions, which will be conducted in a spirit of mutual understanding and of complete frankness, will provide a significant contribution in laying the groundwork for that continuing process."

WORLD COUNCIL MEETING

His Eminence Edward Idris Cardinal Cassidy

President of the Holy See's Commission for Religious Relations with the Jews



"The very fact that you are holding this World Council Meeting in Rome is, in itself, a most significant sign of the new spirit which has come to exist in Jewish-Catholic relations. Your presence in this city follows closely on the recent most successful meeting of the International Liaison Committee representing my Commission

and International Jewish Committee on Interreligious Consultations. That too was very significant for the city in which it was held, namely, Jerusalem.

Almost every day in our office we experience some further manifestation of that new spirit in Jewish-Catholic relations which, in the words of the 1990 Prague meeting of the ILC: I emphasizes cooperation, mutual understanding and reconciliation; good will and common goals, to replace the past spirit of suspicion, resentment and distrust'.

In Jerusalem we sought to take this cooperation even further,

by responding together to the challenge we had given ourselves in Prague. There we spoke of a vision of Catholics and Jews working together to build a new world through 'the establishment of human rights, freedom, and dignity where they are lacking or imperilled' and by promoting 'responsible stewardship of the environment'. We came away from Jerusalem greatly satisfied with our progress in this direction and full of hope for the future...

I have no doubt that the main obstacle to the further development of Jewish-Catholic relations lies in the ignorance which still persists in both our faith communities concerning our new relationship.

There are still a very large number of both Catholics and Jews who are quite unaware of what we have been able to achieve. There is, therefore, much work to be done in the field of education and we must strive to provide information especially through the dissemination of our dialogue documents and of the important statements that have been made, and by making known the practical results that have followed our efforts.

I close with some words which Pope John Paul II addressed to the people of Poland, on the occasion of the 50th anniversary of the Warsaw Ghetto Uprising: 'As Christians and Jews, following the example of the faith of Abraham, we are called to be a blessing for the world. This is the common task awaiting us. It is therefore necessary for us, Christians and Jews, to be first a blessing to one another'.

Shmuel Hadas

Ambassador of Israel to the Holy See



"The Joint Protocols signed in Jerusalem according to which the Holy See and the State of Israel agreed to establish full diplomatic relations was a culmination of the process set in motion in July 1992 when a joint working commission was set up to discuss bilateral topics of mutual interest with a view to normalizing relations. Last year

on the 30th December both sides signed an agreement considered by all to be historic. What took place was not only a diplomatic act but also a milestone in the relations between the Catholic Church and the Jewish people. In its Preamble it speaks of being conscious of the special nature of the relations between the Catholic Church and the Jewish people and the historical process of reconciliation and development within the framework of mutual understanding and friendship between Catholics and Jews. The Agreement reverberates to millions of Catholics and Jews.

We have embarked upon a dialogue which will encompass topics in both dimensions: the Holy See-State of Israel and the Catholic Church-Jewish people... The establishment of a direct channel of communications between the Holy See and the State

WORLD COUNCIL MEETING

of Israel can make a very important contribution, namely, cooperation in the struggle for justice against racism and anti-Semitism, the struggle for peace in the Middle East and other regions...

It is an indisputable fact that we differ on important principles with a theological dimension, but often there is a convergence of views on social and ethical themes, on international peace, and on topics such as social medicine, justice, family, etc. Christians and Jews share a social vision stemming from the same source, the Hebrew prophets. I believe that in this field our dialogue will be constructive and contribute to mankind. We must strive with patience and perseverance for better understanding. This will be

His Excellency Archbishop di Montezemolo

Apostolic Nuncio and Special Representative to Israel



"For the last four years I have been living in Jerusalem where I was sent by the Holy Father to represent the Holy See; I was sent there to develop relations between the Holy See and the State of Israel. In these four years I have been doing my utmost not only to try and develop these contacts but also to try and change the situation; to try to achieve something that

should have been achieved, historically. The work was not easy but it was a great honour for me to chair the group of experts

the great challenge that we must all take up in the next years at the onset of the third millennium of our common history.

The establishment of diplomatic relations on June 15th was not a point of arrival but on the contrary a point of departure. For all that, being the first Israeli representative to the Holy See will be a difficult challenge. I will be involved in a qualitative dialogue beyond classic diplomatic exchanges. Given the themes of the dialogue and the fact that I am dealing not only with other diplomats but also with the diplomacy of the Holy See, one of the most experienced protagonists in international diplomacy, famous for his brilliance and competence, there is no doubt that a difficult but fascinating mission awaits me."

which worked for nearly three years. We started in June 1992 when the Permanent Bilateral Commission was set up to establish a process of normalization; one wanted to normalize something which did not exist; it was something that one sensed and it had some foundations, but it had to be legally formulated and defined.

At the beginning, we did not even know what could be achieved... but we understood that the historical moment of this new understanding was something we should make the most of in order to try and establish not only a simple convention or just an exchange of notes, which is what we thought of doing initially; and in fact we arrived at a full international treaty between two sovereign bodies.

This was not just an arrival or a departure, it was both things together. As in all human things there are difficulties and obstacles to be overcome with good will and there are fears and hopes. But in the future work that lies ahead of us there are far more hopes than fears."

President of Italy sends greetings

President Oscar Luigi Scalfaro sent the following telegram to Dr. Oreste Bisazza Terracini, Deputy President of the Association, and President of the Italian Section (freely translated to English):

"To have chosen Italy to hold this international meeting is very significant and helps us to stress the links that exist between our country and our Jewish friends all over the world. The topics of the meeting stress the importance of the relationship we have with the Catholic community and the whole international community, all this in an environment in which the conscience of free men must eliminate any form of xenophobia, racism and anti-Semitism. With these feelings I address my warmest greetings to the organizers, speakers and all the participants in this symposium and I do hope that your meeting will be very fruitful."

WORLD COUNCIL MEETING



From left to right: Adv. Meir Gabay, Chairman of the Council; Judge Hadassa Ben-Itto, President of the Association, at the Opening Ceremony of the World Council Meeting.



Participants at the Council Meeting



From left to right: Rabbi David Rosen, Director for Inter-Faith Relations for the Anti-Defamation League; Mr. Shmuel Hadas, Ambassador of Israel to the Holy See; His Eminence Edward I. Cassidy, President, Commission for Religious Relations with Jews, Holy See; Justice Moshe Landau, former President of the Supreme Court of Israel; Rev. Father Angelo Macchi, Jesuit Society.

WORLD COUNCIL MEETING

From left to right: Adv. Itzhak Nener, First Deputy President of the Association; Prof. David Libai, Israeli Minister of Justice; Mr. Avi Pazner, Israeli Ambassador to Italy; Mrs. Tullia Zevi, President, Jewish Communities of Italy.



Participants at the Council Meeting

From left to right: Dr. Oreste Bisazza Terracini, Deputy President of the Association and President of its Italian Section; Judge Hadassa Ben-Itto; Adv. Itzhak Nener; Adv. Meir Gabay.



Vatican - Israel Relations: The Jewish Perspective

David Rosen



The evolution of the Catholic Church's attitude towards the return of the Jewish people to the Land of Israel and the establishment of Jewish sovereignty within it, can of course only be understood in the context of Catholic teaching and attitudes towards Jews and Judaism as a whole. These naturally go back to the beginning of Christianity. Very early in Patristic times, those passages of the New Testament that reflected the destruction of the Temple in 70 C.E. began to be used in Christian apologetics against Jews and Judaism. Justin Martyr, for example, utilized the destruction of the Temple as a proof for his thesis that the Mosaic Law had been abrogated in favour of the new, Christian dispensation. The destruction of the Temple and the exile, were seen as a sort of inverted proof for the divinity of Jesus and the abrogation of the "old" Covenant in favour of the new. The destruction of Jerusalem, argued John Chrysostom, represented divine punishment on the Jews for their alleged rejection and killing of Jesus. The diaspora was thus seen as a continuing proof that the Jesus whom "the Jews" had killed was, in fact, divine. Why else would God want to punish them so severely? Because Jews suffer, the logic went, they were to be seen as an "accursed" people. As they had broken their Covenant with God by refusing to acknowledge Jesus, the "fulfillment" of that Covenant; so God had passed the Covenant to a new people, one taken from among

the nations who believed in Jesus. This people formed the Church, the "new people" of God who had replaced the "old" people, the Jews, in God's plan of salvation. The Church was now the Verus Israel having replaced the Jewish people.

This "teaching of contempt" towards the Jewish people not only had its negative consequences for Jewish life in the Christian world, but naturally was also reflected in a negative attitude towards the nascent Jewish national movement of return in the late nineteenth century.

Some four months before the first Zionist Congress in Basle (August 1897) the *Civiltà Cattolica*, the semi-official Vatican periodical, edited by the Jesuits, published an article entitled *The Dispersion of Israel over the Modern World* which declared that according to the New Testament, Jews had to live in the diaspora as slaves to the gentiles, until the end of time. The curse they had called upon their own heads and those of their children would hold good for ever.

It was argued that it would be unthinkable to trust them with the guardianship of the Holy Sites. As for a rebuilt Jerusalem as capital of a state of Israel, this would never happen, being contrary to the words of Christ himself.

Most notable of all, the famous reply of Pope Pius X to Theodor Herzl's plea for papal support of the Zionist cause illustrates the influence of such theological categories on his thought; "We are unable to favour this movement", said Pius to Herzl, "We cannot prevent the Jews from going to Jerusalem - but we could never sanction it. As head of the Church I cannot answer you otherwise. The Jews have not recognized our Lord.

Rabbi Rosen is the former Chief Rabbi of Ireland. He is a member of the Permanent Bilateral Commission which negotiated the Fundamental Agreement between the Holy See and the State of Israel.

Therefore we cannot recognize the Jewish people; and so if you come to Palestine and settle your people there, we will be ready with churches and priests to baptize all of you." Cardinal Merry del Val, instructed by the Pope to pursue the correspondence with Herzl, wrote in 1904 that "as long as the Jews deny Christ's divinity, we cannot take a stand favourable to them."

The Secretary of State, Cardinal Pietro Gasparri, was bitterly opposed to the Balfour Declaration, and he wrote in 1919 that "the danger that frightens us the most, is that of the creation of a Jewish State in Palestine."

While already in the early part of the century new tendencies towards a reappraisal of Catholic teaching concerning the Jews were being expressed in certain quarters, it was both the impact of the Shoah as well as the personal commitment of Pope John XXIII that led to the radical break with this past theology. Pope John XXIII was undoubtedly influenced both by his experiences during World War II and by his personal encounters especially with Jules Isaac, on this subject.

Accordingly, "the teaching of contempt" towards the Jewish people was categorically rejected by the Second Vatican Council document known as *Nostra Aetate* ("In our times") which in 1965 ushered in the "positive revolution" in Church teaching regarding the Jewish people and Judaism, that has continued over the last almost thirty years. The Church rejected the idea of Jewish corporate and continuous responsibility for the death of Jesus; it affirmed the Divine Covenant with the Jewish people as eternal and unbroken and it condemned anti-Semitism.

Since *Nostra Aetate*, the Vatican and in particular the present Pope, John Paul II, have made many additional and forthright condemnations of anti-Semitism which has been declared to be a sin against God and man and thus incompatible with Christian Faith. Furthermore, in 1990, he also confirmed the declaration made in Prague by Cardinal Cassidy and the Commission for Religious Relations with the Jews that the fact that anti-Semitism has found a place in Christian thought and teaching, demands an act of *Teshuvah* (repentance) on its part.

Particularly notable amongst subsequent documents promulgated since the Second Vatican Council was that issued in 1985 by the Vatican Commission for Religious Relations with the Jews. For the first time in an official Vatican document the importance of the State of Israel for the Jewish people and its self-identity was recognized.

Similarly, Pope John Paul II showed his personal recognition of the centrality of Israel for the Jews, when in his Apostolic

letter *Redemptio Anno* (20 April 1984) he acknowledged that "Jews ardently love (Jerusalem) and in every age venerate her memory... from the time of David who chose her as the capital and of Solomon who built the Temple there. Therefore they turn their minds to her daily... and point to her as the sign of their nation." And he added "For the Jewish people who live in the State of Israel and who preserve in that land such precious testimonies to their history and their faith, we must invoke the desired security and the due tranquility that is a prerogative of every nation and a condition of life and of progress for every society..."

Similarly in his address to leaders of the Jewish community in Miami (11 September 1987) he declared that "...After the tragic extermination of the Shoah, the Jewish people began a new period in their history. They have a right to a homeland, as does any civil nation, according to international law (which is what we seek), for the Jewish people who live in the State of Israel..."

Accordingly, we can see that the normalization of relations between the Holy See and the State of Israel was logically long called for, as the natural outcome of these profound changes in theology and attitudes.

Moreover in recent years the Holy See had categorically stated that there are no theological barriers to its full normalization of diplomatic relations with the State of Israel.

When the Bilateral Commission of the Holy See and the State of Israel was established in 1992, Vatican spokesman Joaquin Navarro-Valls declared that "diplomatic relations is not a goal in itself but the culmination of a process." This was reiterated by officials of the Vatican Secretariat of State in the course of negotiations. They were of course referring to the process of negotiations on the Agenda. However, at the same time they were perhaps unconsciously articulating a much more profound truth. The normalization of relations between the Holy See and the State of Israel was the culmination of a process that began almost thirty years beforehand with the promulgation of *Nostra Aetate*.

Why then did the Vatican resist the establishment of full ties with Israel for so long and what led to the change of policy?

It seems fair to say that while there were undoubtedly those within the Church hierarchy who still adhered and may continue to adhere to the "old theology", they were not the major obstacle. The Vatican's reluctance to establish full diplomatic relations with Israel in recent years, has rather been the consequence of secular political considerations.

The Church has communities, institutions and assets in Arab and other Muslim societies, and it feared a backlash from any rapprochement with the State of Israel. Moreover, the Holy See's interests in the Third World, where the Church is a substantial presence and often a dominant one, have been linked closely with the Arab/Muslim world. Not least of all, most Catholics in Israel and the administered territories identify themselves as Palestinian and are led by a Palestinian Patriarch. Christians living as part and parcel of Palestinian nationalist society have had an obvious interest in preventing any change in the status quo regarding the absence of normal relations between the Holy See and the State of Israel. Accordingly, the local Catholic leadership made it clear to the Vatican that it was opposed to any advance in bilateral diplomatic developments with Israel until Palestinian political claims had been satisfied.

It seems evident that notwithstanding the above, the Vatican perceived the time as more than ripe for talks with Israel, as a result of the emerging "new world order" after the collapse of the Soviet Union and above-all after the Gulf War and the ensuing Middle East peace process. As Vatican spokesman Joachin Navarro-Valls put it at the time "Palestinians affiliated with the PLO are formally meeting with the Israelis, why shouldn't we?"

In the course of the last three or four years, Israel has more than doubled the number of its diplomatic missions with the establishment of diplomatic relations with African countries who broke them off after the Yom Kippur War and the establishment of new relations with the emerging states from the former Soviet Union and Communist bloc. Were the Vatican to have further delayed rapprochement with Israel in this new context, one might say that its own credibility would have suffered and protestations regarding the theological acceptance of Israel would have rung hollow to many. Above all, as the peace talks moved ahead, the Church did not want to be left out in the cold, especially regarding the future of Jerusalem where the Holy See has substantial interests. Significantly on this matter, the Vatican no longer talks of the internationalization of Jerusalem, but rather of international guarantees".

Signs of the changing winds in the Vatican corridors were evident at the May 1992 meeting in Baltimore between the Vatican Commission for Religious Relations with the Jews and the International Jewish Committee for Inter-Religious Consultations (IJCIC). The former, as the official Vatican body responsible for relations with the Jewish people and Judaism,

has always refused to involve itself in the question of diplomatic relations with the State of Israel, despite pressure to do so from World Jewry, pointing out that the subject is a matter of relations between States and this was and is outside the competency of the Commission and entirely in the hands of the Secretariat of State. However, at the meeting in Baltimore, the Commission joined IJCIC for the first time in calling for such diplomatic ties.

Practical moves towards the normalization of relations between the Holy See and the State of Israel involving the Apostolic Delegate, the Pope's personal representative in the Holy Land, and Israel's representatives, brought matters to their formal turning point in July 1992 with the establishment of the Permanent Bilateral Commission of the State of Israel and the Holy See.

While from Israel's point of view the issue at stake was essentially one of establishing diplomatic relations, for the Holy See a variety of questions concerning her position and claims in the Holy Land had to be addressed. These included questions of legal status, rights in the field of religious practice, education and welfare, as well as regards taxation and fiscal matters. What the Church had enjoyed de facto under Israeli rule, she sought to enshrine de jure. Accordingly, the Commission agreed on an Agenda that would deal with these issues, as well as the State of Israel's interests and subjects of mutual interest. Through the Commission's committee of experts, work on this Agenda proceeded, leading to the signing of the Fundamental Agreement between Israel and the Holy See last December 30th in Jerusalem.

However while Vatican spokespersons and Archbishop Montezemolo himself have been at pains to emphasize that this is a political agreement between two sovereign entities, very much like other international agreements, it is evident from the text of the Agreement itself, that it is of course much more.

The Preamble of the Agreement not only makes it clear that this normalization takes place within the context of the historic reconciliation of the Catholic Church with the Jewish people, but also as Archbishop Luigi Barbarito the Apostolic Nuncio to the Court of St. James pointed out at Westminster in February 1994, the document is also historic in its recognition of "the unique character and universal significance of the Holy Land for the Jewish people."

Notwithstanding this reality, some Israelis have questioned the value of diplomatic ties with the Vatican, fearing that this may allow the Church a role in the Middle East peace process where

may be more of a hindrance than a help. After all, they say, the Church's interests are not necessarily contiguous with Israel's.

What then are the practical advantages, if any, for Israel in this normalization?

To begin with one may answer that while those aforementioned interests are not necessarily contiguous, they are also not necessarily otherwise. In the struggle over Jerusalem there is in fact reason to believe that the Church may well perceive her interests as substantially linked to those of Israel herself. Secondly, Stalin's famous comment belittling the power of the Pope - "how many divisions does he have?" - was belled by Gorbachev whose policy of glasnost led him almost immediately to St. Peter's, recognizing that the Church has profound influence in various ways upon many societies and their leadership, even without military divisions. Catholicism is the dominant ethos in South America; it is a growing force in Africa and one to be reckoned with in South-East Asia and still not without influence in the industrialized and technologically advanced societies. The normalization of the Holy See's relations with Israel thus has global diplomatic ramifications.

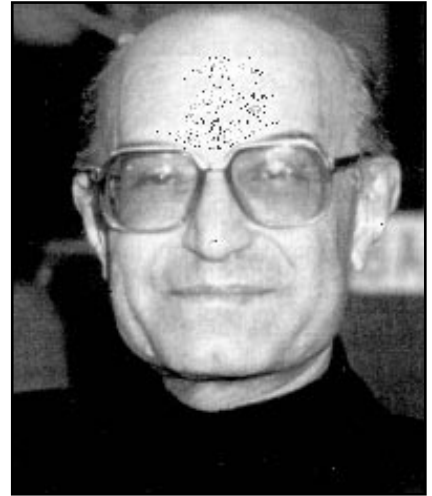
Furthermore, the relationship between the Holy See and the State of Israel affects the attitude of Catholics throughout the world towards not only the Jewish State, but the Jewish people and Judaism as a whole. Consciously or unconsciously, for many

the lack of ties suggested a lack of mutual respect. In the battle against prejudice and the promotion of Jewish interests, this accord with the Vatican is of unquestionable importance. Notable in this regard is the remarkable commitment in the Fundamental Agreement on the part of the Church to working together with Israel to combat anti-Semitism. Indeed the very ability to mobilize the Vatican's diplomatic service on such an issue is of obvious value to Jewry as a whole.

What these relations spell out is a new mutual respect; a new mutual commitment, born out of a recognition of a special relationship to which Pope John Paul II has made particular reference not only at the Synagogue in Rome when he referred to the Jewish people as our dearly beloved elder brothers but also in 1985 when he emphasized that for Christians the relationship with the Jewish people is one of a unique spiritual link: it is, he declared a real parentage, which we have with the Jewish community alone, notwithstanding our many connections with other world religions (Rome, 28/10/85) and this relationship demands special co-operation between us for the great task of promoting justice and peace in the world (Rome, 22/3/84). As Article I I of the Fundamental Agreement states, the Holy See and the State of Israel have a common commitment to "promoting mutual understanding among nations, tolerance among communities and respect for human life and dignity."

Vatican-Israel Relations: The Catholic Perspective

Angelo Macchi



The relationship between the Holy See and the State of Israel is complex because the parties involved are complex... We can indicate the complexity of the State of Israel just by asking a few questions: from the moment it was wished for, thought of and then implemented with the Declaration of Independence and even today is it a state for the Jews or a Jewish state? How can we define being a Jew? Are we referring to a religion only, or do we mean belonging to a family, to a group, to a culture or to all these elements together? These are simple questions but enough to make us understand that the idea of a relationship between the Holy See and the State of Israel must take into account a great number of elements of different weight. The other party is the Holy See, which is not a state but for centuries has been recognized as an international legal body, using the same tools as those used by states. But the Holy See's aims are very specific and not the same as those of states. The Holy See is not the Vatican. The Holy See is what the Holy Father and the Curia, the Central Government of the Church, do.

The relations between the Holy See and the State of Israel have been and still are characterized by a whole series of problems, which belong to two levels: the religious and the political level of justice.

On the religious level, the elements which condition the rela-

tions between the Holy See and the State of Israel include: the relations between the Holy Church and Judaism; the fact that there are Catholics in Israel; the fact that there are Catholic communities which are minorities; the Holy Places; and the legal status of Jerusalem.

On the ethical political level, I would mention the fact that there is a state of war; the military occupation of territories; and the forced movement of peoples... Over time, these are problems which have taken on more or less importance depending on events and on the sensitivities of the time, as well as on the evolution of reflections carried out within the Catholic Church.

If, before the establishment of the State of Israel, the Holy See had expressed some reservations as to the idea of having a state for the Jews in Palestine, one can say that these motivations came from a number of interdependent factors: there was a strong concern for the Holy Places of Christianity in the Holy Land - under the Ottoman Empire the situation was not idyllic but there was a certain stability, guaranteed by the Islamic tradition and also by agreements between the Empire and the Christian Powers. There were also reservations due to the very traditional stand vis-a-vis the Jewish people. Luckily, this has been overcome with the slow evolution of Catholic thought, finally expressed with Vatican Council Two. This was an event which threw light on the religious relations and at the same time enabled one to consider the State of Israel free of all these conditions, on the basis of its internal-external political attitudes...

After the creation of the State of Israel, the Holy See has very slowly and gradually phased out its reservations on the existence

Rev. Father Angelo Macchi is a member of the Jesuit Society. He writes in Catholic journals, including the *Civiltà Cattolica*, the semi-official Vatican periodical.

of the state. It now considers the state as a fact that has occurred and this is matched by the respect which is due to a state and the fact that one recognizes its right to safety and security. In respect to this, there were a few events which were very important, for example, the presence of Israeli delegations at the funeral of Pope Pius XII; at the opening and closing of the Second Vatican Council; at the funeral of Pope John XXIII; at the official inauguration of Pope John Paul II; as well as the letters sent by John XXIII and his successors to the President of Israel saying they had been appointed Pope; the visits in the Vatican of Israeli representatives of the Government of Israel...

Despite the *de facto* recognition, up to now there were no official relations, even though on the Israeli side and from world Jewry there were requests and very often controversy. The Holy See waited for more than 45 years before it changed its attitude. Why? The reasons were represented by certain reservations and non-positive evaluations the Holy See made about certain choices and attitudes of the Israeli Government...

Reservations in the religious dimension included the fact that there is a Catholic community in the State of Israel, whose position is delicate for a number of reasons. It is a Christian community speaking Arabic, which was highly sensitive to what was happening in the region, and which showed solidarity towards the inhabitants of the West Bank and Gaza when they were occupied. The Holy See could not neglect this sort of concern. The same community was free in its educational and religious activities, but it needed a legal status which would give it greater guarantees. The reservations went when it was decided to find this legal status.

Secondly, reservations existed because of the situation of the Catholic communities in occupied east Jerusalem, the West Bank and Gaza, as well as in the countries bordering Israel. These communities are minorities in an Islamic majority, but they are Arab and involved in the conflict with Israel.

There was a question of the proper status for Jerusalem, particularly the town within the walls, something wished for by the Holy See even before the creation of Israel when it accepted the idea of a *corpus separatum*, as foreseen by U.N. Resolution 181 of 28th November 1947, which considered dividing Palestine into three entities: a state for the Jews, a state for the Arabs and an international area... Today, Jerusalem has been unilaterally annexed by Israel, and this is a situation which the Holy See has judged and still judges to be unacceptable.

Reservations in the political dimension to which Israel has

contributed include: the maintenance of a state of war with the bordering countries; the annexation and maintenance of occupied areas; and the Palestinian question... The Holy Father has said that the Palestinian people need a homeland just as the dispersed Jewish people have a homeland after the terrible experiences of the Holocaust.

Now that diplomatic relations between the Holy See and the State of Israel have been definitely established, there have been a whole series of changes. Not, changes which have totally reversed the situation thereby completely eliminating the reservations, but changes in the attitudes of the parties resulting in the build up reciprocal trust and friendship. The climate of dialogue following the Madrid Peace Conference has in fact simplified things for the Holy See and the Vatican.

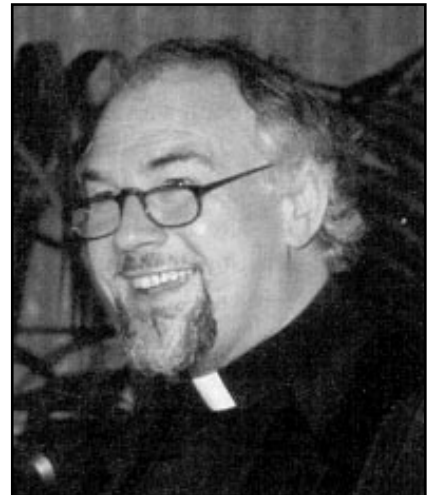
As from the 15th June 1994, we have diplomatic relations on both sides, but we are fully aware that there is still a lot of work to be done both on the bilateral level and as far as the peace process is concerned. We know that we are going in the right direction and when signing the Fundamental Agreement, the Holy See repeated that.

Some people wished the Holy See to wait longer before it took these steps, for all the political problems to be totally settled, particularly the very important problem of Jerusalem; but the Holy See did not want to postpone. It now accepts the new reality and wants to reinforce the trust of those involved in the peace process and it gives support to the dialogue with all those involved. Therefore, the Holy See has contact not only with Israel but also with all the Arab countries, and especially with the Palestinians. The Holy Father, bearing in mind the characteristics of his own mission at times, is called to make prophetic gestures and gestures of hope, even if, at times, these gestures cannot be understood or accepted by some people...

In conclusion, many people have read the words of Prime Minister Rabin when he met the Holy Father on 17th March: he said that the Holy See can and is invited to contribute in a fundamental way to the good results of the peace process, not by participating in the technical negotiations, but by being above them, and through its contribution of a moral character, by supporting and reinforcing the climate of dialogue which is necessary especially in moments of crisis. On the same day, in Tunis, Arafat said the same thing to the Secretary for the Relations with the States. This identity of opinions as to the role to be played by the Holy See in the peace process in the Middle East is highly significant and consolidates the hopes for peace.

"The Good Olive Tree and the Wild Olive Branch"

Remi Hoekman



The history of the relationship between Jews and Christians has been painful since the beginning of Christianity. Misunderstandings and hostility between them developed very early. Yet Jesus was a Jew, and so were his apostles. Today the course of this history is changing.

During the Second Vatican Council, the Catholic Church recalled the spiritual bond linking the Church with Abraham's stock, remembering that "she draws sustenance from the root of that good olive tree onto which have been grafted the wild olive branches of the Gentiles", and professing her faith that "Christ... reconciled Jew and Gentile, making them both one in Himself". Moreover, the Church, mindful of "the [great] spiritual patrimony common to Christians and Jews", not only wanted "to foster and recommend... mutual understanding and respect", but she explicitly repudiated and condemned all persecutions against any human being, especially "the hatred, persecutions, and displays of anti-Semitism directed against the Jews at any time and from any source" (Nostra Aetate, 4; cf. the 1974 Guidelines for implementing Nostra Aetate). Later on, Pope John Paul II called these acts sinful (in his address to the Jewish community in Australia in November 1986)...

"Where there was ignorance and therefore prejudice and ster-

eotypes, there is now growing mutual knowledge, appreciation and respect" (Pope John Paul II, 1985). "There is no doubt that much remains to be done" (idem), but we are well on our way. A new spirit is in the making, "a spirit which emphasizes cooperation, mutual understanding and reconciliation; good-will and common goals to replace the past spirit of suspicion, resentment and distrust... a new spirit [which] would... manifest itself in the work that [our] two faith communities could do together to respond to the needs of today's world... This need is for the establishment of human rights, freedom and dignity where they are lacking or imperilled, and for responsible stewardship of the environment."

These affirmations were made by the International CatholicJewish Liaison Committee (ILC), representing the Holy See's Commission for Religious Relations with the Jews and the International Jewish Committee on Interreligious Consultations (IJCIC) at its 13th meeting held in Prague in September 1990. In fact, the ILC, which is a permanent link between the Holy See's Commission for Religious Relations with the Jews and the world Jewish community, came about in the wake of the Second Vatican Council. The first step for its creation was taken at the end of 1970.

Twenty years later in Prague, Jews and Catholics were able to state together that, "a new image and a new attitude in JewishCatholic relations are required to spread universally the trailblazing work that has been done in a number of communities in various parts of the world... After two millennia of estrangement and hostility we have a sacred duty as Catholics and Jews

Rev. Dr. Remi Hoekman, O.P., is the Secretary of the Holy See's Commission for Religious Relations with the Jews.

to strive to create a genuine culture of mutual esteem and reciprocal caring. Catholic-Jewish dialogue can become a sign of hope and inspiration to other religions, races, and ethnic groups to turn away from contempt, toward realizing authentic human fraternity. The new spirit of friendship and caring for one another may be the most important symbol that we have to offer to our troubled world".

Pope John Paul II may have had this statement in mind when he sent a message to the people of his native land on the occasion of the 50th anniversary of the Warsaw Ghetto Uprising, "As Christians and Jews, following the example of the faith of Abraham, we are called to be a blessing for the world. This is the common task awaiting us. It is therefore necessary for us, Christians and Jews, to be first a blessing to one another."

Cardinal Edward Cassidy, President of the Holy See's Commission for Religious Relations with the Jews, reminded us of those words in his inaugural address to the 15th meeting of the ILC which took place in Jerusalem in May 1994... and added, "In Prague and then again in Baltimore 1992, we sought to give a new direction to our relations. We were well aware of our obligation to history and to challenges which still face us in healing the deep wounds of the past. We were not so foolish as to neglect the danger of new possibilities of anti-Semitism. We Catholic members of the ILC were conscious of the sins that had been committed in the name of religion against the Jewish people. [But] at the same time, we recognized the need to go beyond a mere peaceful co-existence, which is always dangerously fragile, especially in times of crisis, to build something more solid... Prague challenged us to look forward and to work together, not only in order to better our own relations, but so as to contribute to the well-being of this world in which we live and to which we have a particular responsibility

The agenda which we had before us in Jerusalem was intended to carry forward what took place at the Prague and Baltimore meetings, when we decided to become more effective instruments to respond to, and, indeed, anticipate a variety of challenges in today's world to which both our communities are called to respond. Our discussions centred on the Family and Ecology. We wanted to find out to what extent Jews and Catholics can respond together on the basis of their respective faith traditions to challenges such as these. Indeed we do not see ourselves as representatives of secular societies or debating clubs. As Cardinal Cassidy put it at the beginning of the Jerusalem meeting "Both in Prague and Baltimore, we saw

ourselves as representing faith communities. It is on the basis of our separate identities, but frequent common vision as religious communities, that we can and should be able to respond together to some of the needs, and evils, of the world in which we live together." As it turned out we were somewhat surprised, Jews and Catholics, alike, to learn how broad the areas of convergence with regard to the themes discussed really are. As Rabbi Norman Solomon remarked in his paper on Ecology: "As well as common interest, Jews and Catholics share a biblical tradition on creation, and can jointly affirm a wide range of values relating to the created world. Our methodologies, superficially at least, differ. Catholics are apt to decide problems on the basis of the principles of moral theology; whereas Jews are apt to draw on the specific provisions of Halakha. Yet this difference is more apparent than real."

In fact, although the International Liaison Committee is not a place for theological dialogue, and theology as such is not on the agenda, we do meet as representatives of two faith communities who share a common spiritual heritage on which a common action in certain areas of life can be based...

With regard to concrete Catholic-Jewish cooperation, a constant item on our ILC agenda has been the fight against anti-Semitism, racism and xenophobia. We have been engaged in concrete steps. Our Prague meeting adopted a series of practical recommendations on the methods which should be used to combat anti-Semitism. And in February 1992, a joint delegation visited Poland, Hungary and Czechoslovakia with the intention of helping to implement the resolutions taken in Prague. It was felt that the experience was very useful and that similar joint visits should be taken elsewhere...

Another area in which Catholic-Jewish cooperation is taking place is the field of education. As Geoffrey Wigoder pointed out, "We well know the abyss of ignorance in both our communities concerning the other, which includes dangerous myths, stereotypes and prejudices". At our meeting in Baltimore I was able to affirm from the Catholic point of view: "Intuition, discovery and vision have met with positive response in both our communities. They have laid bare wrong approaches, mentalities and attitudes, and principles which had been forgotten or obscured. They have produced guidelines for change and made suggestions for implementation. The objective now is to make the contents of those principles and guidelines really affect, by means of education, the wider community, and therefore, in the first place, the educators of the wider community, i.e., our theo-

logians and priests, teachers and catechists." But if it is clear that any further progress to be made in developing good relations between us will largely depend on our educational programs, it is equally clear that this process ought to happen both ways. On this level reciprocity is definitely a must.

A third field of cooperation is the advancement and protection of human rights. At a meeting which took place in the Vatican in February 1993, we explored the possibilities in the light of the Vienna United Nations World Conference on Human Rights which was to take place soon afterwards. Our discussion demonstrated a clear convergence of views and showed that the concerns of the Jewish organizations were very similar to those expressed by the Holy See at the first Session of the Preparatory Committee for the World Conference.

In particular, there was a strong convergence of views on the following matters:

- A. The universality of human rights.
- B. The recognition of the collectivity (the group) as the subject of rights.
- C. The importance of freedom of religion.
- D. The need for effective procedures for dealing with violations of human rights...

We have by no means exhausted the possibilities of effective Jewish-Catholic cooperation in many areas. In this respect I would like to recall the moving words spoken by Pope John Paul II after the Concert in Commemoration of the Shoah which took place in the Vatican in April 1994. They contain a whole

program of co-operation:

"We have a commitment, the only one perhaps that can give meaning to every tear shed by man because of man and to justify it. We have seen with our own eyes, we were and are witnesses of violence and hatred which are kindled in the world all too often and consume it. We have seen and we see peace derided, brotherhood mocked, harmony ignored, mercy scorned. Nevertheless, man is inclined to justice. He is the only created being capable of conceiving it. To save man does not only mean not to kill him, not to mutilate him, not to torture him. This is our commitment. We would risk causing the victims of the most atrocious deaths to die again if we do not have an ardent desire for justice, if we do not commit ourselves, each according to his own capacities, to ensure that evil does not prevail over good as it did for millions of the children of the Jewish nation. We must therefore redouble our efforts to free man from the spectre of racism, exclusion, alienation, slavery, and xenophobia; to uproot these evils which are creeping into society and undermining the foundations of peaceful human co-existence. Evil always appears in new forms; it has many facets and its flattery multiple. It is our task to unmask its dangerous power and neutralize it with God's help."

Jews and Catholics can, and should, stand together in responding to the task. We are learning that today we not only have an important opportunity to speak to each other in a new way, but that we have a responsibility to speak together to the world in a new way, the newness being in our acceptance of a common heritage which calls for a joint effort to try to effectively signify at least the possibility of human brotherhood in the face of the evils of this world.

Christian - Jewish Dialogue in the Shadow of the Shoah

Hans Herman Henrix



The efforts towards a better understanding, towards a more honest and balanced view and towards a continuing and mutually appreciated solidarity between Jews and Christians will always have to respond to the scrutiny or forum of history. History will not release us. The Jewish tradition is very aware of this fact, because of its culture of remembrance. This culture of remembrance is inherent to Christianity too from its very foundations. Where Christianity neglects this culture, it both suffers harm by itself and causes harm to others. Where remembrance is cultivated, however, it is to the benefit of its sense of reality and its cogency.

I shall never forget one particular experience of culture and cultivation of remembrance. It happened during a gathering devoted to memory and prayer. Jews and Christians had come together on the 50th anniversary of what is often called the Reichskristallnacht. They intended to remember that night of the 9/10 November 1938. During that night close to 300 synagogues in Germany were burnt down and destroyed, countless shops and their windows smashed and devastated, homes were set aflame, around 100 persons murdered and almost 30,000 Jews carried off to German concentration camps. The way of the Shoah was paved brutally and publicly. The Christians and Jews of Aix-la-Chapelle who had come together wished to remember this.

Professor Hans Herman Henrix of the Academy of the Diocese of Aachen, is a member of the German Bishop's Conference Work Group on "Questions of Judaism" and its representative in the International Liaison Committee between the Catholic Church and Jewish organizations.

Among them was the late bishop of Aix-la-Chapelle, Bishop Dr. Klaus Hemmerle, who died on the 23rd January 1994. He cast his very personal memories from early childhood and the exhortation resulting therefrom in the language of prayer. He said:

**"The House of my God was set aflame,
- and mine own have done it.**

**It was taken away from those who gave me the precious
name of my God,**

- and mine own have done it.

They were set out of their own homes,

- and mine own have done it.

**They were deprived of all their belongings, their honour
and their good names,**

_ and mine own have done it.

Their lives were taken away,

- and mine own have done it.

**They, who pray to the Name of the same God, remained
silent,**

Yes, mine own have done this.

Some say: let's forget about it, and put an end to it.

**But what has been forgotten -returns, unexpectedly and
unrecognized.**

How can we put an end to what we forget?

Should I say: Mine own did it, not me?

No, mine own did it.

What shall I say?

God have mercy on me!

What shall I say?

**Preserve in me Thy name, Preserve in me their names,
Preserve in me their memories, preserve in me my shame:
God, have mercy on me."**

This is a profound text of remembrance, of lamentation, of admonition. It is conscious of the fact that we shall not be released from history. It reminds our present generation, and in particular Christians in Germany, of our life in the shadow of the Shoah. This is a fundamental characterization of the Christian-Jewish relationship of today. Those who work for this relationship on both sides appear to be determined by this thought as emerges from the following report on the Christian-Jewish dialogue "After Auschwitz".

Basic Developments in the Christian-Jewish Dialogue after Auschwitz

The Christian-Jewish dialogue after Auschwitz is both a vision and a reality. It is a reality in the sense that it is a discussion between panels and minorities from Judaism and Christianity. Its taking root in the sense of transfusing everyday life remains a visionary hope.

The dialogue aims at becoming relevant to and standing the test of the realities of life, and therefore strives beyond a mere exchange of ideas and articles of faith. It addresses the communities of the Jewish people and the churches which relate to one another in a profoundly asymmetrical way: on the one hand, an ethical, religious and land related community - the people of Israel - called by the God of Israel and bound to Eretz Israel, the Land of Israel; on the other hand, a religious community from among the nations (community of Christ). This relationship is spelt out in the dialogue as "a bond of community and noncommunity". This dialogue is a living relation with an ecumenical profile. Being a fundamentally new effort in the era of "After Auschwitz", it has its place in the shadow of the Shoah.

On both sides, "ordinary" or "normal" men and women are involved; joint Christian and Jewish organizations have been founded, councils, synods, bishops' conferences, ecclesiastical authorities and the Pope have published statements on multiple occasions. Scholars on both sides accompany the dialogue in free discourse and thereby provide the necessary scientific integration; specialized periodicals are available; the International Liaison Committee between the Catholic Church and Judaism

provides a forum for an institutionalized and official dialogue; correspondingly, a continuous Jewish contact exists with the World Council of Churches.

The Jewish-Catholic dialogue is part of a comprehensive Jewish-Christian dialogue. The Orthodox Churches and the NonOrthodox Christianity of the Middle East, however, have many reservations about it and therefore offer limited participation. Nevertheless, as far as the Catholic Church is involved, "the problem of Christian-Jewish relations concern the Church as such, since it is when 'pondering her own mystery' that she encounters the mystery of Israel. Therefore, even in areas where no Jewish communities exist, this remains an important problem" (Vatican guidelines, 1974).

Subjects and Contents of the Dialogue

The search for consensus through dialogue and the clarification of differing views has produced results which, from a theological point of view, can be divided into three groups:

1. Aspects of respective self-definition, with the other in mind.
2. The respective faiths, at the level of their present-day identity.
3. The challenge of issues of Ethics.

Questions of Respective Self-Definition with a View to the Partner in Dialogue and with Reference to the Partner

The dialogical encounter of Jews and Christians has had a retroactive effect on their respective self-definition and, in particular, on that of Christians. Statements of the traditional doctrine of church and theology on Israel, that have come under review nowadays, appear like a denial of the new experience of the proximity to Judaism and the Jewish people. Tradition used to formulate Christian identity in separation from or even polemically vis-a-vis Judaism, as is indicated by a proper category of patristic literature called *adversus Judaeos* literature. The French Jewish historian Jules Isaac (1877 - 1963) described the main tendency of ecclesiastical attitudes towards Judaism and the Jewish people as "teaching of contempt".

In Article 4 of its declaration on the relationship between the Church and the Non-Christian religions, entitled *Nostra Aetate*, the Second Vatican Council has broken radically with this tradition. One of the direct consequences of this initiative taken by the Council is that a new theological thinking on Israel has emerged which has been brought under the catchword of a "Christian theology of Judaism".

The theological process of reform is progressing in a two-fold direction:

- (a) On the one hand, a theology has developed which is morally conscious of Auschwitz. It is postulated as a basic tenet of theological work "not to engage in a theology that is or might remain unaffected by Auschwitz". J.B. Metz, one of the best-known contemporary theologians, insists on a theological conscience that interprets the Bible and develops the doctrine of the Church in the moral remembrance of Auschwitz. That is to say, it takes into account the risks of a theology that in theological dispute might trigger a chain-reaction from religious disqualification down to social contempt and further to physical threat and annihilation. Other theologians who have spoken about the necessity of a theology free of animosity towards Jews, devote their theological efforts to an attempt to put the Christian message to the test of Jewish tradition. Such theology is aware of the interrelationship of theory and practice of faith.
- (b) On the other hand, the process of theological reform confirms the Christian theology of Judaism as a literary reflection of itself. The book entitled *Traktat über die Juden* ("Tractate on the Jews" by Franz Mussner, who is a New Testament scholar), constitutes an exegetic essay in Bible theology, which deserves a high ranking in the literature of the history of theology.

The question remains whether, corresponding to the work of Christian theologians on Judaism, a Jewish theology of Christianity is being discussed on the Jewish side. At first glance, the position of a theological structural disparity seems to be confirmed. Whereas Christianity, in interpreting its identity, necessarily refers to Judaism and thereby develops a theology of Judaism. Christianity remains a merely historical fact in the way Jews look at themselves. Christianity, by definition, fails to constitute a theological challenge.

In the words of Zwi Werblowsky, "there is no and cannot be a genuine Jewish theology of Christianity".

Yeshayahu Leibowitz has put it even more strongly: "The mere existence of Judaism is for Christianity a terrible problem; but for us, Christianity is totally unimportant." Nevertheless, there are also other voices within Judaism. They say, it is no longer sufficient to point to the possibility of the rabbinic recognition of non-Jews as "righteous from among the nations", to cite Maimonides' evaluation of Christianity (and of Islam) as precursor of the true Messiah and to follow the traces of the

tradition of friendly attitude towards Christians in the Jewish Middle Ages from Menahem Meir (13th/14th century) until Jacob Emden (1697 - 1776). In contrast, a more authentic Jewish reaction to Christianity should be formulated; the pluralism of the present calls for a contemporary Jewish view of Christianity that surpasses the traditional division between "Israel and the nations".

Subject of the Dialogue at the Level of Present-Day Identity

- (a) Aspects of the Question about God.

Where the Jewish-Christian dialogue of our time turns to the question about God, it becomes clear quite quickly that the central problem is not the issue of the messiah, nor is it the teaching about the trinity, which from the Jewish position is often understood in a modalistic way. The controversy is centered more around the theme of the incarnation of God in Jesus Christ. Having ventured so far, the dialogue has revealed remarkable nuances of Jewish opinion, without losing the sharpness of the disagreement. Three main arguments can be distinguished in the Jewish objection against the incarnation. The first objection is on the level of philosophy of religion. E. Levinas asks for an explanation of the philosophical value of the "idea" of God who became man and thinks: a presence of God in the time of our world would be "too much for the poverty of God" and "too little for his glory, without which his poverty is no humiliation". Such an a priori opinion is not free from the character of a disposal of God's freedom of decision. A second a posteriori objection is that Judaism cannot accept the incarnation of God "because it doesn't hear this history, because the word of God, as it is heard by Judaism, doesn't say this, and because Jewish faith doesn't witness this." The incarnation of God is also traditionally not a Jewish theme for discussion. A third objection mentions "that the fruits of Christian faith in the incarnation were bad in Jewish eyes, and this again "means" vindication of the truth.

The central Christian-Jewish difference in the understanding of the incarnation is bedded in a great number of theological expressions that are very similar in Jewish and Christian tradition. The theme of the kenosis (renunciation of divine dignity of God), is very familiar in the Jewish religious experience, starting from the biblical beginnings. Many are the witnesses from Talmudic times until modern Kabbala that speak about divine humbleness, even selfhumiliation: God has thought it right to come down until the humiliations of man and to dwell in the human misery. The inseparable connection between the God who comes down and his highness is, nevertheless important:

"Everywhere where you find the greatness of the Holy One, blessed be He, you will also find his humility. This is written in the Tora, repeated by the prophets and comes back for the third time in the writings" (Babylonian Tractate, Meg 31a).

The Jewish witness of the presence of the infinite God with his people and among human beings is so rich, that one has to speak about "congenialities of structure in the Christian and the Jewish understanding of God".

(B) Special Jewish Wishes/Purposes.

Jews who are active in Jewish-Christian dialogue bring their thematic options with them. A limitation of the dialogue to the theological-dogmatical themes is for them problematic. Quite often it is precisely the "sore spots" in the actual/practical relation between those belonging to the Jewish people and the Church, which provoke and stimulate the dialogue.

For many years, the question of full recognition according to international law of the State of Israel by the Apostolic See played an important role in Jewish-Catholic dialogue. The "Fundamental Agreement" between the State of Israel and the Apostolic See of December 30th 1993, is of extraordinary importance for the dialogue. On the Jewish side, there had been important interlocutors who thought that on religious grounds the Vatican would never be able to recognize the State of Israel. There is, they said, the unchangeable teaching of the Church that the Jewish people, because of its rejection of Jesus, must live in exile and in the diaspora. Catholic partakers in dialogue declared such a view to be outdated and pointed to the fundamental changes in Christian theology and teaching. But they could not always overcome the "hermeneutics of distrust" in their Jewish counterparts. Now the Vatican has done this itself by its recognition of the State of Israel.

The problem of the recognition of the State of Israel by the Vatican is a very clear example of the fact that the Christian-Jewish dialogue sometimes goes far beyond the arena of the strictly theological. It claims political realities as a field for Christian-Jewish solidarity. Catchwords for such experiences 'in past years were "Bitburg" as much as the Gulf War, but also the ever resurgent manifestations of anti-Semitism. Anti-Semitism has elicited a clear, intensive and always newly enjoined condemnation by the Church of the present. More than once has Pope John Paul II lashed against anti-Semitism as "a sin against God and humanity".

Challenges of Ethical Issues

The Jewish *cantus firmus* in the dialogue - the truth must be

verified in history and in the face of Auschwitz - asks the Christian the question of whether faith implies obligatory ethical actions for him/her as it does for the Jew. Christian existence is not "cheaper" nor more harmless than Jewish existence. It is subjected to the measure of Jesus' words: "Not everyone who says to me, 'Lord, Lord' will enter the kingdom of heaven, but only he who does the will of my Father who is in heaven" (Mt. 7, 21). But the Christian remains provoked by the Jewish scepticism, according to which the Christian existence doesn't take the ethical sufficiently seriously but dissolves it in a spiritualizing way. Christianity is confronted with a protest in the name of the specific against the general and will have to stand the test not in the theoretical dialogue, but in practical life.

The pressure of interrogation reminds Christians that they have been taken into service for the world by God's call. They have in a long history joined in shaping the world. And yet the world again became strange to them. The peculiarity of the biblical faith in the secular world illustrates aspects of Jewish-Christian affinity from a defensive position. Thus, Jews and Christians who are willing to enter into dialogue sometimes use the image of the besieged minority, that unites in order to look for protection against a hostile world. The challenge of the ethical brings another picture to mind. E. Levinas once reflected on what the problems of the Third World could mean for Jews and Christians together:

"Thanks to God we will not hold a brief for suspicious crusades in order to 'draw closer together' as believing human beings, in order to unite as 'spiritualists' against the flood of materialism! As if one had to build a front against this Third World that has been plagued by hunger; as if one had something else to think about than to appease this hunger: as if not the whole spirituality on earth would exist in the act of feeding; and as if we had from a disrupted world other treasures to save than the gift ... to suffer from the hunger of the other."

Taking part in Jewish-Christian dialogue is on the individual level unconsciously, but factually, guided by the underlying maps of Jewish-Christian relations. There it has its secret and active regulator. The engagement is in need of such maps and regulators. The image of the gesture of food being offered is visualized ethics and at the same time an eminently portentous regulator for Jewish-Christian dialogue. It doesn't too hastily discharge us from history. It remembers the reality of Auschwitz and retains the necessity for a future of individuals, peoples and religions that is characterized by enhanced and stronger solidarity.

Lecture Highlights

Cooperation between Jurists

Bâtonnier Louis Pettiti, Judge of the European Court for Human Rights, President of the International Movement of Catholic Jurists



"Legal co-operation between Christian and Jewish jurists has been positive, constant and very close and remains so, and it could not be otherwise since we believe in the same sources. It is significant that in international jurisdictions we find our sources both in the Bible and in the New Testament; if we compare these to current international documents, such as the Universal

Declaration of 1948..., we immediately find the points in common which reinforce the text. For example, in the beginning of the Universal Declaration we find the equivalent of what is included in Chapter 20 of Exodus: "There is no God but me", or "God is the father and is responsible for mankind", whereas the Universal Declaration talks of the human family, the unity of mankind and the duty of brotherhood between the members of this community; the theological and spiritual principles are the same. We also find points of agreement when we look at the Talmud: those who observe the seven precepts of Noah will inherit the world to come... and the same message is in the most recent international documents and, in particular, those drafted by UNESCO which talk of the common heritage of mankind. In this common inspiration there is a will to dictate our duties and obligations. In fact, in the ecumenical meeting held in the Sorbonne in June 1994, the emphasis was placed on this duty for solidarity... and the leitmotif of the meeting was never to separate the children of Abraham.

Judeo-Christianity has a huge responsibility. In the contemporary chaos where civilization is being shaken to its foundations, the only hope for the future rests on a legal mechanism using as a reference fundamental values and having as its final objective a retribution of justice no longer based on

legalism but based on solidarity...

The work carried out by major NGO's on human rights and the ethics commissions of all our -countries have also included a number of criteria which have inspired modern legislation and which have to do with the protection of the integrity and dignity of man as a substantive issue. Before the war, these concepts had been reaffirmed from a religious/philosophical point of view, but they were not at all anchored into international law, and this is one of the major successes of our times...

This co-operation has continued especially over the last few years but has been transferred from a geographical and geopolitical point of view. Efforts were made during the second Cold War to convince the legal minds in the Eastern Bloc of the need to cut off their thinking from the political system; the fall of the Berlin Wall has enabled a democratic process to begin but this is hampered by the taking hold of the economy of forces belonging more to organized crime than to democracy. Unfortunately, the considerable efforts made by our legal minds for co-operation and exchange have meant that other actions have perhaps been left aside since 1989, particularly in Africa, with a resulting loss of credibility to our institutions. This means that we have to renew our commitments. Legal co-operation has to be closer to the African world since if we fail to integrate the solutions for peace in the African continent, with its future of 1 billion people by the year 2000, we will have failed in all our effort of cooperation... It is no longer tolerable that this anthropological poverty remains in one of our five continents...

The excesses of the Nazi world and the world of the gulag were inspired by the lack of acceptance of principles of universality, but when we try to go beyond this period of shadow and conflict, when we wish to apply these ideas to our democratic societies we are sometimes incapable of drawing the lesson of principles which are common to us and we have a specific difficulty in going from expression to real action...

We should not try to be universal in an abstract way, we should not try to be Utopian. We should not try to ignore cultural differences described by anthropology which can be sources of incomprehension... Lawyers should try and find a median path, try to bring together philosophical concepts as well as the general concepts of law. We have to realize the need to accept

the errors of the past, this is one of the most important messages which has been passed in the Catholic Church... we have to recognize and confess our mistakes, particularly those which were committed in the 19th and 20th centuries, because these mistakes enabled to some extent the gulags to be created and genocides to occur...

Solving Conflicts by Negotiations: the Carmelite Monastery of Auschwitz

Me. Theo Klein, former President of CRIEF, France



"The Carmelite Convent in Auschwitz occupied a building which used to be the theatre within the Auschwitz camp, and which became part of the world heritage when Poland asked to join UNESCO. Three European communities, French, Belgian and Italian decided to deal with this problem. I represented a CRIEF community. Large international Jewish organizations

had not done anything about it. We decided to do something and began talks with a cardinal who agreed to start these negotiations. We came saying there was a problem for our conscience and also for the Catholics, we were not looking for a win but for a solution...

Negotiations were lengthy. In negotiating, one must try and understand what the other side thinks, what animates him, otherwise one cannot come to real, deep agreement. This is an exercise for which Jews are not well prepared, since for centuries Jews have not had an opportunity to negotiate with anyone, no one listened to the Jews or discussed with them... Today, when Jews either live in a free state which is fully independent, and which is a fully fledged member of the nations of the world, or Jews live in free countries, these Jews have a right and a duty to talk to others, to come to agreements and to try and understand them.

This negotiation only lasted two years, we did not hasten them. We decided right from the beginning with Cardinal Lucige that it would be a two phase operation. In the first phase a state

We have to refer to more than values, we have to implement measures of reform which will be able to shake us from the intellectual comfort with which lawyers surround themselves too often... We should not think of universality as a one way system as it was until 1950, but we should have a greater vision of humanity..."

ment was signed by the 4 cardinals members of the Catholic side and the Jewish side that Auschwitz was a symbol of the Shoah. This declaration was immediately accepted by the Catholics without any change of text. From this point of departure we were able to build up the future. At this time Poland was under a communist government, further, the Polish Catholic Church at this time did not have the text of the Second Vatican Council translated into Polish, and the Polish bishops found it difficult to accept what the cardinal responsible for Auschwitz had already signed.

If we had not reached an agreement with the 4 cardinals of the Catholic delegation then the Sisters would still be in the old theatre of Auschwitz. There were difficulties from the Catholic and Polish communist world and also from the Jewish world who did not believe in the feasibility of such an agreement and right to the end questions existed as to the possibility of the implementation of the agreement. In the end the Holy Father intervened despite various problems posed by the Polish bishops.

The lesson to be learned from this operation is that when you have a problem of conscience you must try and negotiate even when you have no power and no real right or power to force negotiations. There is no jurisdiction which can enforce the implementation of this agreement but what counted here, apart from the fact that the cause we defended was right and just, was the signature of a cardinal and that this agreement led to cooperation with the Catholics. From this cooperation we arrived at setting up a centre in Auschwitz, a Catholic centre which is open to Jews, and whose programs are discussed in a committee which includes Jews. The agreement also led the Polish government of 1989 to control the management of Auschwitz Museum and set up an international committee on which Jews are represented, including a vice president from Jerusalem... These negotiations have opened up a door, despite the obstacles and the disbelief of many people in the possibility of such an agreement."

The Implications of the Shoah for Catholic Jewish Relations

Professor Francesco Lucrezi, University of Chieti, Institute of Roman Law, Italy



"From one point of view we must admit that it was the Shoah itself which started the Jewish Christian dialogue, because before it the dialogue was totally non-existent... For the first time, the problem of the Holocaust was presented as a problem which is within the Catholic theology and Catholic ethics. After this event, came other phases from *Nostra Aetate*

onwards when the Catholic Church was conscious of the Shoah and there was a stronger condemnation of anti-Semitism and especially of the Shoah, although in 1965 the language used was not very strong when it came to denouncing the phenomenon; the phrase used was not "11 condemnation" but the softer term "declaration". Later, we had a number of documents such as guidelines of the right interpretation of *Nostra Aetate* the Judas scene from a Catholic point of view, and other documents of the Holy Father which dealt with the problem in a clearer way.

The Prague Declaration of 1990 defined anti-Semitism and the Shoah as a sin against God and mankind. Very importantly the document talks of self-criticism, the Church recognizes that there is a relation between certain positions of the Catholic Church in the Middle Ages and the genesis of anti-Semitism within Christianity.

The Fundamental Agreement between the Holy See and the State of Israel... not only repeats the condemnation of the Shoah but also stresses the need to defend the memory of the Shoah, in

a way that is good also for the Catholic world. The Shoah is therefore a door to the dialogue.

From another point of view, there is a great problem which has not been solved. The Shoah represents a persistent element of difficulty in the dialogue. The difficulty may be summarized as a different sensitivity with respect to the theme, and at times this difference is very important. On the Catholic side the Shoah and any form of anti-Semitism is considered to be a crime and a sin against God and against mankind: this expression means that the Shoah, in itself, does not deny the faith in God and in men, because sin is a part of the creation and the fight between good and evil is part of the history of creation; and, therefore, there is greater justification for the ecclesiastical activity of the Catholic Church. There is therefore no theological interpretation of the Shoah as such on the Catholic side. But the Jews, of course, have a different attitude. The Nazi genocide represents an irreversible characterization. It is a founding element of the ethical and theological heritage of the whole Jewish world. Therefore there is a theological value of the Shoah in the Jewish religiosity or spirituality. It is a negative value, interpreted as "the absence of God" or "the silence of God" in the Shoah. The Shoah is seen by some as "a message of silence", "the eclipse of God", the tragedy of Job multiplied endless times...

There is a difference of perception of the problem in which the intelligibility of history is at stake. This creates a great distance in the language which at times is very important. From the Catholic side the gap was bridged by a number of enlightened people such as Cardinal Martini...

The late Father Valducci in one sentence summarizes the impossibility of seizing the meaning of Auschwitz, of giving a didactic interpretation of the tragedy of the Shoah, and the difficulty of setting up a dialogue: **Auschwitz has destroyed the faith of believers just as it has destroyed the incredulity of nonbelievers.**

Legal Aspects of the Peace Process

Professor David Libai, Israeli Minister of Justice, the Guest Speaker during lunch on the first day of discussions, addressed the Council on legal aspects of the peace process with the Palestinians. Short extracts from his presentation and Adv. Itzhak Nener's introductory comments are published here:

Adv. Itzhak Nener

First Deputy President of the Association:



"Thanks to the peace process, there is a radical improvement in Israel's political status on the international scene. But at the same time, Israel has entered a period of great dangers in order that the peace process should succeed. People in Israel want to live in peace and security. It is no secret, however, that we are divided on the ways and means to achieve it, on what price

should be paid, and how best to preserve and ensure the security and the very existence of Israel.

Israel has fulfilled all its obligations under the Oslo-Cairo agreements, including the release of thousands of terrorists. The PLO, on the other hand, has fulfilled some obligations but has violated quite a few of the most important ones.

There are some difficult questions regarding legal aspects of these issues... Most Israelis are for autonomy for the Palestinians, but against a Palestinian state which, according to some predictions may become fundamentalist, and, together with other fundamentalist Moslem states, endanger the very existence of Israel.

Another question frequently asked is what is actually the difference according to principles of International Law, between what we call 'autonomy', of a kind which is unprecedented anywhere in the world, and what the Palestinians call a 'state'.

Terrorist attacks are still an almost daily occurrence and the PLO has neither the will nor the ability to stop them entirely. "Jihad for Jerusalem", declared by Arafat, is in clear violation of

the Oslo-Cairo Agreement. What legal measures, if any, are we going to adopt to stop these violations'?"

Professor David Libai

Israeli Minister of Justice:

"The first question that must be considered is the legal status of the Gaza Strip and Jericho after the withdrawal of the Israeli Defence Forces. Under the terms of the Cairo Agreement, a Palestinian state will not be established in these areas. In practice, the Palestinians received full autonomy to govern their lives. The central governing body will comprise 24 members which will co-ordinate all legislative and executive powers and will also be responsible for operating an independent judiciary.

Under the Cairo Agreement, the Palestinian Authority is limited both territorially and functionally. Territorially - the Palestinians have no jurisdiction over Jewish settlements and military installations which remain in the area. Functionally - the Palestinians have no jurisdiction to conduct foreign relations with other countries nor do they have any powers in relation to national security, i.e., in defence of the borders of their self-rule areas. Similarly, they have no powers in respect of the internal security and public order relating to the Jewish settlements and military installations in these areas. The Palestinians also have



From left to right: Dr. Alfredo Biondi, Italy's Minister of Justice; Dr. Oreste Bisazza Terracini, President of IAJLJ section in Italy; Prof. David Libai, Israel's Minister of Justice

no authority over Israelis located in Gaza or Jericho, except where expressly agreed otherwise...

As a matter of international law, the term "military government" is a legal term subject to the laws of war, and its existence is a question of fact. The test for the existence of a military government in Gaza and Jericho, is whether there is "effective occupation" and "definite control" of these areas. These principles find expression in Article 42 of the Regulations annexed to the Fourth Hague Convention of 1907, Respecting the Laws and Customs of War on Land.

Section 42 states as follows:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

Today, after the withdrawal of the Israel Defence Forces from Gaza and Jericho, is there effective military government? Another question which follows is, can the Palestinian authorities unilaterally repeal the orders of the Israeli military government?

These questions are not merely theoretical. On 24th May, 1994, Arafat issued a notice purporting to repeal all legislation enacted in the territories since the 5th June 1967.

The Government of Israel has notified the Palestinians that this statement is invalid and of no practical effect. The notice was published on behalf of the PLO, which has no legislative authority. Further, the notice purports to take effect immediately, whereas Art. 7 of the Cairo Agreement provides that "laws and military orders in effect... prior to the signing of this Agreement shall remain in force, unless amended or abrogated in accordance with this Agreement". It is important to emphasize that even if the Palestinian authorities purport to abrogate Israel] defence legislation in the future, such an abrogation will be ineffective in parts of Judea and Samaria outside the self-rule areas, as well as in relation to the Jewish settlements, military installations and Israelis in the self-rule areas.

The legal arrangements with the Palestinians are not easily executed, however, they were adopted with the full agreement of both parties..."

Statement issued by World Council Meeting

Following the deliberations of the Heads of Sections and Representatives of the Association during the World Council Meeting in Rome, the World Council made the following statement:

1. We welcome the establishment of diplomatic relations between the Holy See and the State of Israel, and expect the Church to take an active part in combatting anti-Semitism and denial of the Holocaust.
2. Our Association is committed to deal with anti-Semitism and denial of the Holocaust in all their manifestations, making special use of any available legal means. In view of the threatening increase of this phenomena in many countries, we must increase our efforts to try and involve larger numbers of lawyers and jurists in our efforts in this field.

Special attention will be paid to activities in Universities around the world, involving both students and faculty members.

3. In view of the progress, the expansion and continued liber-

alization of the Israel] economy, there is a great scope for professional activity by members of the legal community.

We encourage members of the Association to increase their efforts in strengthening Israel's legal economic ties with Europe, North America and other parts of the world.

4. The World Council expresses its grave concern at the immense suffering and the human tragedy inflicted on the peoples of Bosnia Hercegovina and Rwanda, and calls upon the International Community to take whatever steps are necessary forthwith to halt the slaughter of innocents, to render all humanitarian assistance, and to make all efforts to establish peace in these war-torn countries.
5. The World Council supports the action taken by our American Section in support of an Individual case, the case of Hugo Prinz, which calls on the German Republic to do justice and provide full reparations to Hugo Prinz, an American citizen, who was a victim of the Nazi Concentration Camp Auschwitz.

Elyakim Rubinstein appointed Legal Advisor to the Israel Ministry of Defence



Adv. Elyakim Rubinstein, who heads the Israeli delegation to the negotiations with Jordan, is seen here with King Hussein of Jordan, during a reception in Washington D.C. given by President Clinton, after the signing of the "Washington Declaration", July 25, 1994. (Photo: Government Press Office)

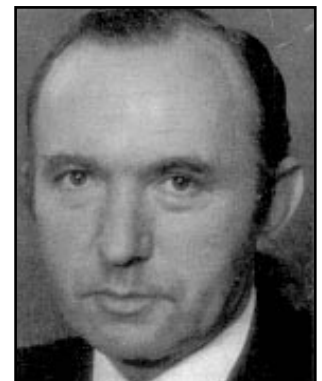
The Association congratulates Adv. Elyakim Rubinstein, a member of the Presidency of our Association, on his new appointment as Legal Advisor to the Israeli Ministry of Defence and Assistant to the Prime Minister.

Ambassador Rubinstein has held the posts of Secretary of the Government of Israel and Legal Advisor of the Foreign Ministry. Since the Madrid Conference in October 1991 he has headed the Israeli Delegation to the negotiations with the joint Jordanian-Palestinian Delegation conducted in Washington; he initialled the Common Agenda with Jordan on behalf of Israel on September 14, 1993 and continues to head the Israeli delegation negotiating with Jordan. Ambassador Rubinstein played a central role in drafting the Washington Declaration and participated with Prime Minister Rabin in the Aqaba Summit.

Judge Richard Goldstone appointed Chief Prosecutor in Bosnia- Herzegovina War Crimes Tribunal

The Association is pleased to announce and congratulate Justice Richard Goldstone, a member of the South African Chapter of our Association, on his recent appointment as Chief Prosecutor of the Tribunal judging war crimes in BosniaHerzegovina.

The appointment was made at the instance of the United Nations General Assembly and confirmed by the Security Council, and will initially be for 18 months. During this period Judge Goldstone will be operating from the Hague.



Freedom of Commercial Speech

H.C.J. 606/93, Promotion of Initiatives and Publishers (1981) Ltd. v. Israel Broadcasting Authority and others, 13.1.1993

(Unpublished).

Before Justices Bach, Cheshin and Dorner

Precis

The Supreme Court held that a proposed radio advertisement, which had racy associations, fell into the category of commercial speech. As such it was entitled to many of the protections enjoyed by other forms of free speech.

Per Justices Dorner and Justice Bach (in the majority): In this case the injury to the public caused by broadcasting the advertisement was not so extensive as to justify the intervention of the Court in the discretion of the Broadcasting Authority.

Per Justices Cheshin and Bach: At the same time, while restrictions on other forms of speech have to be justified following the test of "near certainty of injury to the public" if such speech is allowed, a lesser test is required in the case of restrictions on commercial speech. A distinction must also be drawn between a situation where, for example, political or literary speech is being restricted and the instant case where the Petitioner was asking for an order compelling the Respondent to broadcast the advertisement.

Per Justice Cheshin (in the minority): The advertisement under consideration was not protected speech in view of its vulgar associations.

Facts

The Petitioner was a company concerned with helping students to pass matriculation and other examinations. As part of its promotional campaign, the Petitioner coined a slogan in Hebrew, translatable as "Promotion: Go Excel Yourself" [i.e., the Hebrew phrase reminds the listener of a four letter word]. The slogan became part of the reputation of the Petitioner, and appeared on its publications and advertisements.

The Petitioner wished to broadcast an advertisement on the radio, including this slogan. The director of the radio prohibited broadcast of this phrase, relying on Section 5 of the Regulations issued by the Israel Broadcasting Authority, which enabled him

to prohibit an advertisement that did not meet the test of "good taste".

The Petitioner obtained an Order Nisi against the Respondent and argued that the right to freedom of expression and freedom of occupation also applied to commercials, and that the Broadcasting Authority had ignored these principles. The Broadcasting Authority responded that the application of principles of freedom of speech to commercial advertisements was

minimal and that the tests restricting freedom of speech established by judicial precedents were not relevant in this case. The Respondents further argued that the relationship between the Authority and the Petitioner was contractual and based on the Regulations. The Regulations limited publications to advertisements in "good taste" and gave the Authority wide discretion to reject advertisements which do not meet criteria established therein. Finally, the Respondents argued that its discretion could not be interfered with, unless it was unreasonable in the extreme. The slogan "Go Excel Yourself" reminded listeners of a vulgar profanity and distressed them, the listeners were a "captive audience" and could therefore not elect whether or not to listen to the commercial.

The Supreme Court judgment

In three separate judgments, the Justices of the Supreme Court held as follows:

Justice Dorner held that the Petition should be allowed on the grounds that the Respondent had infringed the Petitioner's right to free speech. The additional argument relating to freedom of occupation was left for consideration on another occasion. Justice Dorner noted that freedom of speech heads the list of freedoms on which democracy rests. Freedom of speech is not given only to expressions which satisfy the general consensus, its importance lies in applying also to irritating and even injurious expressions. Today, the foremost method of realizing one's freedom of speech is through radio and television broadcasts which enter every house. These are managed by the Broadcasting Authority which is currently a monopoly. A citizen has no means of disseminating his views by other electronic means. The right to broadcast on radio and television is therefore

a derivative right from the principle of freedom of speech. Freedom of speech may not be restricted unless the following cumulative conditions apply: express authority of the primary legislator has been granted; the near certainty, or, in some cases, reasonable possibility, that a value conflicting with the freedom of speech will be impaired; and that the impairment of the conflicting value is severe and continuous.

Free commercial speech is an integral part of free speech; it provides information to the public and therefore satisfies their right to receive commercial knowledge; it allows competition between publishers and enables the public to reach its own opinions in relation to preferred products or services. Free commercial speech is protected under the First Amendment in the U.S., and under the International Convention relating to Civilian and Political Rights of 1966, to which Israel is a party.

Nevertheless, not all the rationale behind freedom of speech applies to freedom of commercial speech. For example, the rationale behind safeguarding democratic processes does not apply, or at the most has limited application, to free commercial speech. Therefore, there is no fundamental obstacle to restricting free commercial speech which injures public sensitivities, although such restrictions must also meet certain tests. Where the question is whether the speech violates "good taste" in the terms of the Regulation, two questions must be considered: first, what is "good taste", and second, how great a violation of such good taste is necessary. The same standard of "good taste" must apply to artistic programs as to commercials. Here the Broadcasting Authority did not give due consideration to the Petitioner's right to free commercial speech and did not draw a balance between this right and the possible injury to the public's feelings, and in any event there were no objective grounds for finding a serious injury to public feelings.

Justice Dorner therefore held that the Petition should be allowed.

Justice Cheshin opened his judgment by quoting Voltaire, "I do not agree with one word that he says but I'll defend to the death his right to say it", and noted that the phrase under consideration was very far from what Voltaire had in mind.

Justice Cheshin held that enlisting the principle of freedom of speech to defend the broadcast of the commercial "Go Excel Yourself" was an improper usage of the concept of freedom. This was a trivial case of negligible importance, and was not the sort of matter in which it was right to give relief for the sake of justice. Justice Cheshin noted that if it was up to him the Court

would dismiss the Petition and devote itself to real issues of freedom, however in view of Justice Dorner's lengthy opinion, he felt it necessary to state his own views.

The Broadcasting Authority is a statutory body with a statutory discretion to reject certain broadcasts. The Petitioner's right to promote his business on the radio would more properly be discussed in the context of freedom of occupation than free speech, although in the instant case the arguments revolved around the right to free speech, and more precisely a broadcast which the Petitioner wished the Court to compel the Broadcasting Authority to publish.

As a statutory body the Broadcasting Authority is subject to all the public law principles applicable to a public body holding its assets on trust for the public. But, in the same way that it has a duty to the Petitioner, it has an equal or an even stronger duty to the rest of the listening public.

The essential question is whether commercial speech is really in the same category as political speech. In the U.S. a compromise has been reached where commercial speech comes within the framework of free speech but is not entitled to the same wide defences as other "classical" methods of speech, such as criticism of the government, freedom to pass information, etc.

In Israel commercial speech is entitled to protection as is other speech, on the basis of the principle that free speech is what differentiates man from the animal world, and must be protected at all costs, so long as it does not clash with another basic principle of equal weight. At the same time it is not entitled to the same far reaching protective measures as other forms of speech and may be restricted on lesser grounds than the "near certainty" of injury to the public (if such speech were to be allowed) which is the accepted test for restricting free speech where there is a clash of basic interests.

"Free speech" is not an absolute value but must be weighed against competing values as well as the context in which it is expressed. Quoting U.S. Justice Holmes, "the character of every act depends upon the circumstances in which it is done". In literature a phrase may be defended which, as part of commercial speech, should not be broadcast. Analysis of the powers and duties of the Broadcasting Authority showed that the discretion of the Authority was administrative in nature and not subject to any a priori principles. This indicated that the discretion in respect of the broadcasting of commercials was wide, and one of the factors which could be taken into account was the aesthetic value of the advertisement.

Here the phrase had vulgar associations and the Broadcasting Authority therefore acted properly and within its discretion in deciding to refuse its publication.

In conclusion, the issue under discussion did not really relate to human or basic rights nor to individual liberties or the duties of the Authority, but more to matters of culture, habits and good taste. Here the issue was not prohibiting free speech but rather compelling the Broadcasting Authority to publish an advertisement that it believed in good faith injured public feelings, that it did not want to publish and that it was not its duty to publish.

Justice Cheshin therefore held that the Order Nisi should be set aside and the Petition dismissed.

Justice Bach agreed with large parts of both the above judgments and in particular the statement that the principle of freedom of speech also applies to commercial speech but that it is not entitled to the same defensive measures as other forms of speech. Justice Bach also agreed with Justice Cheshin's distinction between an order prohibiting a broadcasting body from publishing a certain item and an order compelling a body to publish an item contrary to the wishes of its director. In the first case the principle of freedom of speech stands in its pure form, and the prohibition must be justified by weighty reasons. The second case is more complex, and editors of communications media should not easily be forced to publish against their will.

A distinction must also be drawn between the policy or artistic decisions of an editor and a decision such as the instant one. If an editor decides to broadcast one program in preference to another, there are few circumstances in which the court would see fit to intervene. But the situation was different in the case of advertisements. According to policies established by the Broadcasting Authority a certain amount of time is allocated to advertisements and the Authority is under a duty to place this time at the disposal of its customers from among the public, without discrimination. In such a case, rejection of an advertisement without an adequate reason is subject to the Court's intervention. Therefore, the questions to be asked are "what is an adequate reason for rejection" and "in what circumstances will the court exercise its right to intervene?"

Justice Bach did not agree with Justice Cheshin's view of the triviality of the matter before the Court and noted that many democratic principles are founded on "minor" decisions and not

questions of major significance.

With regard to the issue itself, the proper test was not as stated by Justice Dorner, namely, whether there was "near certainty of injury to the public". This test was appropriate in cases which involved performing an act intended to prevent a danger to public safety or to the foreign relations of the state. In such cases the "near certainty" test of such a danger occurring was proper, but where the question was the occurrence of a breach of "good taste" in broadcasting a certain commercial, the test should be whether there was such a breach or not, and not whether there was "a near certainty of a breach of good taste"!

The second, quantitative, test put forward by Justice Dorner was to be preferred. According to this test a commercial may be rejected if its contents or presentation violate good taste, in a significant and severe manner. For this purpose the feelings of minority groups may also be taken into account.

Some of the factors to be considered in deciding whether or not a violation of good taste has taken place, are as follows:

- A. The extent of the violation of good taste of the commercial. This should be tested against the views of a modern, enlightened and liberal society.
- B. Whether the injury posed by the commercial has a special effect on the public or part of it. The feelings of significant minorities (but not extremists) may be taken into account here.
- C. The amount of damage that will be caused to the person wishing to advertise by rejection of the commercial.
- D. Whether the injurious phrases are commonly published in other commercials.

Weighing these factors, and in the light of the finding that the Petitioner had no intention of harming its students, and that the term under discussion was merely an advertising "gimmick" which would, at the most, raise a smile to the lips of its listeners, Justice Bach held that the term could not be brought within the category of "serious and significant violation of good taste", and that there was no reasonable justification to reject it.

Since reference was to basic freedoms, Justice Bach joined with Justice Dorner and held that the Court would intervene in the discretion of the Respondents and give an Absolute Order in favour of the Petitioner.

The Association Urges Governments of the Free World to Act Now against International Terrorism

The Association condemns the terrorist bombings of Jewish targets in Buenos Aires, London and Panama. We remind Members that 95 people were killed in the Buenos Aires attack alone, many more were injured. In the Panama plane bombing twenty passengers, among them prominent Jewish community leaders, lost their lives. In London, the Israeli Embassy was targeted as well as the Jewish center at Balfour House.

We urge the governments of these countries to take urgent and aggressive measures to bring the perpetrators to justice

and call upon the international community to act against those countries which provide financial and military support to international criminals. We further call upon world governments to extend protection and security to their Jewish communities which are increasingly coming under terrorist attack.

The Association takes this opportunity to offer its sympathy to the families of the victims of these terrorist acts and wishes the injured a speedy recovery.

Terrorist Bombing of Argentinian Jewish Centre

Victor J. Kamenszein

On the 18th July 1994, two years after the explosion in which the Israeli Embassy in Buenos Aires was destroyed, the Jewish community centre and seat of the Argentinian Jewish Communities Committee - AMIA - and seat of the political representation - DAIA - was also destroyed, again through the use of a car bomb. The explosion left almost 100 dead, and 200 injured, missing and unidentified bodies.

The presence of an Israeli rescue unit, which arrived at the request of the Argentine government, upset Argentinian military personnel. During that same week 420,000 people gathered in protest demonstrations in the Parliament Square, among them the President of Argentina. On the 30th day after the explosion, 3,000 Jewish youngsters marched to the square of the Supreme Court demanding a serious investigation; while the senior Catholic Cardinal conducted a memorial service in the Cathedral, attended by the President of Argentina, the Chief Rabbi of Argentina and the Chairman of DAIA.

But the investigation of the explosion of the Embassy remains unresolved, and the political correspondent of the important daily - La Nacion - has questioned whether this is the result of an agreement between the President of the Supreme Court and the then Ministers of Justice and the Interior.

The Investigating Judge of the AMIA explosion decided to issue an international arrest warrant against 5 Iranian diplomats, on the basis of evidence given by a one-time senior Iranian official, now exiled to Caracas in Venezuela. This has caused a political dispute to erupt between Argentina and Iran.

The Government has warned against the danger of further attacks. Jewish bodies have established defences on pavements and in front of community buildings. In the current tense atmosphere - the community is demanding an investigation of possible Argentinian connections to the attacks.

Adv. Dr. Kamenszein is a member of the Argentine Section of the Association.

**The Association wishes its Members all over the world
a happy, prosperous and safe New Year**