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The Supreme Court building was inaugurated in 1994. It is part of a triangle with the Knesset and the Government buildings in the centre of Jerusalem. The architects are brother and sister Rami Karmi and Ada Karmi Melamede.

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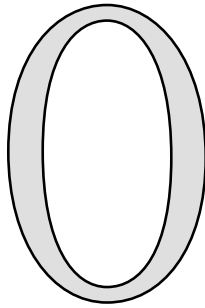
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n May 23, 1968, the United Nations Economic and Social Council (ECOSOC), situated in Geneva, passed Resolution 1296 (XLVI) concerning "Arrangements for Consultation with Non-Governmental Organizations", recognizing "that arrangements for consultation with non-governmental organizations provide an important means for furthering the purposes and principles of the United Nations".

The principles to be applied in the establishment of consultative relations, demanded, *inter alia*, that the organization be of international structure; that it have a democratically adopted constitution; that it have authority to speak for its members through its authorized representatives; that its aims and purposes be in conformity with the spirit, purposes and principles of the Charter of the United Nations,

and that it be concerned with matters falling within the competence of the Economic and Social Council with respect to international, economic, social, cultural, educational, health, scientific, technological and related matters and to questions of human rights.

On February 15, 1995, our Association submitted its formal application for NGO Consultative Status Category II, which confers on an organization a number of rights, including the right to attend as observers all meetings of ECOSOC and its subsidiaries and the functional commissions which relate to it; to make oral and written submissions to be distributed to all members of ECOSOC; and to present arguments, in special circumstances, before the Council plenum and in Committee meetings. NGO's in this category also become entitled to receive invitations to attend as observers world conferences convened by the General Assembly on questions on which they have demonstrated interest and/or competence.

Applications of organizations are considered by the Special Committee for NGO's, which convenes in the United Nations headquarters in New York, and makes its recommendations to ECOSOC. The Committee consists of nineteen representatives of member states: the United States, Great Britain, Tunisia, Ireland, Russia, India, Bulgaria, Ethiopia, Swaziland, Sudan, Cuba, Indonesia, Philippines, China, Madagascar, Chile, Costa Rica, Greece and Paraguay.

Our application came up for consideration in a public session of the Committee on June 13, 1995, and as President of the Association I was invited to present the activities and goals of our Association as well as answer questions put forward by the Committee members.

As a rule the deliberations of the Committee are of a technical nature, its function being to examine whether the applying organization complies with the principles and demands of ECOSOC Resolution 1296. As all applications are screened in advance by the proper authorities in the UN Secretariat, and carefully prepared in constant consultation with these authorities (the preparation of our application took over a year), only 20 minutes are allotted for the consideration of each application.

Unfortunately, the deliberations of the Committee on our application served as yet another example of the unfair and discriminatory manner in which not only Israel, but also Jewish organizations are treated by some member states in UN fora, a subject with which we deal again in this issue of JUSTICE. Ours was the only application discussed

PRESIDENT'S MESSAGE



for 90 instead of the allotted 20 minutes. Delegates from Cuba, Sudan, Indonesia, and even an observer from Algeria, questioned our competence to be awarded the desired status, presenting, in a most hostile manner, questions which the majority of Committee members considered totally improper, and even outrageous, ranging from the policy of our Association towards the Middle East political situation, its record of dealing with the rights of the Palestinians, to its compliance with various resolutions of the General Assembly, ignoring the fact that an NGO is only requested to comply with the principles of the UN Charter.

Intensive lobbying also went on behind the scenes in an attempt to thwart our application.

As the Committee usually adopts its resolutions by consensus, the proceedings were prolonged, and I was allowed by the Chair, the representative of the Philippines, to make a statement, in which I rejected the allegations made against our organization and demanded that our application be dealt with in a fair and non-discriminatory manner.

Our application was strongly supported by the representatives of the United Kingdom, Ireland, Russia, Costa Rica, Swaziland, the United States and others, who protested against the irrelevant questions and against the unprecedented attempts to block our admittance.

It was only after a special appeal by the Chair that the opposition relented and our application was unanimously recommended for approval by ECOSOC.

On 26 July, 1995, in its session in Geneva, ECOSOC formally awarded our Association Consultative Status, Category II.

The Presidency of the Association has appointed its representatives to the United Nations: Professor Malvina Halberstam, of the Cardozo Law School, Attorney Michael David in New York and Attorney Daniel Lack in Geneva.

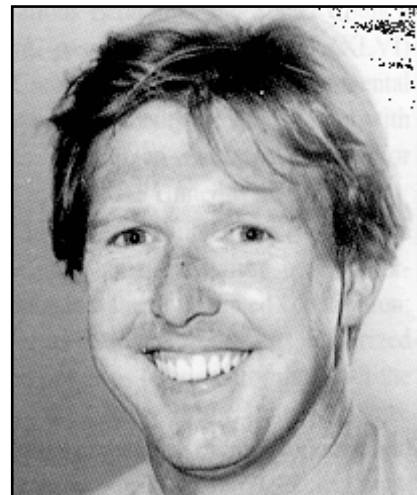
Because of its international network of lawyers and jurists in all branches of the legal profession, including the judiciary, practitioners and academia, our Association is in an excellent position to make a significant contribution to the work of ECOSOC, and, in particular, to the work of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which deal with matters constantly on our agenda.

We have been awarded admittance to an important international forum and an opportunity to be heard. We hope to make a positive and meaningful contribution.

Hadassa Ben-Yitvo

The Work of the International Criminal Tribunal for the Former Yugoslavia

Rodney Dixon



We need to combat discrimination through justice because it is the only way to break the spiral of violence and deter such conduct in the future...We face a lot of frustrating constraints...but the ongoing war and peace negotiations do not affect our decisions, they only affect the way we do our job. And it is a job that has to be done, because war crimes must not be ignored.

[Judge Richard Goldstone, the Prosecutor of the International Tribunal for the Former Yugoslavia (ICTY), "Learning How Discrimination Leads to Genocide", *International Herald Tribune*, 4 July 1995].

The Prosecutor's determined words this month capture the historic mission and daunting responsibilities of the ICTY as it faces the most critical period of its short existence. They are filled with a sense of urgency and perseverance for the way forward promises to be very testing. The work of the Prosecution to date bears testimony to the immense challenges that it has confronted, and constantly mastered. It provides the foundation upon which to progress with confidence and commitment.

The 25th of May 1993 marked the United Nations Security Council's unique decision to establish under Resolution 827 (1993) the first international criminal tribunal since the Nuremberg and Tokyo Tribunals. Moreover, it was the first international tribunal to be constituted by the Security Council acting under its Chapter VII powers of the United Nations

Charter to take appropriate measures to restore international peace and security. On 8 November 1994 the Security Council decided to duplicate the Yugoslav Tribunal for Rwanda. By Resolution 955 (1994) a second *ad hoc* tribunal was established to prosecute persons responsible for genocide and other serious violations committed in the territory of Rwanda, and Rwandan citizens responsible for the same offences in the territory of neighbouring states, between 1 January 1994 and 31 December 1994. The intention is that the work of the two tribunals should be complimentary, and accordingly, Judge Goldstone has also been appointed as the Prosecutor for the Rwanda Tribunal, and the same Appeal Chamber will serve both tribunals. What follows is a broad overview of the work of the ICTY since its inception.

The ICTY was specifically established for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace. The Statute of the ICTY, which was drafted by the Secretary-General, was adopted under the same resolution. It empowers the ICTY to prosecute perpetrators for serious violations of international humanitarian law, and stipulates in Articles 2 to 5 that the ICTY has jurisdiction over particular offences, namely, grave breaches of the 1949 Geneva Conventions; violations of the laws or customs of war; the crime of genocide, as defined in the 1948 Genocide Convention; and crimes against humanity.

Rodney Dixon, B.A. LL.B (Rhodes University, South Africa) LL.M (Notre Dame University, USA), Office of the Prosecutor, International Criminal Tribunal for the Former Yugoslavia.

All of these offences have a long history of development and application under international and national law. The ICTY will have to draw extensively on this body of law in applying the provisions of its subject matter jurisdiction. In some areas the law is noticeably under-developed, with limited precedents, such as, the crime of genocide, which has never been prosecuted before an international tribunal.

In these uncharted areas the ICTY will be compelled to set new standards, and create the precedents for future generations. In so doing, the ICTY will undoubtedly contribute to the clarification, consolidation, and progression of the law in each of these areas. A variety of considerations will, therefore, have to be taken into account when developing an appropriate approach to the legal issues facing the Prosecution:

The presentation of prosecution cases... will require argument on a wide range of international law issues. It will not be possible, and it would not be desirable, to simply dust off the Nuremberg and Tokyo Judgments...The old case law, the few cases decided since 1950, Pictet's Commentaries on the 1949 Geneva Conventions, the ICRC Commentaries on the Additional Protocols, and the various learned articles and treatises constitute an invaluable starting point for the legal argument before the ICTY...At the same time, however, just as the prosecutors in the post-1945 war crimes trials argued successfully that customary law had evolved after 1907 and 1929, so it is reasonable to presume that customary law has evolved after 1949 and 1977. It is essential to pay due heed to the principles of *nullum crimen sine lege* and *nulla poena sine lege*. One must, however, distinguish between the existence of a substantive crime and the existence of jurisdiction to punish the crime.¹

Article 7(1) of the Statute creates individual criminal responsibility for those who "planned, instigated, ordered, committed, or otherwise aided and abetted" in the commission of any of the offences under the Statute. Article 7(3) extends criminal liability to superiors as an independent form of participation in the commission of the offences mentioned in Articles 2-5. It provides as follows:

Any non-compliance with the rules, will in terms of Rule 5 be upheld if it is "inconsistent with the fundamental principles of fairness and has occasioned a miscarriage of justice". It is incumbent upon the ICTY to identify those relevant principles of fairness to all affected parties that will underpin the administration of justice.

The fact that any of the acts referred to in Articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The doctrine of command responsibility will be central to the interpretation of Article 7(3), and the prosecution of military and political leaders under this provision. The elements of command responsibility need to be formulated from the traditional customary law definition of the doctrine, which applied to military commanders only, mainly in situations concerning a failure to act. More recent developments must also be taken into account,

including the provisions of Additional Protocol I of 1977, which stipulate that "superiors" are responsible for the breaches committed by their "subordinates...if they knew, or had information which should have enabled them to conclude in the circumstances at the time" that they were committing such acts and did not prevent their commission.

The Rules of Procedure and Evidence of the ICTY for conducting pre-trial and trial proceedings, and the admission of evidence, consist of an interesting blend of the rules from the common law and

civil law systems of the world. In the legal proceedings that are to follow the ICTY will have to develop methods for interpreting these rules, drawing on the procedural approaches of both systems of law. The plain meaning of the language of the rules, and the intention of the drafters, will be a primary source for determining the nature of their application. In terms of Article 15 of the ICTY's Statute the drafting of the rules was assigned to the appointed judges, a task which was completed on 11 February 1994 when the first set of rules were adopted. The judges have subsequently amended and revised these rules on

1. W. Fenrick, Senior Legal Advisor, Office of the Prosecutor, "Some International Law Problems Related to Prosecutions Before the International Criminal Tribunal for the Former Yugoslavia", 1995, as yet not published.

five occasions, which has created a greater degree of clarity and certainty.

However, many important procedural matters still have to be illuminated. Any non-compliance with the rules, will in terms of Rule 5 be upheld if it is “inconsistent with the fundamental principles of fairness and has occasioned a miscarriage of justice”. It is incumbent upon the ICTY to identify those relevant principles of fairness to all affected parties that will underpin the administration of justice.

Similarly, appropriate evidentiary rules will have to be adopted that facilitate the determination of adequate standards of proof and acceptable methods of proving different factual elements. In this regard, Rule 89(A) states that the ICTY “shall not be bound by national rules of evidence”, and in terms of Rule 89 (B) “a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”. These rules invite the ICTY to identify general principles of law that will guide an international court during trials with sufficient flexibility to permit adaptation to the circumstances of each particular case.

The public proceedings of the ICTY to date have involved a wide range of legal procedures. There have been three deferral applications under Rule 9, which reads:

Where it appears to the Prosecutor that in any...investigations or criminal proceedings instituted in the courts of any State:

- (i) the act being investigated...is characterized as an ordinary crime;
- (ii) there is lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or
- (iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal, the Prosecutor may propose to the Trial Chamber...that a formal request be made that such court defer to the competence of the Tribunal.

All the applications were specifically brought under paragraph (iii), and were successful in obtaining an order to defer the investigations and legal proceedings being undertaken by certain Governments to the ICTY. In the application concerning Dusan Tadic, the Federal Republic of Germany, which had arrested Tadic while he was in Germany, was requested on 8 November 1994 by the Trial Chamber considering the matter, to defer all criminal proceedings in its national courts to the ICTY, and take all necessary legislative steps to comply with this deferral. Germany responded by enacting *The Law Regulating the Cooperation with the International Tribunal for the Former Yugoslavia* (Yugoslavia Tribunal Law), BGBl, 1995, No. 18, 10 April 1995, in terms of which the proceedings against Tadic were deferred to the ICTY, and the accused was transferred to The Hague for trial.

The most significant application was granted on 16 May 1995, requesting the Bosnian Government to defer to the ICTY their investigations concerning Radovan Karadzic, the leader of the Bosnian Serbs; Ratko Mladic, the commander in chief of the Bosnian Serb army; and Mico Stanistic, the former head of the Bosnian Serb special police

On 11 May 1995 a second deferral application was granted for investigations and proceedings undertaken by the Bosnian Government into crimes committed between September 1992 and June 1993 in the Lasva River Valley in central Bosnia and Herzegovina. These incidents included attacks by Bosnian Croat forces on Ahmici, Vitez and other locations in the area which resulted in the deaths of large numbers of defenceless civilians. The most significant application was granted on 16 May 1995, requesting the Bosnian Government to

defer to the ICTY their investigations concerning Radovan Karadzic, the leader of the Bosnian Serbs; Ratko Mladic, the commander in chief of the Bosnian Serb army; and Mico Stanistic, the former head of the Bosnian Serb special police. The Prosecution is currently investigating a wide range of offences in relation to these prominent leaders, including genocide, serious crimes committed against civilians, the protracted siege of Sarajevo, and attacks on UN peacekeeping forces and humanitarian agencies.

All these applications have resulted in particular persons being named as suspects under investigation by the ICTY for certain serious offences, who could be indicted in the future. A statement issued by the Prosecutor on 24 April 1995 explained the deeper implications of the deferrals: “[They] reflect my strategy,

which is to indict those in leadership positions, both civilian and military, who are responsible for serious violations of international law”.

Three indictments have been confirmed by the ICTY. Many more indictments are to be expected in the coming months as a result of the completion of many extensive investigations conducted by the Office of the Prosecutor. The first accused to be indicted was Dragan Nikolic, a commander of a camp at Susica in north-eastern Bosnia-Herzegovina. It is alleged that as many as 8000 Muslim civilians passed through the camp in 1992, many of whom were tortured, mistreated, raped, and murdered. On 4 November 1994 the indictment was confirmed, and an arrest warrant was issued against Nikolic, but the Bosnian authorities have not been able to execute the order as the accused remains at large in Serb controlled territory.

On 13 February 1995 two further indictments were confirmed. In the one indictment 19 accused were charged for committing various atrocities in 1992 against civilian prisoners held at Omarska, a camp run by Bosnian Serbs in the Prijedor district. The second indictment charged two accused, one of whom is Tadic, with unlawfully killing, assaulting, and raping civilians inside and outside of the Omarska camp.

As already mentioned, the ICTY at present only has Dusan Tadic in custody.

The other 20 accused have not been arrested. Tadic has made his first appearance before the ICTY, and pleaded not guilty. Numerous pre-trial motions have since been filed by the Prosecution and Defence. The most crucial motion to the future of the trial, and its legal framework, is the defence motion which challenges the jurisdiction of the ICTY to try the accused for the alleged crimes described in the indictment. This motion requests a ruling from the Trial Chamber to dismiss the Prosecutor’s case.

The essence of the defence’s attack on the jurisdiction of the ICTY is expressed in their motion in the following terms:

The establishment of the Tribunal is legally unfounded and the establishment of its jurisdiction as well as its primacy over domestic courts constitutes an infringement upon the sovereignty of the states directly affected.

The Tribunal has no jurisdiction *rationae materiae* to try any crimes under articles 2-5 of the Statute. These articles fail to determine or describe the offenses in such a way, that they can serve as an acceptable basis of substantive law to be referred to in the provisions regarding jurisdiction.²

The Prosecution is currently responding to these submissions, and the oral hearing of the motion is set for late July 1995. During the course of considering this motion, the Trial Chamber will be required to adjudicate upon issues relating to the powers of the Security Council under Chapter VII of the U.N. Charter, the authority of the ICTY to try persons under an international criminal jurisdiction, the applicability of the offences contained in the ICTY’s Statute, and the rights of the accused to a fair and impartial trial. No international tribunal has ever had to consider

many of these questions, or pronounce upon their contemporary status under international law.

The pre-trial motions will occupy the center stage for the next few months. No trial date has as yet been established due to the uncertainty of when the pre-trial motions will be completed. It is envisaged that the trial will commence towards the end of 1995.

The ICTY has as yet not held a hearing under Rule 61, which provides that when a warrant of arrest has not been executed, a Trial Chamber may upon consideration of the indictment, together with all

evidence that was submitted at the time of its confirmation, and any additional evidence, determine “that there are reasonable grounds for believing that the accused has committed...the crimes charged in the indictment”, and issue an international arrest warrant to be transmitted to all States. The Rule 61 procedure does provide a measure of compensation for not having the accused in custody, and not being able to proceed to trial:

Of course, to indict people for war crimes, even if they never get brought to trial, does have some deterrent effect. Once indicted, the accused cannot travel outside his home country without the risk of being picked up by Interpol. That may not worry minor

The Prosecutor and his staff are doing all in their power to conduct thorough investigations, prepare well-founded indictments, obtain warrants of arrest, including international warrants, and when accused are arrested by States, to prosecute them diligently and fairly.

2. Motion on the Jurisdiction of the Tribunal, Case No. IT-94-I-T, 23 June 1995.

thugs, but it is a problem for the higher-ups. And responsibility for war crimes can reach very high up the political ladder. A man cannot hope to be a world-class politician, Mr Goldstone pointedly notes, if he is stuck inside a single country.³

Since its inception the contribution of the ICTY to the delicate process of resolving the conflicts of the region has been closely scrutinized. The ICTY's capacity to achieve its objectives of prosecuting serious violations of international humanitarian law, and to thereby meaningfully assist in building a just and lasting peace, has been the subject of considerable debate. The success of the ICTY's role will, in part, depend upon the quality of its own endeavours, but also, the will of the international community that established the ICTY to ensure that it can fulfill its full potential.

The ICTY's efforts to prosecute war criminals will be severely constrained, especially while the war continues in the former Yugoslavia, if those indicted are harboured in countries and territories that refuse to co-operate with the ICTY. The failure by other States, especially the major world powers, to apply sufficient pressure on these entities to comply with their obligations towards the ICTY, further undermines the efficiency of the judicial project. In addition, the ill-conceived threat of amnesty for war criminals under a peace agreement

constantly hangs over the ICTY's future, diminishing confidence in its viability. The ICTY's work is, thus, seriously hampered by conditions that are not of its creation, and over which it has no control.

The ICTY can, nevertheless, have a significant impact on the course of resolving the conflict, and the future of international criminal jurisprudence, by undertaking its tasks as diligently and professionally as possible. The Prosecutor and his staff are doing all in their power to conduct thorough investigations, prepare well-founded indictments, obtain warrants of arrest, including international warrants, and when accused are arrested by States, to prosecute them diligently and fairly. Furthermore, Judge Goldstone has continuously reiterated that leadership figures are prioritized for investigation and prosecution, and that pure polit-

ical considerations will not deter the pursuit of justice: "Even if some of the warring parties offer amnesties, that will not be binding on the prosecution and on the war crimes tribunal...Our policy is to indict the most seriously guilty...the people who gave the orders".⁴

The wisdom of the comment, "better no court than a court that no one respects"⁵ must, therefore, be questioned. It reflects a view of the work of the ICTY that conveniently overlooks the achievements to date under very difficult circumstances, and that fails to acknowledge that the ICTY is not to blame for the constraints it faces in promoting justice in the Balkans.

Furthermore, the "toothless court" assessment does not take into account the complex manner in which international humanitarian law has developed since the turn of the century. It has been a steady, incremental process, which has adapted progressively to changing conditions and prevailing public policy. Its objectives certainly have not been achieved in a single moment of triumph. The same is true of the intricate process of development and advancement in any national legal system.

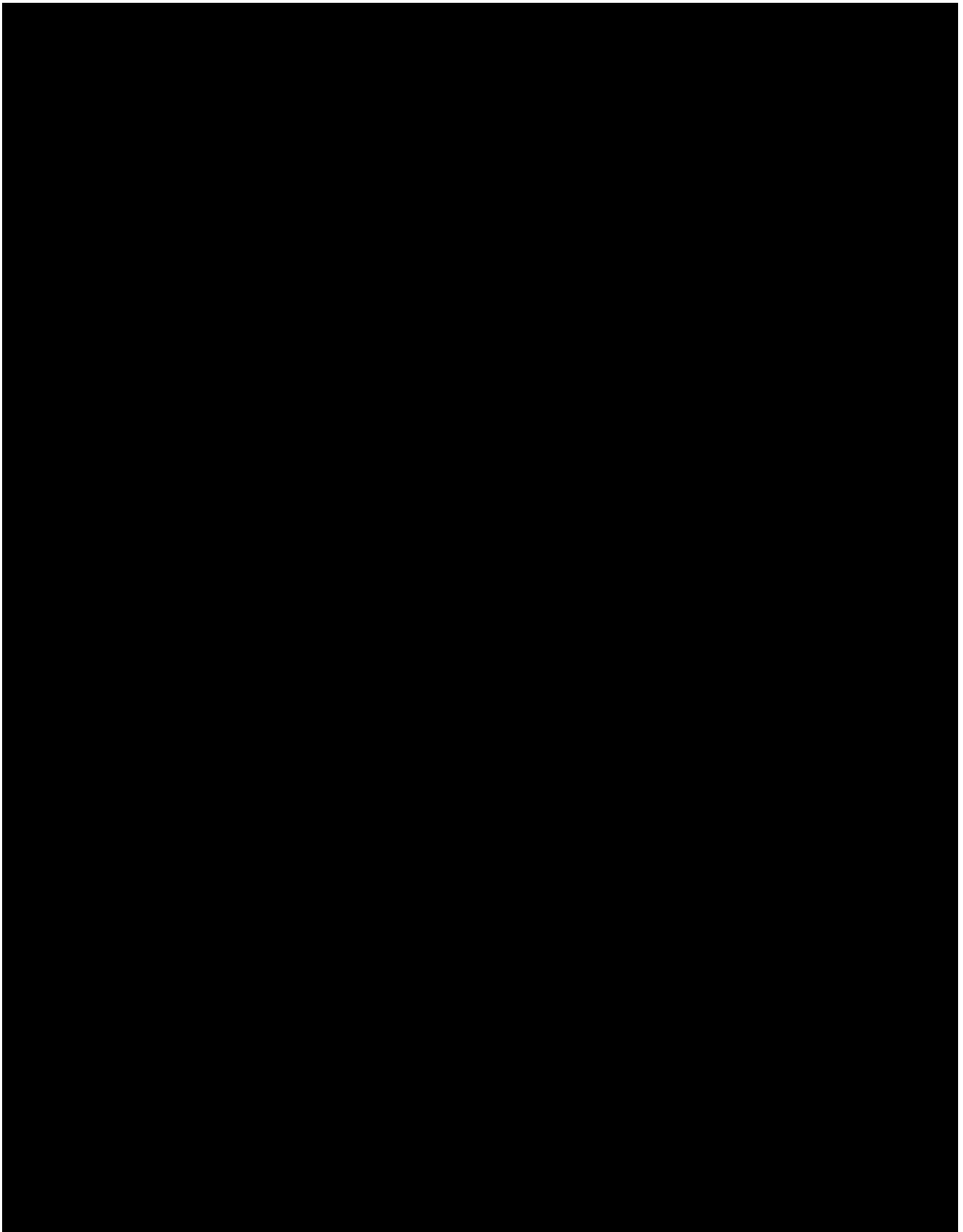
This point is well-illustrated by the extensive recommendations of various commissions and jurists after the First World War in support of an international tribunal. Despite the fact that this tribunal never materialized, their work

provided a basis and the impetus for the Nuremberg and Tokyo prosecutions 25 years later. The concept of crimes against humanity, for example, that was finally included in the Nuremberg Charter, had its origins, to a large extent, in the post-First World War initiatives. In the same way the activities of the ICTY will pave the way towards future international criminal jurisdictions. The judicial process itself can, thus, contribute to creating peace and stability in any community, alongside the



Judge Richard Goldstone

3. "Making Rules for War", *The Economist*, 11-17 March 1995.
4. "U. N. Prosecutor Vows World Justice", *Daily Journal* (San Francisco), 20 January 1995.
5. "UN's toothless court", *Daily Telegraph*, 20 January 1995.



policies of the major political forces, and simultaneously influence their direction.

The opportunity to further broaden the scope of international law for the protection of the victims of wars must be wholeheartedly embraced. It is essential to capitalize on the openings created by the international political community. The numerous obstacles that will be confronted cannot become an excuse for judicial stagnation. International justice will not be constructed in a political utopia, where international law unanimously commands the respect of the world's political leaders. Instead, the development of international law will directly depend upon its ability to creatively regulate the political realities of the international community.

This community was not prepared to establish the appropriate mechanisms to punish those responsible for war crimes and atrocities after the armed conflicts in countries like Korea, Vietnam, Cambodia, and Chechnya. Ironically, Zeljko Raznjatovic, better known as Arkan, the leader of the "Serbian Tigers", a Serbian paramilitary grouping that is alleged to have been involved in the indiscriminate killing of countless civilians, refuses to accept the legitimacy of the ICTY on the basis that: "I will go

to a war-crimes tribunal when Americans are tried for Hiroshima, Nagasaki, Vietnam, Cambodia, Panama". His position depends on the argument that tribunals which cannot immediately achieve all of their objectives should not be established. The expedient logic of the alleged war criminal should never find sympathy in the arguments of the professed bearers of justice.

A brief summary of the work of the ICTY could fail to highlight the human tragedy of the conflict that continues to unfold in the former Yugoslavia. It must, therefore, be stressed that the fate of the ICTY will be substantially determined not only by the quality of its own work, or by the decisions and influence of world leaders and commentators, but by the response of the victims of war crimes, and all peoples of the world who are the

victims of similar offences, to the results of the ICTY's work. Judge Antonio Cassese, the President of the ICTY, clearly recognized the ICTY's far-reaching responsibilities to all the victims of the war in his address to the General Assembly of the United Nations on 14 November 1994 (UN Doc. IT/87):

[T]he tasks that the United Nations has entrusted to us are daunting. On the eve of the United Nations' 50th anniversary, you have decided that the United Nations should broaden its arsenal of pacific means to include resort to international crim-

inal justice, as a lawful response to force and violence. All those who are working on behalf of the Tribunal are aware of the heavy responsibility they have been called upon to shoulder on behalf of the whole international community. We shall all accomplish the Tribunal's mission to the very best of our ability and energy. We hope thus to make our contribution to alleviating the anguish and sorrow of all those who still continue to suffer, even as I speak now, in the former Yugoslavia.

These were inspiring words from the ICTY's President, and nearly one year later they still embody the high standards by which the work of the ICTY must be assessed. They simultaneously highlight the profound legal challenges facing the ICTY, and the true potential that it

possesses to deliver justice to the victims of the brutal conflict in the former Yugoslavia. ■

The numerous obstacles that will be confronted cannot become an excuse for judicial stagnation. International justice will not be constructed in a political utopia, where international law unanimously commands the respect of the world's political leaders. Instead, the development of international law will directly depend upon its ability to creatively regulate the political realities of the international community.

Books just Received

- * **The Role of the Free Trade Agreement Between Israel and the EEC: The Legal Framework for Trading with Israel Between Theory and Practice**, by Dr. Talia Einhorn, 250 pp., Nomos, Baden-Baden, 1994.
- * **Israel Yearbook on Human Rights**. Vol. 24, 1994, ed. Yoram Dinstein, assoc. ed. Mala Tabory, Nijhett Publishers. Co-publication with the Buchnic Faculty of Law, Tel-Aviv University.

Anti-Semitism as a Corollary of Anti-Zionism: A Basic Tenet of Hizballah Ideology

Esther Webman

A relatively new phenomenon on the Lebanese political scene, Hizballah ("the Party of God") has gained worldwide attention during the last ten years because of its terrorist activity, its radical ideology, and its unique relationship with the Islamic Republic of Iran. This article focuses on one aspect of Hizballah's outlook - its attitude toward Israel, Zionism and Judaism, examines its centrality in the movement's overall ideology, strategy and behaviour, and explores its development in the context of the Shi'ite religious resurgence in Lebanon.

The Israeli invasion of Lebanon in June 1982 and the continued presence of Israel in Lebanon played a prominent role in bringing Hizballah to the forefront of Lebanese politics, and contributed to the organization's intense preoccupation with the existence, nature, purpose and future prospects of the State of Israel.

Esther Webman, formerly researcher at The Dayan Center for Middle Eastern and African Studies at Tel-Aviv University, is currently researching the Arabs' and Moslems' attitudes towards the Jews, at the Project for the Study of Anti-Semitism at Tel-Aviv University.

This Article has been adapted from her recent study, *Anti-Semitic Motifs in the Ideology of Hizballah and Hamas*, published by Project for the Study of Anti-Semitism, Faculty of Humanities, Tel-Aviv University.



Hizballah's total negation of Israel's existence is, on the face of it, a natural extension of its negation of the West, especially the US, inasmuch as Israel is perceived as a tool to realize American interests in the region. However, this negation based on Islamic precepts portraying Judaism as the oldest and bitterest adversary of Islam and intertwined with anti-Semitic motifs, taken mainly from Ayatollah Ruhollah Khomeyni's preachings and rhetoric, turns into a basic tenet in the movement's general Islamic plan. It appears therefore, that the line distinguishing between anti-Zionism - the de-

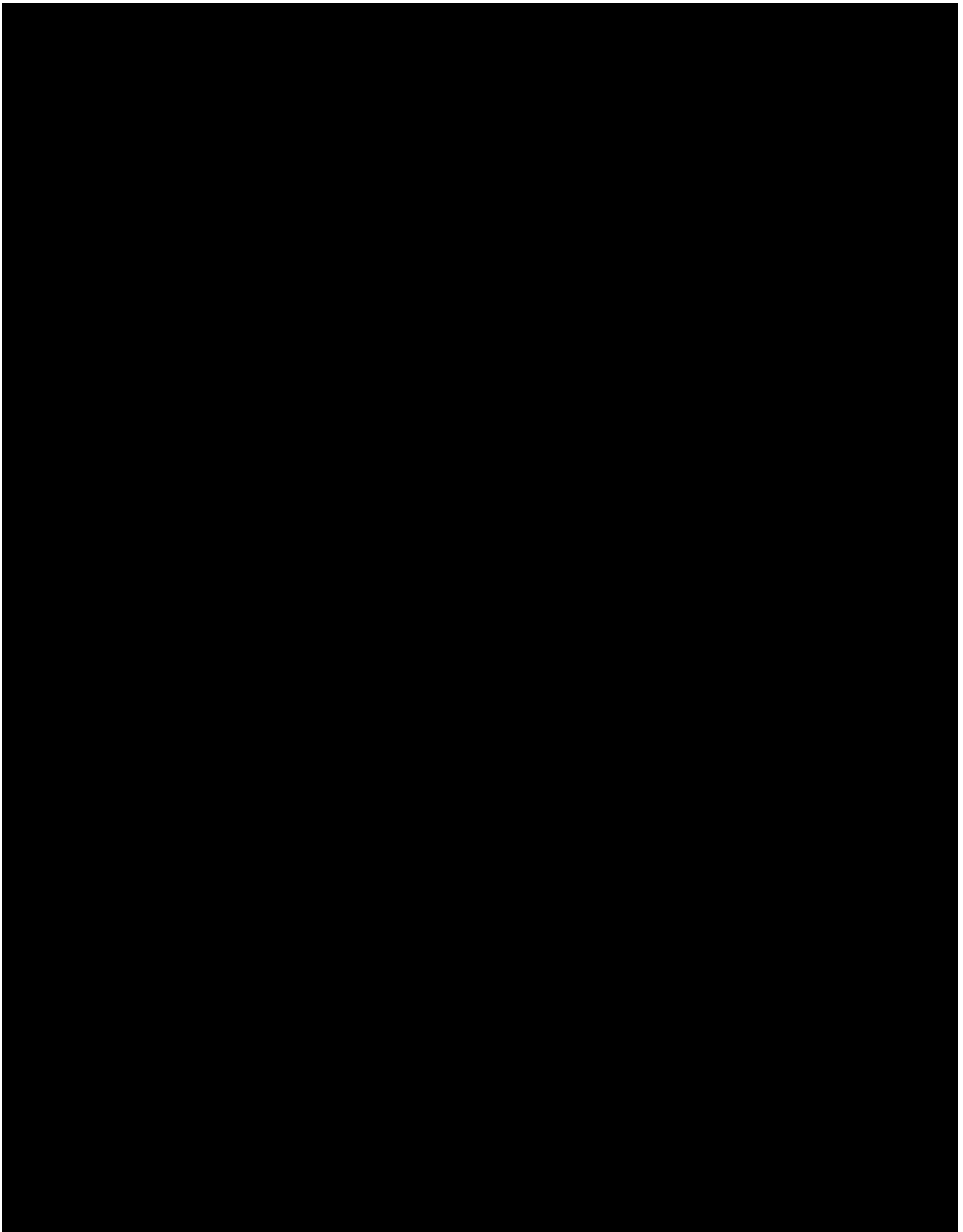
legitimization of Israel's right to exist - and anti-Semitism - a primordial hatred of the Jews - is becoming increasingly difficult to define.

Hizballah's attitude toward Israel and the Jews, entrenched as it is in the movement's overall philosophy, predicates that the way to a new Lebanon and Islamic revival passes through Jerusalem. Notwithstanding, it should be emphasized from the outset that despite its anti-Semitic motifs, this attitude is not the most significant tenet of Hizballah philosophy.

Besides drawing from general publications as well as academic studies of Hizballah, this article is based on primary sources such as Arabic newspapers and radio broadcasts, in particular *al-Muntalaq*, the monthly organ of the Islamic Lebanese Students' Organization which serves as an ideological platform for Hizballah, and *al-'Ahd*, a weekly newspaper, both published in Beirut.

The Shi'is in Lebanon

Lebanese society and the Lebanese confessional political system were based on a delicate balance between disparate groups brought together under the French Mandate in the 1920's and later in the territorial state that became independent



in 1941. This entity consisted of enclaves inhabited by Maronites, Sunni Muslims, Druze, Greek Orthodox and Shi'i Muslims in the Biqa' Valley and southern Lebanon. The social and political balance embodied in the constitution of 1926, stipulated by the French, and in the national covenant of 1943 was designed to hold these groups together through proportional representation in parliament, in political office and in the civil service. The gradual collapse, of this balance after independence, led to instability and eventually to unrest and civil war.

This confessional system, whose abolition is one of Hizballah's main objectives, was blamed by the movement for the continuous injustice suffered by the Shi'i community in Lebanon over the years. At the time of the establishment of the Lebanese state, the Shi'i community was the third largest in size; today it is considered the largest community, numbering approximately 1.3 million. From the outset it suffered certain distinct disadvantages relative to other communities: socio-economic backwardness, a distrusted feudal political leadership, and an attitude of indifference on the part of the government.

Growing social tension in the Lebanese Shi'i community over the years converged with a change in the self-perception of Shi'ism from the 1960's onwards, when its doctrine shifted from passivity to activism. This process culminated in the Iranian revolution led by Ayatollah Khomeyni, which strove thereafter to expand beyond its territorial limits and penetrate all Islamic schools of thought.

It is against this background that Hizballah emerged in the early 1980's as

an indigenous Shi'i movement inspired by the Islamic revolution in Iran which arose as a reaction to adverse local conditions.

Sheikh Musa al-Sadr

The origins of Shi'i activism in Lebanon go back to the early 1960's, shortly after the arrival in Lebanon in 1959 of a young cleric, Sheikh Musa al-Sadr, who paved the way for changes that were to sweep through the Lebanese Shi'i community. Sadr, a disciple of the new Shi'i activism emanating from Najaf and Qom (the two Shi'i religious centers, in Iraq and Iran respectively), started preaching this creed shortly after his arrival. He gradually gained influence in the Shi'i community and in the Lebanese political scene in general. The first substantial sign of the success of his efforts was the formation by him of the Supreme Islamic Shi'i Council in 1967, which he has headed since 1969. This was followed in the 1970's by the establishment of the first Shi'i political movement - the Movement of the Disinherited (*Harakat al-Mahrumin*) - a grass-roots movement of social and political protest. By mid-1974, this movement had developed into a military organization - Amal, an acronym for *Afwaj al-Muqawama al-Lubnaniyya* (Lebanese Resistance Brigades), as well as a word which means "hope" in Arabic. Sadr headed Amal until his mysterious disappearance in August 1978 while traveling to Libya.

Sadr sought to bring about change in the Shi'i community through an evolutionary process of reform of the existing Lebanese political system. He attacked the left, which was gaining support among young Shi'is, as well as the estab-

lished socio-political order, using radical rhetoric and appealing directly to the masses. As a Shi'i cleric he had a considerable advantage over leaders of other political trends, granted a high degree of legitimacy by the Shi'i masses. His political agenda stemmed from his interpretation of faith. "Faith", as one Arab historian explained, "was not about ritual, but about social concerns... Religion was not something that had to be quarantined and kept pure by stern guardians; it could be made to address modern needs. Thus, the man of religion, Rajul al-Din, need not hide and solely concern himself with old books and rituals," but should "bring back religion into the social and political realm."

Sadr's disappearance in 1978 wreaked havoc in the ranks of Amal. With no other figure to fill the leadership gap, personal rivalries and ideological disagreements eventually divided Amal into two distinct groups: a secular one, headed by Nabih Beri, and an increasingly more religiously radical one - *al-Amal al-Islami* - headed by Husayn al-Musawi, both claiming to faithfully represent Sadr's legacy.

Sadr, elevated to the position of a hidden imam whose return is anticipated, in accordance with traditional Shi'i belief, still formally occupies the chairmanship of the Supreme Islamic Shi'i Council and still symbolizes the Shi'i awakening in Lebanon. Thus, the emergence of Hizballah in 1982 was a natural development resulting from the "convergence of Lebanese Shi'i interests with Iranian foreign policy orientations," according to one scholar.

The Emergence of Hizballah

Hizballah is a radical Lebanese Islamic

resistance movement whose ideology combines a strong social message with a universal political goal and an Islamic mission, to be realized by revolutionary means, *i.e.*, *Jihad*. Within a few years, Hizballah attained moral and military hegemony in the Lebanese Shi'i community, and more recently it has striven to achieve legitimization in Lebanese society at large in order to fulfill its objectives.

The name Hizballah, is taken from a Qur'anic verse, and means the "Party of God", reflecting the way the movement perceives itself. "We in Lebanon," it states in an open letter regarded as its ideological platform, "are not a closed organizational party nor a narrow political framework. Rather, we are a nation tied to the Muslims in every part of the world by a strong ideological and political bond, namely Islam." The name symbolizes both the broad identity which Hizballah seeks, and the application of Khomeyni's ideal of replacing the Western concept of the nation-state by a "*hizballah*", which would unite the entire Islamic community of believers (*umma*) under the leadership of the jurisprudent (*wilayat al-faqih*), who is the supreme religious authority. Theoretically, every Muslim is by definition a member of Hizballah, but in fact the movement's adherents are mainly Lebanese Shi'is.

Three major events played a key role in mobilizing the resistance movement and radicalizing the Shi'i community: the disappearance of Sadr, the Israeli invasions of Lebanon in 1978 and 1982, and the establishment of the Islamic Republic of Iran. The last event, in particular, helped "heighten the political consciousness of the Shi'ite community of Lebanon", according to one researcher,

and gave it a source of identity that "transcended national borders."

Hizballah started to operate in 1982 in the aftermath of the Israeli invasion in June of that year, receiving help from Iranian Revolutionary Guards (*Pasdaran*) sent to Lebanon as part of Iran's attempt to export the Islamic revolution. This force had arrived in Lebanon earlier to train and indoctrinate Lebanese Shi'is.

Hizballah began as a loose network of military, political and social groupings, an arrangement that was later to lead to internal tactical controversy. Nevertheless, the movement developed into a well-organized political entity with broad popular support. It is run by a consultative council (*shura*) of 12 led by a secretary-general, with seven operational departments in charge of diplomatic, military, social, intelligence and information activities. Most of the major decisions are made by the council collectively and approved by Iran. Strict internal discipline is imposed on the rank and file, who are expected to accept clerical guidance in every aspect of life unquestionably, in accordance with Shi'i tradition.

Establishing itself initially in the Biq'a` Valley, mainly around the city of Ba`albak where the Iranian Revolutionary Guards were stationed, Hizballah soon moved into other areas heavily populated by Shi'is - West Beirut and the south. In 1984 it took control of West Beirut, pushing aside Amal, and after the Israeli withdrawal from Lebanon in 1985 began challenging Amal's strongholds in southern Lebanon through a combination of violence, intimidation and indoctrination as well as investment in developing various social welfare services. Militarily, it was

initially organized in small clandestine units, but these gradually turned into well-paid semi-regular military forces. Today Hizballah maintains command centers, training bases and a military force of approximately 5,000 fighters (*mujahidun*).

Iran's backing and the Iranian presence in Lebanon played a crucial role in the emergence of Hizballah and continues to be its major supporter. Iran provided financial support, military training and a well-defined set of politico-religious beliefs, reinforcing the movement with zeal and with the experience of proven success.

Hizballah's Ideological Tenets

Hizballah assimilated the doctrine of the Islamic Republic of Iran totally and pledged allegiance to its leader, Ayatollah Khomeyni, and his heir, 'Ali Khamaneh'i. The basic tenet of this doctrine is that Islam is a political and social doctrine akin to Marxism or any other Western ideology, going "beyond ethnic and regional orders and [offering] the best alternative to solve people's problems." Hizballah's ideology emphasizes the Qur'anic origins of its political terminology, with its messages deriving first and foremost from Shi'i themes and symbols, although it tries to conceal its Shi'i leanings.

Hizballah's ideology is constructed in a series of circles: the inner circle - the oppressed Lebanese Shi'i community - proceeding outward to the Lebanese society at large, the entire Islamic world, and the oppressed everywhere in the world. It has both short-term and long-term objectives, which can be summarized as follows:

1. The abolishment of the confessional

system in Lebanon and the transformation of the country into an Islamic state with justice, equality, peace and security for all through the application of the Islamic legal code (*Shari'a*);

2. Resistance to nationalism, imperialism and Western arrogance and the liberation of all oppressed Muslim peoples;
3. Bringing about Islamic unity in order to transform Islam into a universal power and establish Islamic rule; and
4. Negation of Israel, and the liberation of Jerusalem and Palestine.

The spirit of this ideology is reflected in the movement's emblem, which features a raised arm bearing a rifle against the background of the globe, with the slogan "The Party of God is Sure to Triumph" on top, and the motto "The Islamic Revolution in Lebanon" at the bottom.

The Demonization of Israel

The liberation of Jerusalem and Palestine is perceived by Hizballah as a major strategic target, essential for achieving Shi'i liberation in Lebanon as well as for the realization of the ultimate goal: worldwide Islamic rule. The conflict with Israel and the Jews is a total life-or-death war, integral to three broader conflicts:

1. the conflict between "the arrogant of the world" (*mustakbirin*) and "the downtrodden of the world" (*mustadafin*);
2. the cultural struggle between the West and the Islamic world;
3. the historical struggle between Judaism and Islam.

Israel is depicted as the product of Western imperialism and Western arrogance in the context of the conflict between the West and the Islamic world. The West, perceived as the source of all evil, installed Israel in the region in order to continue dominating it and exploiting its resources. Israel, then, is the source of all evil and violence in the Middle East and an obstacle in the way of Islamic unity, and it must therefore be eradicated.

The representation of Israel as a Western tool, foreign to the region, constitutes a major theme in the writings,

“We find in the Qu’ran that the Jews are the most aggressive towards the Muslims, not because they are Jews or because they believe in the Torah but because of their aggressive resistance to the unity of the faith.”

sermons and speeches of Hizballah leaders and spokesmen, which are disseminated in the movement's press and broadcast on their radio stations. It is also explicitly expressed in Hizballah's platform. Israel is depicted as an "American spearhead" in the Islamic world, "the ulcerous growth of world Zionism", and "a usurping enemy that must be fought until the usurped right is returned to its owners." Israel's final departure from Lebanon is a prelude to its ultimate obliteration and to "the liberation of venerable Jerusalem from the

talons of occupation." "America, the first root of vice, its allies and the Zionist entity have engaged and continue to engage in constant aggression against us and are working constantly to humiliate us."

Israel is thus completely identified with the West, with the US - "the big Satan" - and with Western culture, modernization and moral corruption, which have caused all the maladies in the Arab and Muslim worlds. Both Jews and Americans are presented as "the enemies of God and Islam" and as "the Party of the Devil" versus the "Party of God."

Often, the aphorisms by Khomeyni and Khamaneh'i published regularly on the back page of Hizballah's weekly *al-'Ahd* refer to Israel. Typically, one such aphorism, attributed to Khamaneh'i, depicts Israel as "a cancerous wound in the area, an imposed and oppressive entity, having no identity, which ought to be uprooted." Although the description of Israel as a cancer is not new, the use of the adjective "cancerous" in Hizballah publications was apparently originated by Khomeyni and appears in various combinations, such as "cancerous germ" or "cancerous gland," all of which convey the uncontrollable and treacherous nature of cancer and the difficulty in uprooting it.

Israel is also often described as racist, treacherous and barbarian. By establishing the State of Israel, according to Hizballah rhetoric, the world has created a devil from which even greater evil will ensue, and "the Israeli poison will spread and affect the entire world."

Caricatures containing traditional Western anti-Semitic symbols are a widespread means of demonizing Israel. Typically, Israel's alleged ruthlessness is

illustrated by a soldier with a long, crooked nose, long teeth and ears and a prickly chin, wearing an armband with the star of David and a steel helmet on his head, and holding a dagger dripping with blood.

Blurring the Difference Between Zionists and Jews

Hizballah spokesmen interchange the terms Zionism and Judaism, and Zionists and Jews, freely. In an interview, Husayn Fadlallah, the most senior religious authority of Hizballah, explained the difference between Judaism and Israel thus: Judaism, like Christianity, is a religion that is recognized by Islam. Islam calls for a dialogue with the Jews, as with the Christians, since they are “the people of the book” (*ahl al-kitab*). But, “there is something called Israel,” which is a manifestation of “the Jewish movement,” and it aims at occupying Islamic lands. Using as an excuse that this land was promised to them by God and that they had lived there thousands of years ago, the Jews expelled the people who live there. This is “political Judaism, defined as Zionism,” and it constitutes aggression against all Muslims, since it uses force and oppresses others.

Fadlallah proceeded to support these views with Qur’anic references to the corrupt, treacherous and aggressive nature of the Jews. “We find in the Qu’ran that the Jews are the most aggressive towards the Muslims, not because they are Jews or because they believe in the Torah but because of their aggressive resistance to the unity of the faith.” They reached an agreement with the idolators to fight the prophet Muhammad, Fadlallah asserted; they are known as the killers of the prophets; they spread

corruption on earth; and they oppress other peoples. The idea that those most hostile to the faithful are the Jews and the idolators is a theme which appears repeatedly.

Fadlallah and other Hizballah spokesmen do not see any contradiction in presenting Islamic sources as displaying tolerance toward the Jews, on the one hand, and as exposing the Jews’ wickedness, on the other. These same sources, according to Hizballah ideologists, also provide the reasoning behind and the motivation for, the irreconcilable struggle between Islam and Judaism, which is viewed as the struggle between truth and falsehood, and good and evil. The Hizballah fighters wage war on Israel out of religious belief and conviction, “just as they pray and fast - it’s God’s order to them.”

Israel is a state that emerged in the heart of the Arab nation in order to revive “the Jewish persona” through Zionist racism in confrontation with all Muslims. “Either we destroy Israel or Israel destroys us.” A further dimension is added to the abiding enmity between Islam and Judaism in the utilization of Western anti-Semitic images and perceptions of Jews. “The Jews are the enemy of the entire human race.” “Zionism dictates the world and dominates it.” “The Jews constitute a financial power.... They use funds to dominate the Egyptian media and infect its society with AIDS.” “The Torah inspires the Jews to kill.”

The conspiratorial and racial character of Zionism is developed extensively in the analytical articles that appeared in the movement’s monthly, *al-Muntalaq*, during the period under review. According to this publication, world Zionism cooperated with the secretive

Masonic order in order to dominate the world. The Jews view themselves as the chosen people, which is the source of their racism and their condescending attitude to other peoples. The origins of the Jewish image in Western societies are described at length as further proof of the universally negative perception of the Jews. One of the articles refers to Shylock in Shakespeare’s *The Merchant of Venice*, and to the definition of the word “Jew” that appears in French and English dictionaries as the symbol of “deceit, hypocrisy, treachery, exploitation, cheating and hatred of others.”

Fadlallah, in another interview, is quoted as saying:

“The Jews want to be a world super-power. This racist circle of Jews wants to take vengeance on the whole world for their history of persecution and humiliation. In this light, the Jews will work on the basis that Jewish interests are above all world interests. No one should imagine that the Jews act on behalf of any super or minor power; it is their personality to make for themselves a future world presence.”

Yet, despite their seemingly invincible power, “the Zionists are also cowardly and meek.” Even if it takes another century, Islam will emerge victorious, as it did in the twelfth century when it banished the Crusaders who had occupied Palestine for two hundred years, and as it did by spiritually overpowering the descendants of the savage Mongols who had conquered the Islamic territories in the thirteenth century.

Close scrutiny of outpourings of anti-Zionist and anti-Semitic sentiment by Hizballah activists reveals that they occur more frequently on certain occasions, as follows:

1. Memorial days for the fallen (the "martyrs") killed as a result of Israeli military operations in Lebanon, such as that held annually in February for Sheikh Raghieb Harb, observed by the entire movement. It was on this occasion in 1985 that Hizballah's platform was first read out at a mass rally in the form of an open letter.
2. Following Israeli military operations. The abduction of Sheikh 'Abd al-Karim 'Ubayd in July 1989, the killing of Sheikh 'Abbas al-Musawi in February 1992 and Israeli strikes at Hizballah bases in southern Lebanon in retaliation for ambushes of Israeli soldiers in Israeli security zone, unleashed an outpouring of emotion expressed in numerous speeches, articles and radio commentaries. These included such epithets as: "wicked enemies of God and Mankind," "villains," "Zionist gang," "blood-thirsty Zionists," "the most cowardly of God's creatures." Similar reactions followed Operation Accountability in July 1993, attempting to instigate war by reiterating that Hizballah consists of "followers of martyr Husayn...the sons of the blood revolution of Karbala" (the battle in 680 in which Imam Husayn Ibn 'Ali was martyred).
3. Regional and international political events relating to the Middle East and specifically to the Arab-Israeli conflict. The holding of the multi-lateral peace talks in Madrid, the invalidation of the UN resolution equating Zionism with racism, and the decision of the Palestinian National Council to join the peace talks, were vehemently denounced, with Hizballah issuing special state-

- ments on these occasions reiterating depictions of the "conspiratorial, conceited and obstinate" character of the Jew, who should never be trusted. The peace conference was labelled a "Satanic plan," and peace with the "Israeli enemy" was equated with "peace with crime, treachery, barbarism and racism."
4. Religious, especially Shi'i, holidays. When Hizballah terrorist activity is plotted on a graph, the curve soars during the 40 days following 'Ashura, the Shi'is' holiest day, commemorating Imam Husayn's martyrdom, which became a symbol of Shi'i oppression and later of Shi'i activism and is observed by demonstrations and self-flagellation.
 5. Jerusalem Day. A commemorative holiday fixed by Khomeyni in 1980.
 6. During parliamentary elections. In presenting their political platform during the election campaign in 1992, Hizballah candidates made frequent references to the conflict with Israel and the Jews, including inflammatory anti-Semitic allusions such as "parasitic entity," "the Zionist culprits," and "the struggle with the Jews is a struggle for Islamic survival."

Several Lebanese and American Jews were taken hostage by Hizballah in the first couple of years of the organization's activity, and some Lebanese Jews, among them the head of the community, Isaac Sasson, were accused of being Israeli spies and executed during 1985/86. It would appear that their primary guilt was in being Jews who continued to live in the Muslim quarter of Beirut after 1984 when Hizballah forces gained

control over it, or, in the case of foreign hostages, having Jewish names.

Jerusalem - The Building of a Myth

The holiness of Jerusalem and its importance to Islam assumed mythical dimensions in the Arab world and especially in the Islamic fundamentalist movements after the Six-Day War of 1967. This trend received further impetus from the Iranian Islamic revolution, which adopted Jerusalem as a political symbol, stressing its religious importance to all Muslims.

For Hizballah as well, the liberation of Jerusalem is perceived as the essence of the resistance effort, with the struggle for Lebanon merely a stage on the road to the redemption of Jerusalem. Hizballah zealously adopted Jerusalem Day, which was fixed as an Islamic holiday by Khomeyni in 1980, a year after he seized power in Iran, on the last Friday of the month of Ramadan. The day is commemorated by Hizballah with marches, demonstrations and mass rallies. It is known as "the day of Islam" or "the day of Islamic revival," when every Muslim must prepare himself for the confrontation with Israel. Jerusalem Day gained the status of other religious Islamic holidays such as "the day of the battle of Badr" (in 624, a battle won by Muhammad which symbolizes the victory of a minority over a majority), "the night of Mi'raj" (the night of Muhammad's ascent to heaven), and 'Id al-Fitr (the last day of Ramadan).

Two Hizballah military units were named for Jerusalem - the Jerusalem Brigade in Ba'albak and the Division of the Liberation of Jerusalem. An entire issue of *al-Muntalaq* was dedicated to

Jerusalem in 1991, covering historical, religious and political aspects. Numerous articles traced the origins of the city's holiness and its importance to the Muslims. Jerusalem was presented as an Islamic cause manifested in light of its "Islamic historical glory." It is also perceived as a unifying factor, thereby playing an essential role in Hizballah's pan-Islamic ideology.

Jerusalem is consistently viewed as a unique symbol which spans all political trends and religious schools of thought in the Muslim world. Its status is of concern to the entire Islamic nation and is perceived as a reflection of that nation's strength or weakness.

Historically, Jerusalem is the first *qibla* (direction of prayer), the site of the al-Aqsa Mosque, and the third holiest city after Mecca and Medina. Emotionally, it is a concept capable of mobilizing the masses of the Islamic nation and a banner around which they can rally and start taking charge of their own destiny. According to Husayn Fadlallah, Jerusalem was, is and will remain the axis of the *jihad* movement for all Muslims. However, because they adopted foreign ideologies, the Arabs mistreated Jerusalem over the years and related to it solely as a geographical region, ignoring its religious sanctity. In his view Jerusalem is the essence of the Islamic strategic plan, which aims at the revival of Islam and the retrieval of the lost pride and dignity of the Islamic nation. For this reason, Fadlallah declared, it must be kept ever-present in the mind.

Conclusion

Hizballah acquired its theoretical basis including its attitude toward Israel and

the Jews from Khomeynism. Ayatollah Khomeyni, together with Fadlallah, "gave a practical and activist form" to those Qur'anic verses, and the *hadith*, relating to "the struggle against culprits and unbelievers," according to one commentator. "Their view of the conflict derives from a deep understanding of the Qur'an and history." Khomeyni also drew on traditional Shi'i attitudes toward the Jews, which viewed them as unclean, impure and corrupt infidels and treated them with overt contempt.

He referred to the impurity of the Jews in his books and laid down rules for dealing with them, although apparently Hizballah chose to ignore this argumentation in their statements, speeches and articles on the Jews.

Hizballah is completely opposed to Jews and Judaism and stresses the eternal conflict between them and Islam, although it also cites the more tolerant aspects of Islam toward the Jews. The movement claims to distinguish between Judaism and Zionism, but at the same time reinforces its anti-Zionism by reviving the ancient Islamic enmity toward the Jews, revealing that essentially there is no separation between anti-Zionism and anti-Semitism in the Hizballah view.

Hizballah's brand of anti-Semitism is yet another addition to the emerging phenomenon of Islamic anti-Semitism, and is typical of the fundamentalist Islamic movements generally, combining traditional Islamic perceptions with Western anti-Semitic terminology and motifs to express its opposition to Zionism. Zionism, in turn, is equated not only with the State of Israel but also with imperialism and with Western arrogance.

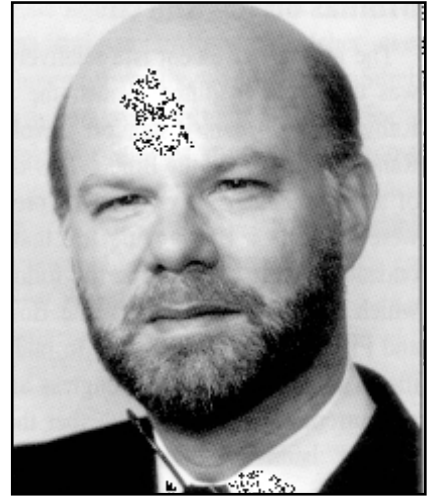
Hizballah has been making efforts to reconcile three disparate elements in its

ideology - the pan-Islamic, Shi'i and Lebanese. It has come to recognize that political, social and economic conditions, whether local, regional or international, affect ideology and dictate change. For example, it appears that the movement is modifying its tactics in the domestic Lebanese arena. By participating in Lebanon's parliamentary elections; allowing the deployment of the Lebanese army into southern Lebanon; and functioning within the existing political system, Hizballah has displayed a greater awareness of its Lebanese identity, seeing no contradiction between Lebanese nationalism and the Islamic revolution.

Its attitude toward Israel and Judaism, however, remains unchanged. It is consistent and inflexible, even though Hizballah spokesmen acknowledge the movement's practical limitations in the event of an all-out war. Fadlallah even admitted that "Israel has now become an undisputed fact...on the international scene, whether we like it or not," yet victory over Israel is still the first step toward the achievement of a perfect society and a perfect individual, in the Hizballah view. The idea of the eradication of the State of Israel, symbolizes the universal pan-Islamic aspect of Hizballah's ideology and the first target in the struggle against the West. Moreover, the volatile political situation in southern Lebanon, the peace negotiations, and the prospective changes in relations between Israel and the Arab states, have pushed Israel as an issue, and hence anti-Semitic manifestations as a corollary, to the forefront, causing these to receive a greater share of exposure than their actual importance in the overall philosophy of Hizballah would warrant. ■

Hate and Paranoia: The American Militia Movement

Neil C. Livingstone



One of the consequences of the Oklahoma City bombing investigation was that it focused unprecedented attention on the burgeoning American militia movement. The militias came under scrutiny because two of the principal suspects, Timothy McVeigh and Terry Lynn Nichols, were reported to have attended meetings of the Michigan militia. For their part, leaders of the Michigan militia deny any connection to the accused bombers.

Prior to the bombing, most of the mainstream media and even federal law enforcement had largely ignored the expanding network of militias taking root in, at last count, forty states. The movement is strongest in Montana, Texas, California and Michigan.¹ Only in Hawaii, Connecticut, Rhode Island, Maryland, Vermont, Massachusetts, North Dakota, Maine, New Jersey and Nevada is there presently no militia activity. The number of actual militias is difficult to calculate, but Senator Arlen Specter (R-PA) told a Senate hearing in June that there are 224 separate militia organizations.² Although militia leaders claim hundreds of thousands, even millions, of members, reliable sources suggest that there are no more than 15,000 to 25,000 hard-core militia members.³

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Why more was not generally known about the militias prior to the arrest of McVeigh and Nichols is a complex question with many answers. In large measure it had to do with the fact that the right-wing extremist organizations in the US were generally perceived to have been in eclipse for the past decade or more. Secondly, terrorism was regarded chiefly as an international problem, especially in the aftermath of the 1993 World Trade Center bombing. Even those who viewed the militias as having a high potential for violence, including this author, always believed that the eruption of trouble, when it came, would be gun-related, because the gun issue had been the catalyst for the creation of most militia organizations. That it would come in the form of an unprecedented bombing attack in America's heartland was not even a matter of speculation. Finally, during the past quarter century most local sheriffs and police departments, reacting to political pressure, disbanded their intelligence-gathering units, and therefore did not keep close tabs on the growing number of extremist organizations emerging across the political landscape.

Even federal police agencies had been reluctant to engage in domestic surveillance activities following charges that the FBI spied on the civil rights and anti-war movements during the 1960s, and on those opposed to the US involvement in El Salvador during the 1980s. This was complicated even more by the fact that American-based Islamic militants and members of right-wing Christian Identity groups both claimed protection under the First Amendment, guaranteeing religious freedom, every time the government evinced interest in their activities.

Militias on the March

The militia movement is a relatively recent phenomenon, and was energized by three events: the assault weapons ban, the Ruby Ridge (Idaho) standoff involving White Supremacist Randy, Weaver, and the Branch Davidian affair, where members of a religious cult led by David Koresh, including 17 children, were killed in a fast-moving fire that consumed their complex outside of Waco, Texas. The fire followed a fifty-one day siege, which began when agents of the Bureau of Alcohol, Tobacco and Firearms (ATF) attempted to raid the complex in search of illegal weapons. Both the Congress and the Justice Department are currently investigating whether the government acted properly in launching a military-style assault on the Branch Davidians.

Believing that the government has overstepped its rightful role in society and is bent on persecuting those who support gun ownership, many angry Americans, especially in rural areas banded together in militia organizations. In this connection, the militia movement was a reflection, albeit an extreme one, of a much broader disenchantment with government that filtered down to all levels of society, and was, to a large extent, responsible for the Republican Party capturing control of both houses of Congress for the first time in half a century in the 1994 elections.

As the militia movement gathered momentum, it became a magnet for extremists of every persuasion, including anti-Semites, racists, tax resisters, survivalists, and conspiratorialists spinning the most outrageous theories and dark premonitions of the future. Former and current members of the Ku Klux Klan (KKK); the Posse Comitatus; the Order; the Aryan Nations; the Christian Patriot Defence League; and the Covenant, the Sword and the Arm of the Lord (CSA) began appearing in various militias, and used the organizations as platforms for proselytizing and spreading their messages of hate.

Central to the conspiracy theories that have gained wide acceptance throughout the militia movement is the notion that the US government is preparing, as part of the New World Order, to turn control of the United States over to the United

Nations. According to militia "intelligence" sources, the government is secretly building "concentration camps" in which to incarcerate millions of Americans who are expected to oppose the takeover of their country by the world institution. One publication, distributed by the Wolverine Brigade of the Southern Michigan Regional Militia goes even further:

"There are four massive crematoriums in the USA now complete with gas chambers and guillotines... more than 130 concentration camps already set up from Florida to Alaska... more than two million of us are already on computer lists for 'detention' and 'liquidation'".⁴

Foreign troop, militia propagandists maintain, are being trained in the US for the operation, and the only thing standing in the way of this diabolical plot is the fact that so many Americans are armed. Thus, the thinking goes, the government is now attempting to confiscate all firearms so that ordinary citizens will be unable to resist the designs of the "one worlders".

Militia members claim to have seen all sorts of strange happenings confirming their fears, including black helicopters flying surreptitiously around the country at night, the movement of military equipment with UN markings by rail and truck, and the deployment of former Soviet military equipment at key bases

around the US. So-called "sightings" of foreign troops and equipment are widely circulated via the InterNet and brochures, and feed the growing paranoia taking hold in many areas. Once expressed these anecdotal stories often take on a life of their own. When held up to scrutiny, however, none of the evidence presented by the militias turns out to have any foundation of truth. For example, the openly anti-Semitic publication, *Spotlight*, published an alleged photo of "Russian" armour being transported through Montana, but it turned out that the vehicles depicted were Canadian APC built under licence from Mowag of Switzerland. Some members of the Michigan militias were apparently so convinced of the presence of Soviet armour in the US that federal authorities say they plotted to assault Fort Grayling army base in 1994. The raid, however, did not occur.

Believing that the government has overstepped its rightful role in society and is bent on persecuting those who support gun ownership, many angry Americans, especially in rural areas banded together in militia organizations.

There is no limit to the fantasies spun by various militia members. In a news release, Norman Olson, commander of the Michigan Militia Corps, blamed the Japanese for the Oklahoma City bombing, alleging that it was carried out in retaliation for the Sarin attack in the Tokyo subway system. Although Japanese authorities have arrested a number of members of the *Aum Shinrikyo* ("Supreme Truth") cult, including its leader Shoko Agahara, and charged them with the murderous poison gas attack, Olson said that the subway plot had, in reality, been hatched by the CIA, acting on behalf of the US government, which wanted to punish Japan for devaluing the yen.

Another fantasy which has gained wide currency within the militia movement is the notion that the US government was behind the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. According to conspiracy theorists, the federal government feared that the militia movement was growing too rapidly and amassing too much power. Desperate to discredit the militias and find a pretext to pass sweeping new anti-terrorism legislation that would greatly enhance federal police powers, top government leaders ordered the destruction of the federal building. The Oklahoma City federal building was charged as the target, it is claimed, because the day care center was particularly vulnerable and the murder of children was bound to increase public outrage over the incident.

Within four days of the bombing, a newsletter tied to the militias proclaimed that the "Oklahoma City Federal Building Blast was an Inside Job".⁵ The publication went on to say that there were, in actuality, two separate explosions and that a "truck bomb could never have caused the pattern of damage that was evident from newspaper photos."⁶ "The detention," concluded the publication, "was intended to create the political climate necessary to pass the unconstitutional Biden-Schumer 'Terrorist Bill'".⁷ Similar fantastic claims flooded the InterNet, including speculation by a man purporting to be a former FBI agent who concluded that the Oklahoma City bomb was "not a fertilizer bomb" but in actuality an "electro-hydrodynamic gaseous fuel device... similar to the Army Blue-92 bomb, which is called the 'Daisy Cutter'".⁸

During the June 15 Senate hearing on the militias chaired by Senator Specter, Montana militiaman Robert Fletcher even accused the federal government of weather manipulation. Surely it was no coincidence that there were 85 tornados on a single day in America's growing areas, he told the incredulous subcommittee. He implied that it was all part of a plot to "starve millions" of people in America's heartland, presumably people like himself that could be counted on to oppose the evil designs of the proponents of the New World Order.⁹

Purveyors of Hate

To hear the militia witnesses before Senator Specter's subcommittee tell it, they are simply misunderstood patriots.

One of the few African-American militia leaders, James Johnson of Columbus, Ohio, went so far as to describe the militias as the "civil rights movement of the 90s".¹⁰ Montana militia leader, John Trochmann, said that the movement was something like a "giant neighbourhood watch".¹¹ All of the witnesses denied any association with racists or anti-Semites.

Trochmann, however, has a long history of anti-Semitic rhetoric and activities. He distributes anti-Semitic literature out of his office in Noxon, Montana, and by his own admission has visited the Hayden Lake, Idaho

compound of the openly anti-Semitic Aryan Nations movement on at least two occasions. Some reports suggest that he was also a guest speaker there. The Montana militia reportedly encourages all recruits to read "*The Conspirators' Hierarchy: The Committee of 300*" by John Coleman, which describes how a group of Jews is plotting to take over the world.¹² Not all of their hatred is reserved for Jews. A Militia of Montana newsletter recently advertised a video for sale called "Big Sister is Watching You."

The advertising blurb went on to say: "Hillary's hell cats, or if you like... Gore's whores. Hillary's regiment of hardened, militant feminists includes lesbians, sex perverts, child molester advocates, Christian haters, and the most doctrinaire of communists. One heads the FBI, another the IRS."¹³

Among the many publications widely distributed throughout the militia movement is the tabloid newspaper *Spotlight*, published by the Liberty Lobby, which has long been identified as anti-Semitic and racist.

Among the many publications widely distributed throughout the militia movement is the tabloid newspaper *Spotlight*, published by the Liberty Lobby, which has long been identified as anti-Semitic and racist.¹⁴ In an article describing how *Spotlight* fans the hysteria within the militia community, Craig B. Hulet called attention to the “close associations among the militia movement and *Spotlight*”.¹⁵ Accused bomber Timothy McVeigh advertised a rocket launcher in *Spotlight* and the New York Times reported that Terry Nichols and his brother, James, were regular readers of the anti-Semitic screed.¹⁶ *Spotlight* is sold at many militia meetings and has a large following among militia members, along with such publications as *The Protocols of the Elders of Zion*.¹⁷

The *Turner Diaries*, perhaps the most influential book throughout the militia movement, was written by William Pierce (under the pseudonym Andrew Macdonald). The book culminates in an orgy of violence where thousands of blacks and Jews - the villains of his novel - are hanged from lamp-posts, along with all white women who have slept with non-whites. Pierce is a long-time anti-Semite, with ties to neo-Nazi groups in other countries. A former assistant to George Lincoln Rockwell, the leader of the American Nazi Party, in the late 1960s Pierce sold various police supplies under the label of “Negro control equipment”.

Another document distributed by various militias is called “*Prairie Fire*”. “The menace within [the US] is Jewish controlled with its absolute control of the Federal Judiciary, Justice Department, and the Armed Forces”, reads the document, which goes on to assert that the “philosophy of the group led by Jews, which now holds power in the United States and in the other ‘people’s democracies’ is that of **HUMANISM**”.¹⁸

Conclusion

In the final analysis, the militias are anything but benign civic organizations. There is overwhelming evidence that militia members are stockpiling weapons, engaging in paramilitary training, inflaming public distrust of government and hate, and even stalking elected officials and some members of the law enforcement community. Numerous militia members have long personal histories of violence and some have been convicted of hate crimes. The hearing held by Senator Specter in June was designed to investigate whether the activities of the militias pose a “clear and present danger” to the US government. In the wake

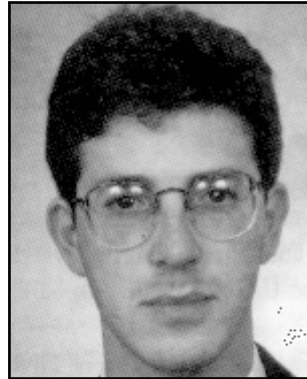
of the hearings and the other evidence now available, it is clear that the militias not only represent a serious threat to the federal government, but to state and local government, law enforcement, Jews, African-Americans, homosexuals, and just about anyone else who disagrees with them.

1. Source: Anti-Defamation League, June, 1995.
2. Senator Arlen Specter, “Hearing on Militia Groups,” Judiciary Subcommittee on Technology and Government Information, U. S. Senate, June 15, 1995. By contrast, militia leader Ken Adams, of Harbor Springs, Michigan, told the Senate panel that there were 1000 militias and that they were active in all fifty states. Adams, however, could provide no support for his figures.
3. “Beyond the Bombing: The Militia Menace Groups,” report by the Anti-Defamation League, 1995.
4. Senator Carl Levin, “Testimony Before the Senate Judiciary Subcommittee on Terrorism, Technology and Government Information,” June 15, 1995.
5. “Oklahoma City Federal Building Blast was an Inside Job;” “Resurrection, The Newsletter;” Sheila M. Reynolds, publisher; dated April 23, 1995. original faxed press release.
6. Ibid.
7. Ibid.
8. Inter Net conversation between John Stadtmiller and Ken Gunderson, April 29, 1995.
9. Robert Fletcher, “Hearing on Militia Groups.” op. cit.
10. Ibid.
11. Ibid.
12. Carol Bradley, “Materials by Croup Pull No Punches,” Great Falls Tribune, April 30, 1995, P. 6A.
13. Senator Herb Kohl, Statement, “Terrorism Subcommittee Militia Hearing,” June 15, 1995, P. 2. (original draft)
14. For a description of the Liberty Lobby’s anti-Semitic history, “paranoia as patriotism; Far Right Influence on the Militia Movement,” Special Report, Anti-Defamation League, 1995, p. 22.
15. Craig B. Hulet, “All the News that’s Fit to Invent, Shining the Light of Truth on Spotlight,” *Soldier of Fortune*, August, 1995, p. 60.
16. “Beyond the Bombing: The Militia Menace Grows,” op. cit., p. 3.
17. Ibid. p. 12.
18. “Prairie Fire,” published by the Sam Adams Committee of Public Safety; M. Nelsen, Chairman; P. O. Box 301; Roselle, Illinois, 60172.

Fighting International Terrorism Through Compensatory and Punitive Damages: American Judicial and Legislative Developments

Allan Gerson and Mark S. Zaid

The 1990s continue to bear witness to the perpetration of terrorist attacks, particularly against citizens of the United States and Israel. For the United States, the recent toll has been particularly severe requiring itself to adjust to the fact that terrorism is a phenomenon which occurs not merely far away from its shores. Six dead, and over one thousand injured, resulted in the 1993 bombing of New York City's World Trade Center, the culmination of an international plot intended to murder tens of thousands. An attempt in 1993 by international terrorists to bomb selected New York City targets, including the United Nations, was, fortunately, thwarted. And, earlier this



year one of the worst bombings ever to occur in U.S. history claimed 168 lives and hundreds of injured when the Murrah Federal Building in Oklahoma City was destroyed by a home-grown terrorist.

Those who carried out these attacks have been or are in the process of being brought to justice. But the foreign government officials

who may have ordered such acts stand to escape punishment. Indeed, how does one punish state-sponsors of terrorism such as Libya and Iran? Traditionally, state-sponsored terrorism has primarily been handled in two ways: militarily and diplomatically. Some victims of international terrorism are, however, striving to create an additional weapon to deter future state-sponsored attacks and secure compensation for past wrongdoings - the use of civil lawsuits to exact compensatory and punitive damages.

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Mr. Zaid specializes in international criminal law in Washington, D.C., and is the President of the Foundation to Combat International Terrorism. Zaid is a co-counsel in *Smith v. The Socialist People's Libyan Arab Jamahiriya*.

The Fatal Flight of Pan Am Flight 103.

On the darkest day of the year in 1988 the usually tranquil skies of Scotland rained fire as Pan American World Airway's "Maid of the Seas" Flight 103 was blown apart by a terrorist bomb over Lockerbie. The impact of debris, which was eventually found scattered over 845 square miles, claimed an

additional 11 lives when Flight 103's engines and wings caused the total disintegration of several homes and their occupants.

Within days it was confirmed that the crash of Flight 103 was no accident but the result of a deliberate terrorist attack. Initial suspicions were directed primarily at Palestinian terrorist organizations, particularly the Popular Front for the Liberation of Palestine - General Command, and the states of Iran and Syria. Just four months earlier, on July 3, 1988 Iran Flight 655 was accidentally shot down by the U.S.S. Vincennes with a loss of 290 lives. The July incident occurred just four days before a Muslim high holiday. Perhaps coincidentally, Flight 103 was destroyed four days before the Christian holiday of Christmas. Many who studied the terrorist tactics of Iran thought otherwise.

On November 14, 1991, nearly three years after the downing of Flight 103, two Libyan nationals - Abdel Basset Ali Al-Megrahi and Lamem Khalifa Fhimah - were simultaneously indicted in the United States and United Kingdom for the bombing. Suspicions of Iranian and Syrian complicity lingered, but no action would be taken against any of their operations. By contrast, Al-Megrahi and Fhimah were accused of serving as Libyan intelligence agents operating under specific orders to ensure that Flight 103 would never reach the United States. Libya's leader, Muammar Gaddafi, and other high officials were alleged by the United States and the United Kingdom to be the evil masterminds behind the act.

For the last seven years, the families of the victims of Flight 103 have sought to attain accountability from and punishment of those individuals who carried out the murder of their loved ones. Despite the application of U.N. sanctions against the state of Libya in an effort to bring the two suspected terrorists to trial in the United States or United Kingdom, Libya has remained steadfast in its refusal to cooperate. A diplomatic resolution of the impasse appears unlikely in the near future.

Civil Litigation Against Libya

In December 1993, Bruce Smith, whose 31-year-old wife was killed onboard Pan Am Flight 103, filed the first civil action against the government of Libya in a United States federal court. He is seeking US\$15 million in damages. Also named as defendants were Libya's state intelligence agency, Libyan Arab Airlines and the two Libyan suspects. A second family member, Paul Hudson, whose 16-year-old daughter was killed in the bombing, filed suit in February 1994 (A third suit was filed in November, 1994 by 65 former members of Pan American's

flight crew alleging that the bombing precipitated the bankruptcy of Pan American thereby causing them to lose their jobs.) The actions sought to attain accountability for the bombing and, to punish the government of Libya by assessing a damage judgment sufficient to serve as a deterrent to future acts of terrorism.

The criminal actions pending against Al-Megrahi and Fhimah remain in limbo as they have for nearly four years with no resolution in sight. Both remain protected in Libya. And Libya is not about to voluntarily relinquish them to the United States or the United Kingdom regardless of what Security Council resolutions may call for. Moreover, a tightening of the United Nations' economic sanctions against Libya, assuming the Security Council would ever agree to do so, seems unlikely to force Libya to release these two individuals. In this light, it was thought that a civil action opened was the most realistic avenue for determining as best one could under the circumstances the issue of Libyan culpability.

In June 1994, the complaint in the *Smith* case was amended into a US\$3 billion class action suit on behalf of all families who suffered a loss as a result of the bombing. This effort, intended to send a clear message that state-sponsored terrorism does not pay, was blocked by the group of attorneys representing Flight 103 families in their battle against Pan Am's insurance carrier in a separate action. Their reason: apparently to undercut the prospect of jurors in the action against Pan Am from realizing that there were two, not one tortfeasor at bay. The result might have been a lessening of damage awards and hence a decline in these attorneys contingency fees.

In July 1994, the government of Libya and Libyan Arab Airlines entered their formal appearance to contest the litigation. Libya's attorneys argued that even if the accusation against Libya was true, Libya, as a sovereign state could be afforded immunity against suit in a U.S. court. The U.S. Foreign Sovereign Immunities Act of 1976 (FSIA) provides Libya, as argued, an absolute grant of immunity unless one or more specified exceptions existed to create jurisdiction. The FSIA generally bars lawsuits by U.S. citizens against foreign governments or state-owned businesses unless the alleged injury occurred in the United States or was commercial in nature.

Several arguments were asserted against Libya's claim of immunity. First, Pan Am Flight 103 was an American flagship and, therefore, arguably part of United States territory (in the same manner that a flagship vessel is considered floating territory of the flagstate). Secondly, it was pointed out that the

Anglo-American Declaration incorporated by the UN Security Council in its resolutions required that Libya provide compensation. Thirdly, it was argued that the drafters of the FSIA never contemplated that the Act serve as a shield for mass murder.

While justice requires punishment of the perpetrator, criminal punishment may in some cases not be a realistic prospect. Nor should it be the sole remedy. In the case of Pan Am Flight 103, criminal punishment is not an available means for dealing with the government of Libya. Although, the indictments place blame on the government of Libya for employing intelligence agents and in directing their actions, the criminal indictments filed in the United States and United Kingdom fail to name the government of Libya.

In this context, the prospect of substantial damages in a civil trial for wrongful death appears to offer the most realistic prospect for holding the government of Libya directly accountable providing, of course, that the hurdle of a constrictive interpretation of the FSIA could be overcome.

Last May, nearly four months after oral arguments, the US District Court for the Eastern District of New York dismissed the actions against the government of Libya, its intelligence agency and Libyan Arab Airlines on the basis of sovereign immunity (the individual claims were not discussed as no appearance has been made by the defendants). "Although Libya's alleged participation, if true, in this tragedy is outrageous and reprehensible and the human suffering involved is heart-breaking", wrote Judge Thomas C. Platt, in his opinion: "Libya's alleged terrorist actions do not fall within the enumerated exceptions to the Foreign Sovereign Immunities Act". The decision is presently on appeal to the U.S. Court of Appeals.

While the families and their attorneys remain optimistic that the decision will be reversed, their hopes shifted to legislation pending before the U.S. Congress. If passed, it would strip terrorist states of claims to sovereign immunity under the FSIA.

Congress Set to Forge a New Weapon Against Terrorist States

In early 1995 the Clinton Administration introduced its "Comprehensive Antiterrorism Act". Following the Oklahoma City bombing, Congress became spurred to ensure that a substantive terrorism bill would pass. The time was seen as ripe to protect American victims of terrorism rather than the state that committed the act.

However, the U.S. Department of State vigorously opposes any attempts to amend the FSIA. Its reasoning stems from fear that reciprocal situations might then arise whereby the United States would be subject to suit in foreign courts. These concerns are unwarranted. Over the last decade, the United States has significantly expanded its criminal laws to include extra-territorial acts committed against Americans. Yet it has not faced any significant reciprocal actions by other states. In any event, the United States is not and should not be involved in committing human rights violations that would subject it to reciprocal action.

Recently, an amendment to the FSIA was submitted before the U.S. Senate to strip states listed by the U.S. State Department as sponsors of terrorism (Libya, Iran, Iraq, Sudan, Syria, North Korea and Cuba) from claiming sovereign immunity for acts of aircraft sabotage, torture, extrajudicial killing and hostage-taking. Prior to commencing an action, however, the claimant would be required to offer the accused state the opportunity to arbitrate the grievance. In June, the amendment was adopted by the Senate by a vote of 91-8.

The version presently under consideration by the U.S. House of Representatives broadens the amendment to allow for suits against any country whose legal system does not provide an adequate avenue of legal redress for victims of these human rights violations. While the amendment passed the Judiciary Committee, the bill has yet to be voted upon by the full House. It is, however, expected to pass the House by September and should be signed into law by President Clinton by the Fall.

Regardless of which version of the amendment ultimately passes, the families of the victims of Pan Am Flight 103 will, it now appears, be accorded a clear right to seek damages and accountability against the government of Libya.

Civil Judgments Can Send a Clear Message to Terrorist States

Civil remedies do not seek to replace criminal prosecution. They serve to achieve an additional and complimentary objective: deterrence through compensation not ordinarily obtainable in a criminal case. Thus, civil suits for damages against terrorist states offer an opportunity for the United States government, through its citizens, to strike a blow against state-sponsored terrorism.

The Argentinian State's Liability for the Damage Caused by the Destruction of the A.M.I.A. (Jewish Community) Building

Enrique I. Groisman

The state's liability for indemnification was accepted some time ago, after a long and gradual journey.

The right to file suit against the state was restricted until late this century, and was not available at all in several countries without previous legislative authorization.

In the European continental systems, the possibility of suing the state progressed by way of the "public treasury theory", which lead to a separation between the monarch's patrimony and the Crown as an impersonal institution. For a classicist of Administrative Law, such as Otto Mayer, the recognition of a private person's rights *vis-à-vis* the state was the key to the existence of that discipline.

Nevertheless, until a few decades ago, only contractual responsibility was recognized; later on, indirect responsibility, based on public servants' irregular performance, was also accepted. Finally, different approaches have been taken in various countries in respect of the right to an indemnification for

A year ago, on the 18th July 1994, a terrorist explosion in Buenos Aires killed close to 100 innocent civilians - Jews and non-Jews alike, in the AMIA building, the main center of Jewish religious, educational, cultural and social activity in Argentina.

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damages caused by legislative actions or mistaken judicial rulings. What is more uncommon is the recognition of damages for the failure of the state to fulfill its function as the guarantor of public security.

As far as the **British system** is concerned, the liability for damages was not accepted with respect to the Crown until 1947, although the personal liability of public servants who have committed illegal actions, detrimental to private persons, was later accepted. The general principle is that the Crown "will not be liable unless the public servant or agent is liable" (H.W.R. Wade, *Administrative Law*, 1967, The Clarendon Press, Oxford, Chapter VIII).

In **Argentinian law**, the recognition of the state's responsibility passed through a number of stages: at first, only contractual responsibility was recognized; for many years it was argued that the claim for damages was only acceptable if established by law, although, ultimately, this requirement has been waived. At present, recognition of the state's responsibility for the deficient accomplishment of a public service cannot be considered as widespread.

According to the present state of Argentinian doctrine and jurisprudence, **it would be possible to uphold the state's liability in the case of AMIA, provided that one could prove neglect in the duty of vigilance and preservation of public security.** Even for those who distinguish between a duty in respect of "means" (to keep watch adequately) and a duty in respect of "results" (to in fact prevent the damage), such liability would be possible, provided that the care was insufficient or that reasonable precautionary measures had not been taken.

The issues become more complex when it is possible to prove that the crime occurred despite the fact that the state carried out its duty of vigilance in the ordinary way. I believe, however, that even in that case there are arguments in favour of a claim for an indemnity for the damage.

The first reason for the validity of the state's liability consists in its juridical and moral duty to preserve the safety of the people and their goods.

Even while it is true that the state cannot be forced to provide compensation for the harm caused by all criminal actions, it is undeniable that in those cases which pass a certain threshold, where, as a matter of fact, impunity becomes the rule, the state's responsibility arises, not because it did not prevent the commission of a specific criminal action, but because it did not carry out its primary duty and basic justification.

New US Anti-Terrorism Proposals

Proposals for a Comprehensive Anti-Terrorism Act of 1995 have now been introduced into the United States Congress. The Act is expected to broaden US capabilities and jurisdiction to combat terrorism both in the United States and abroad. The bill includes essential provisions that provide legal and investigative means to confront the challenges of increased terrorism. Among them are: expanded federal jurisdiction to prosecute terrorist acts, expanded restrictions on access to the U.S. for representatives of terrorist groups, expedited exclusion

hearings for alien terrorists seeking political asylum, a ban on fundraising for presidentially designated terrorist organizations - and individuals who knowingly contribute to those groups, provisions expanding nuclear materials prohibitions and implementation of the Convention on Plastic Explosives, and increased penalties for explosives conspiracies. The bill also includes an array of provisions to enhance U.S. investigative capability to actively counter terrorism within the U.S. The bill has been strongly supported by the Anti-Defamation League.

Nevertheless, if we apply this argument alone as the basis for a compensatory claim, it would be possible to argue in reply that the AMIA case is unusual, and therefore, the hypothetical situation described in the former paragraph, is not appropriate to it. But when we deal with terrorist crimes, we have to add another weighty consideration: the need to distribute the social burdens equitably.

If terrorism can be considered as a kind of social plague, which is difficult to avoid in spite of any possible endeavour on the part of the state, the damages caused in specific cases must be distributed among the whole of society, and the state must indemnify the victims, even when it is not responsible in classical terms.

This is the consideration which has persuaded several countries to establish rules for the indemnification of the victims of terrorists crimes, although the respective laws do not recognize it as a duty and provide that it is a compensation of a voluntary nature.

In Argentina, precedents exist since 1973, when those rights were recognized by Law 20007, although the Preamble states that "it is not an indemnification based upon the state's responsibility and the Civil Code's provisions, which can therefore be claimed as a right, but it is an **inherent Executive faculty, of voluntary nature, to exercise taking into account the peculiarities of the case**".

This voluntary nature manifests itself when the aforementioned law limits the indemnifiable items; excluding the

damages caused to commercial and industrial activities. The law also excludes indemnification for moral damages.

After the 1992 terrorist explosion in the Embassy of Israel in Argentina, the Argentinian government enacted Decree 664/92, providing for the extension of "the scope of Law 20007 to national corporate bodies, public and private, which were damaged in their movable goods or real estate", but also made it clear that that rule "does not recognize nor generate any responsibility of the state".

Notwithstanding the insistence of those rules on the voluntary and discretionary nature of the indemnification, it is undeniable that they imply the recognition of a state's duty. Otherwise, there would be no justification for the expenditure of huge public funds - which cannot be decided in the framework of a modern State of Law by the mere will of the rulers, without a justifying reason.

We may therefore conclude, in two different ways, that the state has an obligation to indemnify for the damages caused by terrorist attacks: that obligation arises from the duty to guarantee the safety of people and goods; or, it rests upon the unpredictable or unavoidable nature of a calamity which, since it affects the society in its entirety, has to be fairly borne by everybody.

These two arguments, independently from the above-mentioned rules and beyond the limitations indicated by them, allow us to uphold the victims' right to obtain an appropriate indemnification from the Argentinian state. ■

Inequity in the United Nation Human Rights System



Anne Bayefsky

The Charter of the United Nations proclaims the equality of nations large and small. Nowhere is this principle violated more than in the case of Israel. And nowhere is the inequity more malevolent than in the U.N. human rights system. Reasonable and equitable treatment of a multiplicity of human rights claims throughout the world ought to be one of the hallmarks of United Nations actions. It is not. Instead, for Israel's enemies human rights is the rhetorical weapon of choice. And the stage for their campaign is the United Nations. Neither the medium, nor the strategy has changed since the signing of the Oslo Declaration of Principles.

The facts are incontrovertible

Over the last 30 years the U.N. Commission on Human Rights has passed a number of resolutions critical of the human rights regime in specific states. One quarter of all those resolutions concern Israel. Omitted from the list entirely are states such as China and Syria.

Over the past 25 years the Commission has spent 11% of its total substantive meeting time on Israel alone.

Since 1977 Israel has been at the top of the Commission's agenda. Even during 1993, when there was considerable effort to focus on the situation in the former Yugoslavia, the Commission refused to move the Israeli agenda from its number one slot.

Now that South Africa has dropped off the agenda of the Commission, Israel will soon become the state which has

attracted the largest number of condemnatory resolutions in the entire history of the Commission. In 1996 Israel will not only be the first substantive item on the agenda, it will also be the only state subject to an entire agenda item.

Behind the scenes the Commission and the U.N. Sub-Commission on Discrimination and Minorities consider complaints of gross human rights violations. Since the process began in 1974, only 13 states have been moved from private consideration to public scrutiny. Syria was quietly dropped off the agenda in 1989 and 1992 without the matter being moved into the public arena. In March 1995, four states were on the in camera agenda. Three of the four were assigned investigators who would report back, again behind the scenes, to Commission members. The only state to successfully defeat the appointment of even such a confidential investigator was Saudi Arabia.

In contrast, there are a total of 26 public country-specific procedures which are currently in existence in the U.N. human rights system for all 185 member states. Five of these procedures refer to Israel alone.

In the case of eleven of the twelve states which are the subject of a Special Rapporteur, the Commission on Human Rights' strongest sanction, the mandate is for one year and is reconsidered on a yearly basis in light of developments. Only in the case of Israel is the term open-ended and the mandate renewed automatically.

The creation in 1993 of the Special Rapporteur on Israel was in addition to a multiplicity of other U.N. bodies already devoting themselves solely to Israel.

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“The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People” was established in 1968 and has produced 55 reports since. It continues to churn out 3 reports each year. It is composed of representatives of three states, only one of which has diplomatic relations with Israel. The Committee is the only country-specific human rights investigative mechanism that is not comprised of independent experts.

The “Committee on the Exercise of the Inalienable Rights of the Palestinian People” was established in 1975 on the same day the General Assembly passed the Zionism is Racism resolution. It remains very active. It has 23 member states (about half of which are democratic) and continues to produce annual reports.

The human rights treaty bodies are supposed to be non-political, independent expert bodies which monitor the implementation of the major human rights treaties. But the Committee on the Elimination of Racial Discrimination singled out Israel, along with Rwanda, Burundi and the states of the former Yugoslavia, and asked for an urgent report - in Israel’s case after the Hebron 1994 incident in which 1 person killed 29 Palestinians. The request for more information from Israel was made within 10 days of the incident, took no notice of recourse procedures underway, and included a call for solutions (like the disarming of all settlers) without even hearing the information requested of the state party. It was the first time the Committee perceived a sufficient pattern of racial discrimination warranting an urgent report in any state in the Middle East. When Israel sent the Committee the report of the official Commission of Enquiry on the incident along with a substantial number of other documents, the Committee initially refused to publish it and further condemned Israel for failing to submit a report. Committee members instead expressed the view that the act had to be put in the “overall context” described only as “violence by the Jewish settlers towards the Palestinians”.

Of course, monitoring by any human rights treaty body depends on treaty ratification and the extent of any reservations accompanying such ratification. Only 7 states in the world have not ratified any of the major human rights treaties, including Saudi Arabia and Malaysia. When Islamic states do ratify, they frequently add the caveat that nothing in the treaty will modify any internal law or practice if it is inconsistent with Islamic law.

The double standard applied by the U.N. human rights system to Israel is not only a method of diverting attention from human rights issues around the world. It is also inextricably linked to

the U.N.’s disturbing record on anti-Semitism. During the 1993 Vienna World Conference on Human Rights - only the second such conference, the first was held 25 years earlier - efforts to place “anti-Semitism” in the final Declaration were rebuffed. The Brazilian Chairman of the Drafting Committee told one delegation “anti-Semitism” was too controversial. Fifty years after the Holocaust, in a world-wide human rights meeting whose purpose was too reaffirm the values of the Universal Declaration on Human Rights, anti-Semitism could not even be mentioned.

Instead, in the 1995 Commission on Human Rights, Indonesia lectured Israel: “At a time when the world is remembering Auschwitz... we should like to join those, who... urgently call upon the Israeli government to immediately put an end to its policy of repression to the peoples under its occupation...” This year Syria condemned the Judaization” of cities in the West Bank. Last year Libya denounced “a mosaic of religions, races and groups alien to the region and designed to do away with the Arabs as a coherent, single common ethnic group”. At the 1994 Commission a resolution was adopted on racism that voiced concern with “anti-Semitism”. In a separate vote on this word 18 of the 52 members voting refused to vote in favour of its addition.

There are some who claim that the U.N. is undergoing profound changes since the Oslo agreement. There have been changes. They are not profound. Israeli credentials, that is the right to be a member of the United Nations, are no longer challenged by the General Assembly. The number of hostile resolutions directed at Israel in the General Assembly has decreased by about 25%. The pernicious content of the remaining 17 resolutions in the General Assembly in December 1994 forced Israel to vote against them in almost total isolation except for the U.S. The language or tone of the resolutions has been moderated. Throw away references to the peace process or altering the language from “condemns Israel” to “calls upon Israel” and leaving in only the occasional “deplores the violations by Israel” has been sufficient to retain the pre-Oslo voting patterns in the case of almost all of the hostile resolutions. The European Union responded to the least alteration of style by voting against Israel in 1994 - worsening its vote from 1993, and then dragged Eastern Europe down with them. A positive resolution in support of the peace process has been adopted by the General Assembly for the past two years. But in addition, in 1994 the General Assembly also passed a new resolution in

effect ignoring the on-going peace process and calling in thinly-veiled language for the creation of a Palestinian state.

The most profound example of the U.N.'s double-standard is the sole rejection of Israel from any U.N. regional group. The Asian group, composed of many Arab and Moslem states, refuses to admit Israel despite the geographic connection. The Western European and Others group, which includes such geographically diverse states as Australia, Canada and Western Europe, also refuses to admit Israel, primarily due to the objections of France and Great Britain. Exclusion from a regional group means exclusion from election to the vast majority of U.N. posts and bodies. The regional groups also function as drafting bodies and negotiating partners. As a result, Israel is excluded from much of the business of the U.N. system.

Change is resisted from all quarters. Two years ago when the Commission on Human Rights created a Special Rapporteur to investigate Israeli human rights abuses, the vote saw all Western and Eastern European Commission members vote against. In February of this year the independent Rapporteur produced a report in which he came to the conclusion that his task did not assist the parties in achieving peace, and he suggested the termination of his mandate. His remarks met with almost universal

condemnation by the Commission and in particular from Western states which accused him of undermining the Special Rapporteur mechanism in general. Efforts by Israel to implement the reports' conclusions were rejected out of hand by the vast majority of Western allies, despite the fact that they had originally voted against his appointment and the Nobel Peace Prize had been awarded in the interim. In other words, grossly inequitable treatment of Israel is perceived as a small price to pay for the achievement of a wide variety of other, unrelated Western goals.

In short, the United Nations human rights system is the tool of those who would make Israel the archetypal human rights violator in the world today. It is a breeding ground for anti-Semitism. It is a forum for the real enemies of human rights to invert principles, to accuse opponents of one-sidedness and double standards. The only double standard which the U.N. has unabashedly applied for decades victimizes Israel. Fifty years after the United Nations Charter the record ought to be an embarrassment to every democratic U.N. member. The tragedy, and the peril, is that it is not.

Slovenian Protocols Case

From time to time the Association reports on the continuing impact of the *Protocols of the Elders of Zion* around the world. The Association has now received information relating to upcoming litigation concerning the *Protocols* in the Slovenian city of Ljubijana.

According to this information, from August 1989 until April 1990, *i.e.*, while still under Communism until the first Yugoslav elections, *Tribuna* (the Communist youth daily) serialized the *Protocols*. Mladen Svarc, head of the tiny Jewish community in Ljubijana and a prominent journalist, approached the Public Prosecutor of Ljubijana on the grounds that this publication had encouraged several vandalization attacks on the local Jewish cemetery. After several protests by Svarc, Katya Boch, a Communist and present Slovenian Ambassador to Vienna, convinced the President of the Zagreb Jewish community, S. Goldstein, to accept the publication of the *Protocols* as freedom of speech.

A few months before the December 1992 elections, *Tribuna* published three installments of *Mein Kampf*. As *Tribuna* was and

is financed by the Ministry of Education and the Public Prosecutor was stalling, Svarc decided to take legal action. Thereupon, the Ministry of Education suspended *Tribuna* for six months for fear of a negative reaction by community veterans to the publication of *Mein Kampf*. The Mayor of Ljubijana, Dr. Dimitri Dupei, then President of the Slovenian Democratic Union Party, promoted *Tribuna* editor, Drozk, to editor of the Party journal *Democratija*. The President of the editorial board of *Tribuna*, Levkref, a Communist who now presents himself as a Jew, took Slovenian President Milan Kucan on a state visit to Israel in June 1995.

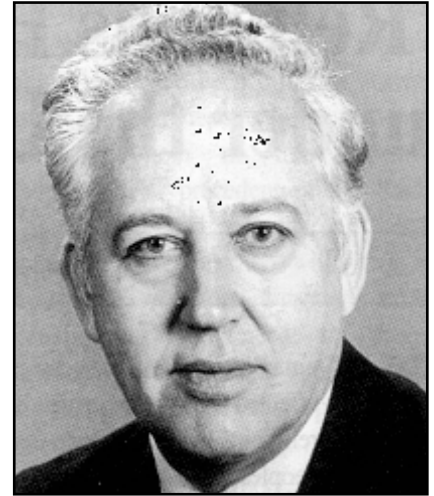
Tribuna has now been reinstated with a new Catholic editorial board. As Svarc had sued in the name of the Jewish community, he is considering reopening the suit on the grounds that there was never an answer to the community as plaintiff.

The Jewish cemetery has been vandalized four times, the most recent being 9 May 1995.

Svarc represents only seventy Jews, half live in Maribor where he is also attempting to save the fifteenth century synagogue.

Israel and the United Nations

Gad Yaacobi



The United Nations General Assembly decided in 1947 on the establishment of the State of Israel. The UN accepted Israel as its fifty-ninth member in May 1949. But one could say that the UN has done little, since the 1970's, to win the hearts of the Israeli people.

When I was appointed as Ambassador to the UN in October 1992, we set four goals to try to improve the relationship:

- * Change the UN stance towards Israel
- * Maximize cooperation
- * Increase involvement and participation in UN activities
- * Normalize Israel's relations with the member states.

We were able to meet these goals because of the changes in the world and the region, coupled with the new policies of Israel's government.

Today, we are experiencing a new era in the UN. Israel is taking its place at the table of nations. The General Assembly resolutions are beginning to reflect the new reality. Obsolete resolutions that do not serve the cause of peace are being eliminated. Of the approximately 30 negative resolutions raised annually, over 20 were either not introduced, not brought to a vote or changed.

In the past 2 years, the General

Gad Yaacobi is the current Ambassador of Israel to the U.N. The following are extracts from his address delivered in May 1995.

Assembly - for the first time - has adopted a resolution that supports the peace process, and calls for regional cooperation. 149 countries supported the resolution. Only Syria, Lebanon, Libya and Iran opposed it. It is the first positive resolution on the Middle East since the Security Council adopted Resolutions 242 and 338 more than 20 years ago.

For the first time Israelis are being elected to UN bodies.

The General Assembly endorsed an anti-terrorism resolution which calls for international cooperation on this grave matter. Terrorism against Israel and Israelis is finally being recognized here for what it is - murderous acts - and is being condemned.

Israel also continues to improve relations with UN peace-keeping forces in the region - UNIFIL and UNDOF - and with UN agencies functioning in the territories.

Our relations with the Member States have also improved significantly. Since the Declaration of Principles was signed in Oslo, 29 countries have established diplomatic relations with Israel, 10 of them Muslim or Arab. Some of the contacts, as well as some of the signings took place at the UN. We now have diplomatic relations with 155 countries out of the 185 members of the UN. With most of the remaining 30 states, we have regular working relations.

This expansion of ties has been invaluable in helping us advance our interests

in the international community and at the UN. Still there is a long way to go.

- * Israel has to be accepted for membership in a geo-political group. 184 countries out of 185 at the UN enjoy this basic right. Except Israel. This violation of the principle of universality cannot be allowed to continue.
- * We want to see the Palestinian bodies at the UN eliminated. This includes the Division for Palestinian Rights of the Secretariat, the so-called Special Committee to Investigate Israeli Practices, and the so-called Committee on the Exercise of the Inalienable Rights of the Palestinian People, among others.
- * And there is still much more in the General Assembly resolutions on the Middle East that needs improvement

Isolationism in any form - whether it is because of a misguided notion that what happens across the ocean only happens across the ocean, or because one disparages the UN as ineffective or incompetent or irreconcilably hostile - isolation in any form is a trap that we should not fall into. The issues we confront affect the entire world. The entire world must therefore confront them together.

Religious Human Rights under the United Nations

Natan Lerner

Human history has been deeply affected by the role of religion. Civilizations and peoples have felt the impact of the emotional and political implications of religion. War and peace have been their consequence. Present international life cannot escape such an impact. The way in which religion influences the mentioned events and changes is of enormous weight. Religion is certainly not marginal to the tragic conflicts of our time involving ethnicity, racism, group hatred, or to aspirations related to self-determination, separation or segregation. Against the background of those conflicts, the United Nations General Assembly proclaimed 1995 to be "the United Nations Year for Tolerance."

Trends and movements have developed in different parts of the world opposing the universal acceptance of basic rights in the sphere of religion and belief that became - or should be - an international minimum standard, from which no derogation or departure is legit-



imate. Having stated the basic principle of the universality of human rights, it is however necessary to acknowledge the legitimacy of some peculiarities, provided that they do not affect the international minimum standard and do not fall into a relativism incompatible with a modern conception of human rights.

Persecution on religious grounds is a grave and present danger, as is seen in current conflicts between believers and non-believers, or between different religions or churches in multi-religious states, or between states with an official or preferred religion and persons or communities not belonging to it. In some cases, the conflict is between a given church or congregation and its own members, and

the law is expected to introduce a balance between the opposing rights.

United Nations instruments dealing with religious human rights do not define the term "religion". This is the result of a general trend to avoid ideological or philosophical definitions, that may cause controversy and make it more difficult to reach agreement between States in such a delicate area of human behaviour. It is, however, indisputable that, in United Nations law and modern human rights law, the term "religion", usually followed by the word "belief", means theistic convictions, involving a transcendental view of the universe and a normative code of behaviour, as well as atheistic, agnostic, rationalistic, and other views in which both elements may be absent.

The United Nations system for the protection of religious human rights does not include presently any specific obligatory treaty regarding religious human rights. Article 18 of the Covenant on Civil and Political Rights, and provisions related to religious issues in the Covenant and in treaties prepared by the United Nations and other international bodies, are, of course, mandatory for those States that ratified such instruments. A significant part of those provisions are seen today as reflecting customary international law and some, such as the outlawing of genocide against religious groups, belong to the restricted category of *jus cogens*. Freedom of religion is one of the fundamental rights that cannot be derogated in states of emergency.

The discussion on the need and/or convenience of a mandatory treatment on religious rights and freedoms is incon-

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clusive. The main argument in favour of a convention is, of course, the general desire to grant religious rights a protection similar to that extended to other basic rights. The example of the widely ratified Convention on Racial Discrimination, incorporating a relatively effective system of monitoring and implementation, is pointed out as justifying the treaty-oriented approach. Arguments against a treaty, neither new or exclusive for the sphere of religion, are the risk of having to compromise on a very low common denominator of protection and the possible reluctance, on the part of some states, to ratify an instrument that may clash with long established systems of law, mainly in the area of family law, personal status, and conversion.

Against the background of this inconclusive debate, the existence of a monitoring system, in the form of reports or studies by special rapporteurs appointed by United Nations organs, provides a modest degree of protection of religious rights, naturally not equivalent to conventional obligations assumed by states. There have been proposals, mainly from non-governmental organizations, aimed at improving that system. These included suggestions to establish national bodies to monitor religious rights, in the spirit of the 1981 Declaration; the submission of periodic reports from member states to ECOSOC, and similar measures not implying a mandatory treaty.

The 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief was a powerful step forward in the search for a system of protection of religious human rights. The Declaration,

which incorporated many though not all of the principles enunciated in the Krishnaswami study, includes a comprehensive and detailed catalogue of rights related to freedom of conscience, religion and belief, and their exercise in practice. It implies progress as compared with the purely individualistic approach of the Covenants and is nearer to some recent instruments that acknowledge the group dimension of religious human rights. Such rights cannot be adequately protected unless the rights of religious organizations, communities or congregations as such are recognized and ensured, beyond the purely individualistic freedoms. This may be of great importance for collectives or communities of a religious origin in which the religious element may appear combined with ethnic and cultural characteristics.

In recent years, conventional arrangements between several states and major churches, religions or religiously-oriented communities, granted recognition to such groups and their specific rights. There may be some advantages in this case by case approach, in view of the difficulties that still exist in the area of minority rights and the reluctance of many states to accept such rights.

There are some particularly complicated problems that continue to arouse controversy. Examples of such problems are the issues of conversion, opting-out from some religions or recognized religious communities, blasphemy, rights of women and children, and conscientious objection - a matter not always of a religious nature. A major controversy - not exclusively affecting religious rights - relates to the question of striking a balance between the prohibition of incitement against religious groups, as

established in Article 20 of the ICCPR, and the freedoms of speech or association. There have been different answers to this question, depending on the constitutional system of the respective countries. The precedent of the Racial Convention and trends presently prevailing in connection with religious rights seem to indicate a growing understanding of the need to protect substantive social values against abuses of the freedoms of speech and association.

Another controversy, intensified recently, involves the issue of universality vs. "cultural relativism", namely the prevalence of some traditional forms of life and religious customs that may differ from what is described as a Western approach to human rights. It seems legitimate to respect some particular forms of group behaviour, also in the field of religion, provided the international minimum standard is not affected.

While this article is being drafted, tragic events affecting the life and welfare of millions of persons are taking place, involving population sectors defined by religion, frequently inseparable from the ethnic character of such sectors. The need to ensure the protection of religious, ethnic or cultural groups, irrespective of the nature of the group, was acknowledged by the judiciary of several countries. The shocking practices of "ethnic cleansing" added urgency to the recognition of that need.

The protection of religious and other groups may require a serious intensification of the efforts to adopt and enforce some rules of international criminal law. The Genocide Convention is a principal example of positive international norms

Libel Case Against Austrian Jewish Editor

The Association has received reports of a libel suit brought against Karl Pfeifer, editor of the *Die Gemeinde*, the official monthly of the Jewish community in Vienna following an article published by him entitled *The 1995 Libertarian Yearbook with a (neo)-Nazi Flavour*. This article was devoted to the 1995 yearbook of the so-called *Libertarian Educational Workshop*, which is closely linked to the far-right Freedom Party led by Jorg Haider. *Inter alia*, Pfeifer considered an article in the yearbook written by Werner Pfeifenberger, a professor of political science at Munster Hochschule in Germany.

According to Pfeifer, in that article Pfeifenberger described the history of the last 2000 years as a war between internationalism and nationalism. Among other things, Pfeifenberger idealized the pagan Roman state and attributed its downfall to early Christianity (which in his view was both "Oriental" and "Jewish"), and its doctrines advocating equality to all human beings.

Further, according to Pfeifenberger, the American and French Revolutions were a result of a Masonic-Jewish conspiracy: the Free-masons and the capitalists, with the help of the Jews, strived (in his view successfully) to rule the world. According to Pfeifer, Pfeifenberger sees no

difference between an internationalist of capitalist or Marxist currency; working together, both destroyed the "nationalist" (apartheid) Republic of South Africa, whose passing he deeply mourns. With regard to the Second World War, Pfeifenberger states:

"The Jews declared war on Germany, a war which did not begin in September 1939 and did not end in May 1945... the hateful tirades against of the defamation campaign against Kurt Waldheim should once again make clear to everyone that this world war is far from over."

In his article, Pfeifer described these sentiments as a "long-winded revival of the old Nazi fairy tale of the world Jewish conspiracy." As noted, Pfeifenberger has brought charges against Pfeifer personally, as well the Jewish community of Vienna, for libel - a criminal offence in Austria. Pfeifenberger, has offered as evidence of his claim that the Jews declared war on Germany, a headline from the *Daily Express* of March 24, 1933: *Judea Declares War on Germany.*"

The Association will report on developments in this case as they occur.

to that effect, but unfortunately it does not contain implementation measures.

The establishment of international tribunals to deal with the crimes committed against sectors of the population of former Yugoslavia and Rwanda, be it crimes against humanitarian law or human rights violations, is a mild positive step, despite its limited mandate. But

a more general approach in this respect seems to be necessary.

The protection of religious human rights during the United Nations era is, thus, limited. Provisions of a positive character do exist, and have exercised a not negligible influence on domestic legislation. The claim that they are not enough, particularly at times of high

international and intra-national tension, seems however to be supported by the course of events. Religious human rights deserve more than to be reputed a neglected chapter in the universal endeavours to ensure observance of, and respect for human rights.

The Israeli Government's Role in the Struggle against Anti-Semitism

Elyakim Rubinstein



It will not be a surprise to state that the State of Israel is against anti-Semitism. But the fight against anti-Semitism as an institutionalized part of its foreign policy is something which has only been introduced systematically and methodically in the last seven years. Prior to that it was dealt with on various occasions, but only sporadically.

We are now in the three weeks between the 17th of *Tamuz* and the 9th of *Ab*, three weeks which have been commemorated since the destruction of the Temple in Jerusalem. And one of the suppressors of our Jewish independence in the post-destruction years was Roman Emperor Hadrian. The *Midrash*, our Sages, on the Book of Lamentations read on the Ninth of *Ab*, speaks of a Jew who was going by and met Hadrian and his advisers, and he greeted Hadrian. Said the emperor: "A Jew is greeting me. Go and execute him". Another Jew passed by and saw what happened, and did not greet the emperor; and the emperor said: "A Jew does not greet me. Go and execute him". His advisers said to him: "We do not understand what you are doing", and he said to them: "Do I need your advice to kill my enemies?"

And it so happens that we are here at the end of June 1994. Exactly fifty years ago, in May-June 1944, the Auschwitz crematoria accepted about 400,000 Jews from Hungarian cities, from

The author, a former Government Secretary, was the founding chairman of the Israeli Government forum monitoring anti-Semitic phenomena (1988-1994). He has recently been appointed as a District Court judge in Jerusalem. This article is based on his remarks, delivered at the Rome Conference, 6 June 1994.

France, from Italy, from the Netherlands, from Eastern Galicia, from Corfu. The Holocaust was the worst expression of anti-Semitism; there was no State of Israel; the gates were closed. We sit here in a group of people which includes both experts on this period and survivors of this period, and they know and we know that after the Holocaust many people thought that the shame that was connected with public utterances of anti-Semitism would be sustained, but this is not what happened. We are witnessing the fading away of historic memory, which enables the denial of the Holocaust. New generations have arrived. The Holocaust is becoming a footnote in the books of history for many. For Israel this is still part of the national ethos. What about other places?

Of course, there are many differences between those days and our days. Today there is no anti-Jewish genocidal ideology that is prevailing anywhere. And there is a Jewish state whose gates are open. What is the role of the State of Israel in combating anti-Semitism?

Just as an illustration, when Prime Minister Rabin, the first Israeli-born Prime Minister, visited Spain in February 1994, he was asked by a Spanish parliamentarian concerning proposed legislation against racial and anti-Semitic activities, and he said: "I was twenty years old during the Holocaust. That left its mark on each of us. The establishment of the State of Israel was to a great extent the answer to European anti-Semitism. It is our duty to appeal to all states and to all people in Europe, and in particular to the Germans, that they should take all means against anti-Semitic activities. Wherever there are anti-Semitic activities, we

appeal to all relevant governments to act against the plague of anti-Semitism. This is our obligation due to the Holocaust experience".

Israel sees its main efforts and vision in *aliya*, Jewish immigration to Israel. This is the essence of the Zionist hope. But as long as there are Jews in the Diaspora, there are anti-Semitic phenomena and they must be coped with. As David Ben Gurion, Israel's first Prime Minister, said in his day, Israel is not "neutral" in these matters.

And as one of our national poets, Shaul Chernikhovsky, wrote: "A person is just a small piece of land. A person is just the shape of the landscape of his homeland".

The first time that anti-Semitism was mentioned in an Israeli Government resolution was in 1970, twenty-two years after the establishment of the State of Israel. This was when they dealt with the question of Soviet Jewry. They spoke of the right to immigrate, to make *aliya*, but also vowed to continue the struggle against anti-Semitism. I should add that before that, in 1960, following some anti-Semitic events, mainly in West Germany, the subject came up in the Knesset and Prime Minister Ben Gurion said that the government had circulated a memorandum about anti-Semitism to most countries in the world and had received encouraging responses. That was the year of the Eichmann trial. That was also the year in which for the first and only time until 1994, on March 16th 1960, a U.N. organ accepted a resolution against manifestations of anti-Semitism and other forms of racial prejudice and religious intolerance of a similar nature. That was in one of the committees in the pre-Assembly. In the General Assembly itself, at the end of the year, any mention of anti-Semitism was omitted.

After 1970, the government of Israel came back to dealing with the subject when the Zionism-racism resolution was adopted in 1975. The government denounced it, of course, but without mentioning the term anti-Semitism as such. A few years later, however, when the peace talks with Egypt began and there were in Egypt newspaper reports with anti-Semitic connotations, an Israeli government resolution expressed the hope that insults to the Jewish people would be avoided. In 1979 we came back to Zionism-racism, but again without specifically mentioning anti-Semitism. In 1980, after the rue Copernique attack in Paris, the government declared that there is no distinction between anti-Israeli and anti-Zionist phenomena, and anti-Semitism, which has brought catastrophe and disgrace upon all mankind.

But here again in the 1980s, you do not find any mention of anti-Semitism in Israeli Governments' resolutions until 1987,

when some of us felt that it was time to be more precise, and more focused on the subject, since ugly incidents were taking place. We proposed to Prime Minister Yitzhak Shamir to establish a forum monitoring these phenomena. My memorandum to him at the time said: "Whoever believed that the victory over the Nazis also overcame anti-Semitism, and whoever believed that in the penultimate decade of the 20th century there is no room for dark, irrational and false trends - must be disappointed". We established a forum, consisting of representatives of all relevant government authorities, Foreign Ministry and others, and the Zionist Organization, also accompanied by a wider forum, meeting once or twice a year, of academic people and representatives of Jewish organizations - to monitor the subject. We have been reporting to the Prime Minister and to the Foreign Minister every month, and to the full government about once a year. Our work began early in 1988 and has continued ever since. Our first written report to the full Cabinet was submitted and circulated in 1989, to be followed by more.

Of course, I want to underline, we do not panic and we do not want to cry wolf. But we do feel very strongly that this subject should be dealt with properly. A few years ago you would not find too many cables from Israeli embassies reporting on anti-Semitic phenomena. Now, you find them quite often almost on a daily basis or a few times a week. And the reasons are, on one hand, more awareness - but on the other hand, many problems in the world at large. Therefore, Israeli embassies, as part of their normal job, report home and contribute to the struggle against anti-Semitism.

Since 1988, we have been seeing dramatic events worldwide. The collapse of the Soviet empire, and the genie coming out of the bottle in terms of nationalistic forces all over Eastern Europe, instead of the "established anti-Semitism" of the regimes before. We have also witnessed the unification of Germany and its repercussions. Fundamentalist Islam has risen and has become active in this regard. The Gulf war gave room to a lot of anti-Semitic manifestations. In addition, you have rather strange developments, just in the last few weeks the embassy of Israel in Japan was involved in trying, successfully we hope, to suppress the publication of a book praising Hitler. Within the last weeks, we have also been talking to Egypt and Jordan about *Schindler's List*, because the movie has been banned in those countries.

Anti-Semitic expressions worldwide have been of great concern. They are not limited to a certain continent or country. Nor are they limited to written or verbal forms. Our reports, as well as reports by various organizations, have covered numerous incidents of all kinds.

Israel has, therefore, been talking to various governments about anti-Semitic phenomena. For instance, we do not suspect politicians in Italy of anti-Semitism, but the fact that parties which have had a neo-fascist aura have joined the coalition there was of certain concern to us, and we found a way to properly express it, without crying wolf, but remembering the experience and lesson of history.

What do we monitor? First, propaganda and anti-Jewish verbal and written material. The denial of the Holocaust; the dissemination of the *Protocols of the Elders of Zion*, and of course - violence and its perpetrators. Experience shows that the beginning is in written or verbal forms; but that it may deteriorate into violence.

Besides monitoring, we also try to contribute as much as we can to the struggle itself. First of all in the public fora. Our Prime Minister and Foreign Minister will raise the subject with their counterparts abroad when necessary. At our own level, and through our Ambassadors, we speak to governments as we deem fit. So far, every official visitor to Israel, visits *Yad Vashem*, the Holocaust memorial, as the first step in his visit. In June 1993, in Vienna, in the Human Rights Commission, the Israeli delegation tried to raise this subject.

It should be noted that, fortunately, the U.N. Human Rights Commission adopted in 1994 for the first time a resolution which called for a report on anti-Semitism, and will follow up on that through a special rapporteur. We will readily cooperate with this effort.

We have worked with the U.S. State Department suggesting to supply them with material on the subject for their annual human rights report. We have talked to Eastern European countries on the glorification of fascist and Nazi leaders. The Israeli agreement with the Vatican of late 1993 was widely discussed; its article on the struggle against anti-Semitism needs to be followed-up. Of course, what is required is not only high-level speeches against anti-Semitism, although they are important. What is needed is that a priest in a parish somewhere in Latin America or in Poland will know about this Israeli-Vatican agreement and will discuss it with his community. And here we speak as the victims of anti-Semitism over centuries.

Israel is accepted as a legitimate counterpart on the subject of anti-Semitism by all governments. The days in which you could talk to a Russian foreign minister and he would say, first it does not exist, and second, it is an internal matter, are gone. In fact, one Eastern government called in our ambassador last year to

consult with him how to talk to the local Jewish community on this subject. So this is the public and diplomatic aspect.

There is a legal side. When the "Pamiat" trial started last year in Russia, we called in the Russian ambassador. This was not done easily. But we said: "We do not want to interfere in your internal affairs or in your legal system, as we would not like anybody to do it to us. But we would like you to know that if the *Protocols of the Elders of Zion* get "approved" in that trial, it will be of great concern to us". We did that with open eyes. We talk to governments also about necessary legislative measures, as well as on the need to enforce existing legislation.

Last but not least - education. It is a must, if we do not want ignorance to prevail. Our colleagues from the Foreign and Education Ministries in Israel have initiated, now for the second time, an international essay contest to educate high school children the subject. We try to insert the struggle against anti-Semitism into cultural agreements that Israel is negotiating with various countries. We work with governments, organizations, Jewish communities, with the hope that everybody will give their hand to this struggle. Sweden is worth special mention, because there, non-Jews and Jews alike cooperate in this struggle.

What is our goal? When I submitted our last report to the full Government, I said: "What ideology guides this effort to monitor and combat anti-Semitism? The goal is to keep anti-Semitic manifestations in the category of shameful contemptual behaviour, and to prevent anti-Semitic behaviour from acquiring any form of legitimization. The attitude that we have tried to take over the years in our monitoring work, and our participation in the public legal and educational struggle against those ugly phenomena is a balanced one, without exaggerating, but without closing our eyes to reality. This is Israel's duty and Israel must discharge it by treating the issues on their own merits and in the correct proportions. Paraphrasing our Sages, it is not our duty to complete the work, yet we are not free to desist from it". That is basically what we are trying to do, and I hope, that it will be continued by the government. ■

Adv. Nener - Hon. President of the Word Jurists Association

We congratulate Adv. Itzhak Nener, First Deputy President of our Association, on his unanimous election to the position of Honorary President of the World Jurists Association, during the world assembly convened in Montreal, Canada in August 1995.

This is the first time that this association, which has chapters in 150 countries has elected a lawyer to this prestigious post.

Anti-Semitism in the New Spanish Criminal Code

Alberto Benasuly

There were two initiatives for the crystallization of our criminal legislation on racism: a proposed Basic Law to amend the Criminal Code in order to include the “apology” [praise, justification] for genocide; and a proposed Basic Law with a new Criminal Code, introduced in the Spanish Government’s resolution of 27.7.1994 - the fourth attempt on behalf of Spanish democracy to adapt the old-fashioned Code to the current constitutional framework.

On 16.2.1995, the Congress of Deputies (the Spanish House of Representatives), with the backing of all parliamentary sectors, approved a bill defining genocide.

Alberto Benasuly is the Coordinator of the Commission of the Jewish Organizations in Spain for the Reform of the Criminal Code and is a member of our Association.

The article published here consists of extracts from two articles written by him for JUSTICE, one before the promulgation of the new provisions against anti-Semitism, and the other after their enactment. The successful fight of a small Jewish Community (about 15,000, 4,000 in Madrid and 3,000 in Barcelona), against anti-Semitism, is an interesting precedent, particularly for many Latin American countries.



The bill was introduced by Gil Robles of the Popular Group (the Conservative opposition, led by Jose Maria Aznar (42) who recently visited Israel and is considered by the Spanish media as a serious challenger to Felipe Gonzalez’s Socialist government).

The bill was far reaching, and made an offence the “denial, banalization or justification of acts typified as genocide” as well as “the claim to rehabilitate or constitute regimes or institutions aimed at sheltering those practices”.

The bill established the general principle deeming the existence of aggravating circumstances in any crime “against either persons or patrimony for

racist or anti-Semitic motives or other [motives] relating to the ethnic or national origin, or ideology, religion or beliefs of the victim”.

The original draft also included a reference to the public use of “symbols of racist, anti-Semitic or xenophobic ideologies”, but this provision was omitted from the final version.

At the same time, the government presented to the parliament its own bill for the reform of the Criminal Code.

The general structure of the Criminal Code had remained unchanged since 1848.

The various parliamentary groups made numerous changes to the government’s bill, including, with minor modifications, a few anti-racist provisions already existing in the old Code: the crime of genocide as defined by the UN Convention of 9.12.1948; the prohibition against discrimination in the Civil Service; and the illegality of organizations inciting to racial discrimination or supporting it.

The government attached additional rules, particularly in terms of conclusively deeming the existence of aggravating circumstances in the case of any crime intermixed with shades or nuances of a racist or anti-Semitic nature.

Two other new additions included: the offence of “provoking or inciting to discrimination”; and the criminal offence of discrimination in the Civil Service.

We recognized the importance of the government’s bill, but did not consider it to be sufficient. At the core of that bill was the concept of “discrimination” and not “incitement to hate and racist violence”, as is usual in various countries of the EU and in other parts of the world.

The Federation of Jewish Comm-

unities in Spain, the Spanish Bn'ai Brith, the Spanish chapter of the Anti-Defamation League (ADL), and other groups, established an Ad-Hoc Commission for the Reform of the Criminal Code. The Commission proposed additions and amendments to the aforementioned initiatives and also drafted a joint memorandum with groups of the Gypsy minority and human rights organizations. The proposed amendments concentrated on three main points:

- 1) To punish not only incitement to discrimination, but also incitement to hate or violence, motivated by racism, anti-Semitism or xenophobia.
- 2) To punish not only racism and racial discrimination in the Civil Service, but also in the private sector: discriminatory selection of people allowed to enter coffee-houses or discotheques, or who are accepted as tenants of flats, *etc.*
- 3) To punish discrimination among workers or employees of any kind, in the public as well as in the private sector

The New Basic Law

The Basic Law 4/1995, dated 11.5.1995, was immediately published - on the 12.5.1995 - in an exceptional step aimed at stressing the importance and urgency of the problem.

The Law partially modifies the Spanish Criminal Code, introducing and defining the crime of apology (praise, justification) of crimes of genocide.

The new Law is clearly based on the first of the two initiatives referred to above, as presented by the opposition and later modified in a joint endeavour of all the political parties, taking into account the modifications and additions

proposed by our Jewish Ad-Hoc Commission, and even incorporating in some vital aspects text drafted and presented by the Jewish Commission.

The specific inclusion of anti-Semitism recognizes its *sui generis*, specific, different character.

Anti-Semitism is different because it embraces an exceptional combination of racial, religious, economic and political motives which do not appear in other kinds of racism or xenophobia.

New Challenges

We still intend to insist on the specific inclusion of anti-Semitism in the different racist crimes and not just on its application as an aggravating circumstance.

We also have in mind a possible future campaign for general, broad legislation against racism and anti-Semitism, far exceeding the limits of the Criminal Law, and relating to various aspects of life in our society.

The Law

In the Preamble to the Law we read, *inter alia*:

"...The proliferation in different countries of Europe of episodes of racist and anti-Semitic violence perpetrated under the banners and symbols of the Nazi ideology, obliges the democratic states to initiate a determined action against [that proliferation]...."

".... That proliferation obliges us to take a further step toward the repression of as many forms of behaviour as may signify apology or diffusion of ideologies defending racism or ethnic exclusion, obligations which cannot be limited in the name of ideological liberty or [freedom] of expression, in accordance with the doctrine estab-

lished by the Constitutional Tribunal (Sentence 214/1991, 11.11.1991)..."

First Article (full text):

"A new article 137 bis b), is incorporated to the Criminal Code, as follows:

'The apology of the crimes typified in the former article will be punished by a sanction inferior in two degrees to the [punishments] ordained respectively in the same [article].

The apology exists when, before a gathering of people, or through whatever medium of dissemination, there is an exhibition of ideas or doctrines which praise the crime, extol its author, deny, banalize or justify the acts typified in the former article, or claim the rehabilitation or constitution of regimes or institutions sheltering practices which lead to the crime of genocide, provided that those behaviours, by their nature and circumstances, are able to constitute a direct incitement to commit a crime.'

2. A new article 137 bis c), is incorporated in the Criminal Code, as follows:

'If any of the crimes provided for in the former two articles is committed by an official or civil servant, then apart from the punishments indicated there, the [punishment] of absolute disqualification shall be imposed on him; and if he is a private person, the Judge or Tribunal may apply to him a special disqualification from a public occupation or position.'

3. The current article 137 bis of the Criminal Code will be numbered article 137 bis a)".

Second Article (excerpts):

This article is incorporated in the Criminal Code and numbered "165 ter" [third]; it provides a punishment of "minor prison sentence of minimum or medium degree and a fine of 100,000 to 1,000,000 pesetas" for those who "provoke or incite, directly or by apology, through the communication media or through any other system which facilitates publicity, the discrimination of individuals or groups for motives related to their racial, ethnic or national origin, or their ideology, religion or beliefs..."

The second part of this article again defines "apology", in a manner similar to the definition in the First Article.

Third Article (Full Text):

"Paragraph 17 of the Criminal Code's Article 10, currently without content, shall be drafted as follows:

'17. To commit any one of the offences against either persons or patrimony for racist, anti-Semitic or other motives related to the ethnic or national origin, or the ideology, religion or beliefs of the victim.'"

Final Provision (Full text):

"The present law will come into force on the day after its publication in the 'Official State Gazette'.

Therefore,

I command all Spaniards, individuals as well as authorities, to observe and cause the observance of this Basic Law.

Madrid, May 11, 1995.

Juan Carlos r.

The Government's President
Felipe Gonzalez Marquez"

Pursuit of Justice Award

The third annual Pursuit of Justice Award, conferred by the American Section of the International Association of Jewish Lawyers and Jurists on an individual who personifies the goals of the Association, was given to Associate Justice Ruth Bader Ginsburg at a ceremony in the Courtroom of the Supreme Court of the United States on May 24, 1995. Presenting the award before an audience of more than 250 dignitaries and Association members was the Hon. Abner J. Mikva, White House Counsel to President Clinton, who was formerly Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and a member of the United States House of Representatives. Judge Mikva had received the Association's first Pursuit of Justice Award at a ceremony at the Supreme Court building in 1992, and Justice Ginsburg, who was then a member of the Court of Appeals and an Honorary Governor of the Association, had presented the award on that occasion to Judge Mikva.

This year's award was an original 1723 Biblical engraving of a scene from the Book of Ruth in which Boaz redeems his family's hereditary field and claims Ruth as his wife. Nathan Lewin, President of the American Section of the Association, noted in his introductory remarks that the award was selected not only because of its relation to the honoree's name, but also because the ceremony was being heard shortly before Shavuot, when the Book of Ruth is traditionally read. He also observed that Ruth is blessed as being better than seven sons, and the United States Supreme Court has had, to date, six male Jewish Justices.

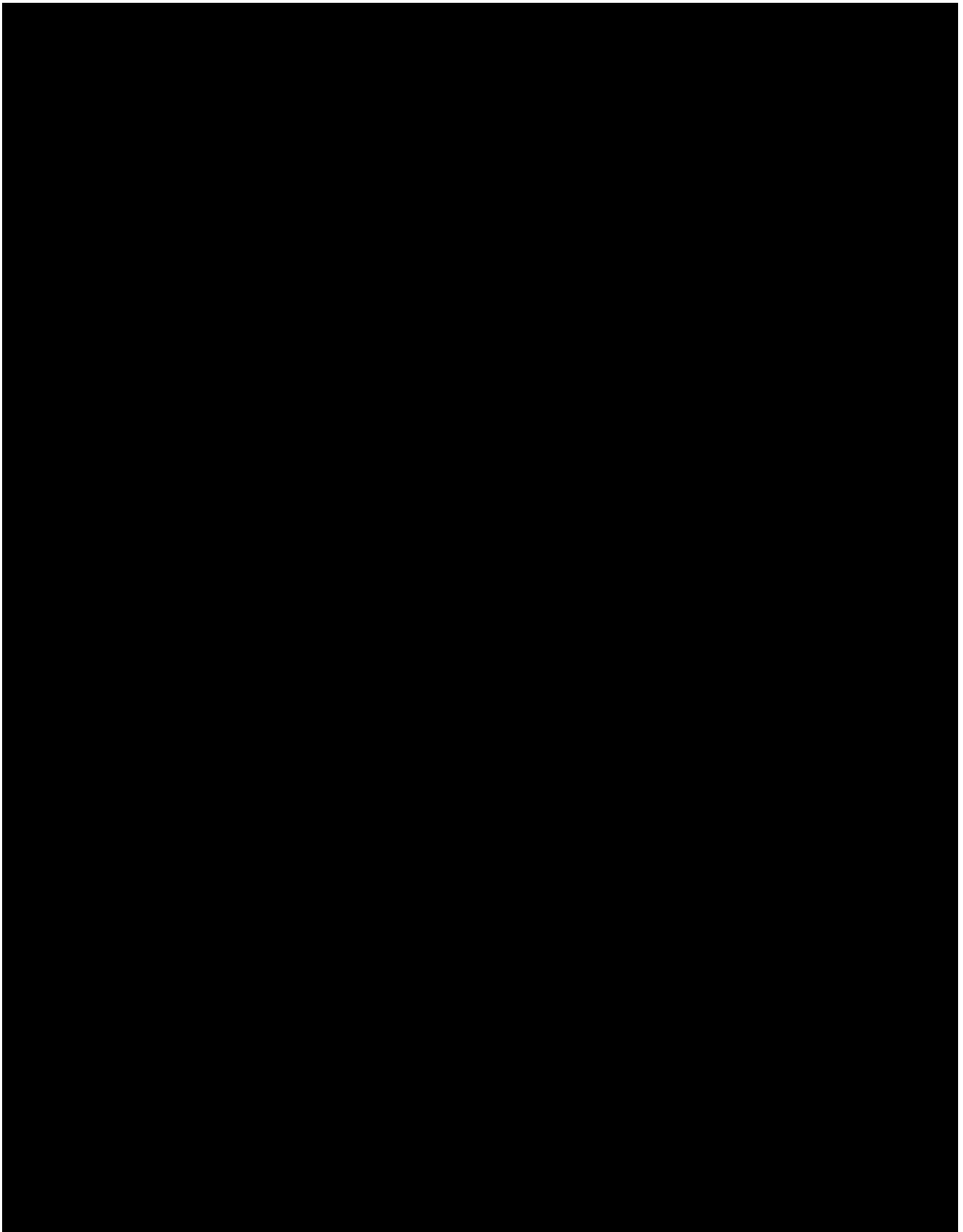
Judge Mikva's presentation recounted his experience as a colleague of Justice Ginsburg's, and Justice Ginsburg, in her acceptance of the award, movingly described her pride as a Jew, a woman, and a mother, and the discrimination she had encountered in her early legal career in this regard. She was nominated by President Clinton in June 1993 to the Supreme Court seat, after serving for the 13 years on the Court of Appeals. Her appointment made her the first Jewish Justice since the resignation of Justice Abe Fortas in 1969. Before serving on the bench, Justice Ginsburg had been a professor of law at Columbia Law School and, before that time, at Rutgers Law School.

The guests at the award ceremony enjoyed a reception of kosher hors d'oeuvres and cocktails at the Supreme Court's formal hall following the ceremony. Leading members of the bar and judges including the Court's second Jewish member, Justice Stephen G. Breyer, attended.



Nathaniel Lewin, President of the U.S. section of the IAJLJ, presents the Pursuit of Justice Award to Supreme Court Justice Ruth Bader Ginsburg.

(Photo: mark Rubin)



Sabbath Observance in United States Government Agencies

In an *amicus curiae* [friend of the court] memorandum filed by the International Association of Jewish Lawyers and Jurists (American Section) together with the National Jewish Commission on Law and Public Affairs, both represented by Attorney Nathan Lewin, the Supreme Court of the United States has been asked to issue a writ of *certiorari* in a case concerning Sabbath observance in United States government agencies.

According to the memorandum, the Court of Appeals for the Eleventh Circuit had effectively excluded Sabbath-observing individuals from service as local government law-enforcement officials, in the absence of any substantial evidence that accommodation to the religious convictions of such prospective employees would create undue hardship. While the Eleventh Circuit's decision involved a member of the Seventh-Day Adventist Church, the *amici* contended that the principles stated by the court would apply to Orthodox Jews, to Sunday-observing Christians, and to observant Muslims.

The Court was urged to correct what the *amici* regarded as the Eleventh Circuit's misapplication of the Civil Rights Act and thereby prevent the unwarranted exclusion of Sabbath-observers from government jobs which they are fully able to carry out.

Aston A. Beadle v. City of Tampa, Florida et al, No. 94-1701, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

The U.S. Civil Rights Act requires employers to provide "reasonable accommodation" to the religious needs of employees unless to do so would result in an "undue hardship".

According to the *amici*, notwithstanding the statutory requirement of Section 701(j) of the Civil Rights Act of 1964, as amended in 1972, the Eleventh Circuit had held in this case that a police department need not make any change whatsoever in its "neutral rotating shift system" for an employee who has religious convictions that prevent him or her from working from sundown Friday to sundown Saturday. The court stated that since "the employer's business involves the protection of lives and property" and it is required to allocate work schedules "among over 900 employees", any departure from its system of random assignments would be more than the *de minimis* accommodation prescribed by the case of *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

The *amici* contended that this conclu-

sion conflicts with the governing statute, with the Court's decisions applying that statute and with decisions of other federal appellate courts. They also argued that it conflicts with the Supreme Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), whereby religious minorities, such as the Seventh-Day Adventist Church, should be accommodated by legislative protections encompassed in duly enacted statutes even if the Free Exercise Clause does not, of its own force, protect them.

The main arguments put forward against the Eleventh Circuit decision were as follows:

1. The decision eradicates the statutory obligation of every employer to make some effort at "reasonable accommodation". The *amici* contended that possible accommodation in this case was far easier than might first appear. During the "field training assignment" period for Tampa police officers, trainees were expected to work for four ten-hour days. Here rather than assigning the petitioner to a field training group that worked Sunday through Wednesday, with Thursday, Friday and Saturday off, the Tampa Police Department assigned the petitioner, with full knowledge of his religious convictions, to a Friday-through-Monday

shift. This plainly conflicted with his religious obligation to refrain from work between sundown Friday and sundown Saturday and amounted to a disqualification of any Seventh-Day Adventist or any Orthodox Jew- or, indeed, any Sunday-observing Christian from the Tampa Police Department.

2. The decision undermines legislative protection for religious minorities in derogation of *Employment Division v. Smith*. The argument ran that if not for that case, the petitioner could have brought a constitutional claim under the First and Fourteenth Amendments against government employers who were refusing to hire

him or were forcing him to resign because his religious convictions would not be accommodated in his governmental employment. It would then have been the defendants' burden to establish that was a compelling governmental interest that justified denying employment on the Tampa Police Department to the petitioner - even in jobs that did not require Saturday work. In deciding *Employment Division v. Smith*, the Supreme Court held that the Free Exercise Clause gave the petitioner no right to demand accommodation or, in the absence of any accommodation, a showing of a "compelling governmental interest". Instead, the Court majority has

remitted religious observers like the petitioner to legislative accommodation.

According to the *amici*, Section 701(j) is precisely such a form of legislative accommodation. If it is to have any meaning in the context of local government employment, it cannot be limited, as the Eleventh Circuit has limited it, to government employers that do not have large employment rolls, are not involved in the "protection of lives and property," and do not maintain a work force around-the-clock. If these are to be exemptions from the statutory requirement of "reasonable accommodation" and "undue hardship", the Congress should write them into the statute.

A New Milestone in the Supreme Court of Israel

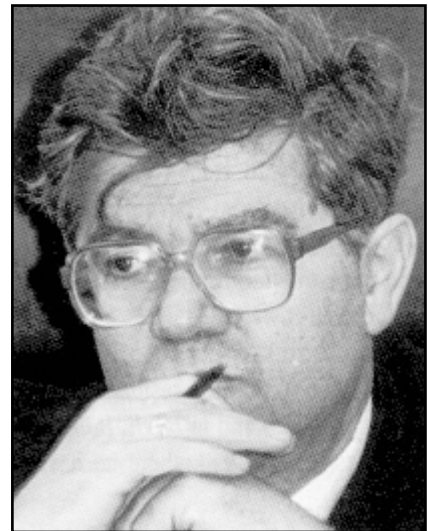


Justice Meir Shamgar

The Association marks the retirement of the outgoing President of the Supreme Court of Israel, Justice Meir Shamgar, who has been one of the principal architects of the modern Israeli legal system' and wishes him success and happiness in his future activities.

The Association congratulates Justice Aharon Barak on his appointment as President of the Supreme Court of Israel and wishes him success.

The Association also congratulates Elyakim Rubinstein, member of the Presidency of the Association, on his appointment as Judge in the District Court of Jerusalem.



Justice Aharon Barak

Can a Religious Court (Bet Din) Enforce the Commandment to Give Charity

Z. Gilat

The *tannaitic* sources regard the commandment of charity [*Mitzvat Tzedakah*] as one of great significance and lavish praise on those who observe it. Thus, for example, we find in *Tosefta Pe'ah*: “Charity and acts of kindness weigh equally with all the other commandments of the Torah combined”. Or “Anyone who ignores charity is as one who worships idols”. As well, we have in the words of Rabbi Elazar the son of Rabbi Yossi “Charity and acts of kindness serve as a great advocate for Israel before their Father in Heaven and bring peace between them”.

For all that, there is no statement of a financial obligation or an implication of a right to enforce this commandment on one who does not observe it. There exist only two examples in *tannaitic* literature which indicate the commandment as an enforceable obligation:

- A. When a person has made a verbal commitment (oath) to give money to charity and later refuses to honor his commitment as explained in *Bavli, Rosh Hashana*, and in the *Sifre* commentary to Deuteronomy on the passage: “Guard that which comes from your lips and do as you have vowed to the Lord your God to donate that which you have spoken”. This is an instruction to the Court [*Bet Din*] to force you to do as you have vowed.
- B. When charity is part of the general obligations which are incumbent on all the residents of a given municipality, as in *Tosefta Pe'ah* and in *Bavli, Baba Batra*, each individual who resides in a place: “where he has resided for [no less than]

thirty days is obligated equally with all the other residents to donate to the general charity fund, after six months residency he is obligated to donate to the fund for clothing the poor and after one year for the strengthening of the city walls”.

What distinguish the commandment of charity from other positive commandments which can be enforced, that makes it impossible to obligate one who refuses to give to charity? A “*bereita*” in *Bavli, Ketubot*, teaches us: “... as to the positive commandments: if one is told to build a *Sukkah* and does not do so, to prepare a *Lulav* and does not do so, he is to be beaten [by order of the *Bet Din*]”. Moreover, even commandments which must be done willingly and their observance is nullified if they are done under duress can, under certain circumstances, be enforced. About the commandment to bring sacrifice, the Torah teaches us: “He must make the sacrifice of his own free will”. A “*bereita*” in *Bavli, Rosh Hashana*, interprets free will as follows: “we learn the words ‘of his own free will’. Can it be done against his will? How is this possible? He is coerced until he says that it is his will”. Similarly, a bill of divorce [*Get*] must be given by the husband of his free will and yet, in the *Mishna* we learn “one finds [cases] in bills of divorce that the husband is coerced until he says that it is his will”. Furthermore, if giving charity, as opposed to the commandments, cannot be enforced why are the two cases cited above exceptions to the rule?

It would seem that the commandment of charity bears a unique characteristic in that it is totally dependent upon the will of the donor as to the beneficiary and the amount to be given. No specific recipient has any right to make demand of the donor on his own behalf or as in the desired amount of donation. The Torah states:

Dr. Gilat lectures at Bar-Ilan University, Israel.

“if there is a poor person among you, of your brethren, within your gates in the land which the Lord your God has given you, do not harden your heart or close up your hand towards your impoverished brother, rather open up your hand and provide him with that which he lacks”.

The author of *Sefer Hachinuch* [The Book of Education] emphasizes this as the ethical - religious basis for the commandment of charity. The Torah, we are told “commands us to provide for the needs of those who are our brethren, according to our own ability to do so. As a rule ‘anyone who benefits his fellow whether with money, food or any other needed object or even with kind and comforting words’ this is within the framework of charity and the reward is very great”. In a previous comment he writes: “do not allow miserliness and meanness to rule over you, rather open your heart to the qualities of generosity and pity”. If in all the commandments free will acts only as a prerequisite to the observance of the commandment, in the case of charity, notwithstanding the obligation to donate in principle, the commandment in its entirety is dependent on the free will of the donor as to the identity of the recipient and the amount, and thus free will is the qualitative basis of the commandment itself.

Since the entire commandment of charity depends upon the will of the donor the court has no authority to force him to give more than he desires to give. The *Talmud* is replete with stories about individuals who chose to give to others far beyond the actual needs of the recipients. Of Hillel the Elder we are told that for a certain poor man of worthy family he provided “a horse to ride upon and a servant to run before him. Once, not having found such a servant he, himself, ran before him a distance of three miles”. In a similar case, the people of the Upper Galilee provided “a pound of meat each day” to a poor man in one village, the implication being that this constituted exaggeration.

Nor only were the donations to charity often far beyond the actual needs of the recipients, there were even cases of exaggeration in the giving of charity. *Midrash Kohelet Rabba* tells of Rabbi Tanchum son of Rabbi Chia who, when he wanted to purchase a pound of meat “would buy two pounds - one for himself and one for the poor, two bundles of vegetables - one for himself and one for the poor”. *Bavli Ta’anit* related the story of Rabbi Elazar of Birta who endeavoured to donate more than his actual capability:

“when the charity collectors saw him they would run from him

because he would give them all the money he had. One day he went to the market to purchase a dowry for his daughter. The charity collectors saw him and ran but he caught up with them. ‘Tell me honestly for whom are you now collecting’. ‘For two orphans’ they replied. ‘They take precedence over my daughter!’ he said and gave them all the money he had with them”.

In so far as charity is conditioned upon the kindness and generosity of the donor, one cannot enforce the giving of charity upon one who does not wish to do so. On the other hand if the obligation to give charity stems not only from the generosity of the donor but rather from a vow which he has made, then, it is indeed enforceable. One who takes an oath to donate money to charity knowingly accepts the obligation to act upon his statement and from that moment he can be coerced as in every case of one who is in breach of a verbal obligation.

Similarly, this rule applies in the case where charity is part of the obligations agreed upon by the community. All such obligations derive from conditions imposed by the residents upon themselves. The authority for such impositions is stated in the *Tosefta Baba Metzia* which allows the citizenry to supervise “rates of exchange, weights and measures and salaries of hired workers [minimal wage rates]”.

These can be imposed by the majority even upon the minority who do not accept the decision. Professor Shalom Albeck in his work “*Monetary Legislation*” in the *Talmud*, explains:

“there is implied agreement that he himself benefits by the decision prior to his refusal to abide by it”.

Donation to charity and provision for the needs of the poor can be enforced:

“since the majority benefit by it... and he is obligated to participate in donating charity to the poor of the city. He benefits from the decision whether, because in his own time of need he will receive charity, or because the centralization of efforts to aid the poor is more economical than individual donations... Since the majority of the residents benefit by this arrangement we may assume that the minority benefit as well. The opinion of any individual who does not agree is not to be taken into consideration and he must pay his fair share along with the majority.”

Maimonides stresses the critical importance of the matter of charity when he writes: “Every town which has a Jewish community must appoint officials to collect for charity”. Never

have we seen or heard of a Jewish community which did not have a charity fund. Thus, it is clear that the minority cannot refuse to participate.

If charity is an obligation imposed on all the residents of a town, and it is possible to coerce the minority of those who refuse to donate, it follows that the amount incumbent upon each resident is defined by the estimate of the charity collectors of the financial status of each individual, just as his wealth is estimated for purposes of other financial obligations [*i.e.* taxes].

Meiri, in his commentary to *Baba Batra*, writes of charity collectors:

Anyone who pressures one who is unable to comply is considered wicked.... and, on the other hand, one who does not coerce those who do not deserve it, but does not refrain from doing so where it is proper, is as a righteous judge whose decisions are truth, and this is the law in all cases of collecting public funds”.

Conclusion

We may therefore conclude that charity cannot be enforced as it is a commandment entirely conditioned on the generosity of the donor. Notwithstanding, *Rava*, who was a charity collector in his hometown, forced Rabbi Nathan to give to charity according to his [*Rava's*] estimate of Rabbi Nathan's ability to give, just as all residential obligations are enforced.

Although the general commandment of charity is dependent on the will and consent of the donor, the Rabbis understood that some order of preference does exist. The *Sifre* informs us that first consideration goes to the poor:

“among you and not among others, those poor who are hungry and unable to feed themselves, your paternal brother before your maternal brother, the poor within your gates before those of another city. Those in your country precede those in foreign lands. One who resides permanently within your gates takes preference before a transient beggar to whom you have no obligation”.

The order of priority in the *Sifre* is not obligatory but is rather to be seen as sound advice based on the Rabbi's understanding of the nature of charity. In the common order of affairs one would give preference to supporting those near to him before those far removed. It is accepted that a donor prefers to give to the poor of his own city, whom he sees and upon whom he takes pity, before giving to the poor of another city. It is equally understandable that one donates charity when it is asked of him

by the potential recipient rather than expecting the donor to seek out the needy person too embarrassed to appear with his request.

Other examples are to be found throughout Talmudic literature wherein various acts are described as being within the realm of the commandment of charity. They are, nonetheless, to be viewed as worthy conduct, sound advice, but not as a basis for an enforceable, obligatory commandment.

Glossary

Tannaitic literature - Post biblical Hebrew legal studies until circa 200 C.E., consisting of:

Mishna - Compiled and edited by Rabbi Yehuda Hanasi around 200 C.E.

Bereita - Tannaitic material quoted in the Talmud but not included in the Mishna (lit: outside).

Tosefta - Later collection of Tannaitic material appended to editions of the Talmud (lit: addition).

Sifre - Legalistic commentary on the books of Numbers and Deuteronomy.

Midrash - Generic name referring to various works of homiletic interpretation of biblical texts (e.g. Midrash Rabba).

Tanna (pl. Tannaim) - Collective title of the Rabbis whose works appear in all of the above.

Talmud or Gemara - Commentaries and deliberations of the post-tannaitic period until circa 500 C.E., consisting of: Bavli - Babylonian Talmud, and Yerushalmi - Jerusalem (or Palestinian) Talmud.

Various tractates quoted:

Rosh Hashana - New Year

Gitin - Bills of Divorce

Ketubot - Marriage Contracts

Pe'ah - Dealing with 'Harvest Charity' (lit. edge)

Ta'anit - Fast days.

Baba Kama, Baba Metzia, Baba Batra - (lit. first gate, middle gate, last gate) commercial law, damages and torts.

Other books mentioned:

1. **Kohelet** - Ecclesiastes.

2. **Sefer Hachinuch** - Book of Education - Medieval commentary on Maimonides listing all 613 commandments in the Torah.

3. **Meiri** - Medieval commentary on the Babylonian Talmud.

The Right To Send Police Outside the Border of Israel

Noam Federman v. Minister of Police, General Inspector of Police

Originating Motion 5128/94 before President Shamgar, Justice Goldberg, Justice Orr, Justice Zamir, Justice Dorner, Application for Order Nisi, Delivered on 4.10.94.

Precis

This petition concerned the Israeli government's decision in September 1994 to accede to the United States' request to dispatch a delegation of Israeli policemen to join the multinational supervisory force then operating in Haiti. The multinational force comprised representatives from 20 countries and acted under the terms of UN Security Council Resolutions 917 and 940 - providing for the return of democracy to Haiti.

The Israeli force was to comprise 30 volunteers, who were to have supervisory and liaison functions, and who would be under the orders of the US commander in the region. The purpose of the force was defined as 1) ensuring the preservation of law and respect for human rights; 2) assisting the local police with advice, training and investigations; 3) the force would not have operational duties.

The petitioner objected to the dispatch of Israeli policemen on two main grounds:

1. Israel should not intervene in conflicts with which it is unconnected.
2. Under the Police Ordinance, the Minister of Police and Inspector-General of Police are not authorized to involve police forces in disputes outside the borders of the state, where the issues involved are not the direct concern of the state.

The Supreme Court unanimously dismissed the petition.

The judgment was given by President of the Supreme Court, Justice Meir Shamgar.

Judgment

President Shamgar noted that by virtue of Section 1 of the Basic Law: the Government, the government is the executive authority in the state and that while various laws confer powers on the government and its ministers, its powers are wider than those set out in any particular law; or, put differently, the authority responsible for performing the functions of the state in respect of innumerable matters, exercises, for the purpose of fulfilling these functions powers which are not stipulated by statute but which have been described by Justice Zamir as "administrative powers" or "inherent powers" (*Law and Government*, Vol. 81, A, 112-113, Heb.).

However, Justice Shamgar noted that these powers are not unlimited; for example, where powers are given expressly and solely to one body, another body, including the government, cannot exercise them. The right to exercise administrative powers is residual and therefore where legislation deals with a particular issue, general governmental powers are inapplicable. There is no person and no authority which is above the law or which is free from its constraints.

Moreover, there are actions which are outside the scope and competence of the government, because carrying them out without legislative consent is contrary to fundamental normative concepts which arise from the nature of Israel's governmental system. This is true in relation to basic rights which are part of our positive law, whether incorporated within a Basic Law or not. Thus, for example, the government would not have power to close a newspaper on the basis of an administrative executive decision, if there is no express provision providing for this, even if no Basic Law has yet been enacted providing for freedom of speech. Such an action would be contrary to the fundamental tenets relating to human freedoms which are embedded in our system, and which may only be circumscribed by legislation. This means that the basic right of free speech, which is part of our positive law, creates a restriction which binds the hands of the executive authority and prevents it from infringing, without

lawful agreement, the prohibition on violating the freedoms conferred by it.

“General” or “inherent” powers have been described by various scholars as the legacy of the prerogative of the British crown, as expressed in Israel’s common law. In President Shamgar’s opinion, however, the powers arose of themselves from the very fact of the establishment of the state and its authorities.

And in any event, irrespective of the roots of the inherent powers, the Israeli legislature did not see fit to leave this matter within the framework of the ‘oral law’ but incorporated an express provision in the Basic Law: the Government, to the following effect:

Section 29 - Powers of Government

The Government is competent to do in the name of the State, subject to any law, any act the doing of which is not enjoined by law upon another authority.

President Shamgar noted that within the framework of its residual powers, the government manages the state’s foreign relations. It establishes contacts with states and international organizations, hosts heads of state and is hosted by them, maintains dialogues with them, assists with advice and material aid, such as agricultural development aid in the countries of Africa and South America, and even gives active aid to victims in times of distress, as well as holds out an open hand to the Jewish people in the Diaspora.

These are matters of inherent power of the government administers the affairs of the state, not only directed inwards but also directed externally.

President Shamgar clarified that of course the legislature may enact laws which deal with issues which fall within the inherent powers of the government, in such a case the government would act in accordance with the principles established by the law. Thus, for example, the legislature can remove the signing of international agreements from the arena of the general powers of the government in the area of foreign relations - today part of the inherent power of the government - and provide for it in legislation. In this context, President Shamgar suggested that consideration be given to the possibility of anchoring in statute issues of international foreign aid. Such legislation exists in England and the U.S.

Nevertheless, in the absence of such legislation, the existing constitutional norm applies to the effect that contacts and activ-

ities on the international level fall within the general powers of the executive authority which today draws its power from Section 29 of the Basic Law: the Government.

President Shamgar noted that foreign relations are a wide and multi-faceted field. It includes not only formal relations with other states but also dialogue, mutual assistance, advice and consultations. Aid comes in many different styles.

In the instant case, Israel had been asked by a friendly state to take part in advice, training and supervision of police forces in a third country, in which the international community was attempting to restore democracy.

Israel has no legislation which refers to the sending of advisors or supervisors of the type requested, to a foreign country. Did this mean that the State of Israel had no power by law to send advisors? In the absence of a law, was there no power to send ambassadors, consuls or envoys to a foreign country? In the absence of a law, was it forbidden to send a delegation of doctors to Rwanda or experts to deal with natural disasters in Armenia?

In President Shamgar’s view, such powers were conferred on the government within the framework of its general powers in accordance with Section 29 of the Basic Law: the Government - in the same way that the government had power to receive foreign advisors and experts in Israel, without express agreement in law.

Of course, all this is subject to accepted parliamentary review.

President Shamgar stated that in his view there is no justification and no legal basis for restricting the power of the State of Israel in comparison with other sovereign states which act in this field, without specific legal provisions.

With regard to the issue whether the police delegates could be policemen in service, President Shamgar noted that the police serve under the terms of the Police Ordinance (New Version) - 1971.

Section 3 of the Ordinance - Duties of the Police, provides as follows:

The Israel Police shall be employed for the prevention and detection of offences, the apprehension and prosecution of offenders, the safe custody of prisoners and the maintenance of public order and of the safety of persons and property.

Other legislation provides for additional police powers.

It is undisputed that the powers of the Israel Police, as a force

which operates on the basis of these laws, are conferred on it only in the areas under the control of the State of Israel, and in this framework it acts for the purposes set out in the Ordinance. Accordingly, the Israel Police and Israeli policemen are not empowered to exercise police powers conferred upon them by the various laws, outside the territory controlled by the State of Israel.

Here there was no intention to exercise police powers in Haiti. Moreover, even from the point of view of public international law, the source of the power for the actions of the multi-national force, including the Israeli police delegation, within the territory of Haiti, were the resolutions of the Security Council and the orders of the local united command acting in accordance with the decisions of the UN.

The volunteer forces being sent to Haiti were sent on the basis of their personal expertise for the purpose of giving advice and guidance, within the framework of the international body, and with the agreement of the local government authorities, and not

for the purposes of exercising powers in accordance with any Israeli legislation.

The fact that the government of Israel was asked and decided to send a delegation of policemen as its representatives in the multi-national observation force ensued from the substantive nature of the task which the delegation was to fulfill in terms of the expertise of its members, in the same way that military and civilian doctors were sent to treat Rwandan refugees, rescue forces were sent to Armenia, and agricultural experts were sent to other countries.

The delegations did not fulfill their regular statutory functions in accordance with the laws of Israel in the places to which they were sent, but rather state missions within the framework of the foreign relations of the State.

Accordingly, the Court found no room to intervene in the government's decision and the petition was dismissed.

Abstract prepared by Adv. Rahel Rimon.

In Memoriam Stephen Roth 1915 - 1995

The Association regrets to announce the passing of Stephen Roth in London on 27 July, 1995. Stephen Roth was a human rights campaigner, writer, promoter of the Jewish community both in Israel and abroad, and a very active and concerned member of our Association.

Stephen Roth headed and fostered the Institute of Jewish Affairs in London for over two decades. He held high positions in international and British Jewish organizations including the World Jewish Congress, the Board of Deputies of British Jews and the Zionist Federation of Great Britain and Ireland.

Stephen Roth was born in Hungary. He was active in the Zionist movement,

and helped rescue Jewish refugees escaping Nazi occupied Austria, Czechoslovakia and Poland. He himself was arrested by the Gestapo and closely escaped transfer to Auschwitz. In 1946 Roth was one of the Hungarian Jewish representatives at the Paris peace conference. Moving to London he played an important role in the World Jewish Congress, particularly in helping survivors of the Holocaust and reconstructing Jewish life throughout Europe. In 1966 Roth became director of the Institute of Jewish Affairs, an important research institute into contemporary Jewish affairs. One subject which was of particular concern to him was the restitution of Jewish communal and personal assets.



Over the years he campaigned for human rights and wrote many articles and essays on the subject. One of his articles was published in JUSTICE in the Summer of 1994.

The Association offers its sincere condolences to Stephen Roth's many friends and family.

Association's Presidency Meeting

At the Presidency Meeting of the Association held in Tel Aviv on 2 July, 1995, Presidents of Chapters reported on their activities over the year. Highlights are as follows:



Bulgaria - Jossel Geron, President: The Section is mainly concerned with the restitution of Jewish property and claims against Germany by people who have not yet received compensation. The Section is involved in the legal fight against growing anti-Semitism in Bulgaria, although this is difficult in view of the state of the legal system. The Section discusses legislation with all parties in the Bulgarian Parliament.



Canada - Irwin Cutler, Special Counsel to the Association, reported on representations to the Canadian government on bringing Nazi war criminals to justice, as well as on the restitution of Jewish property in Poland. The Section has inaugurated an annual lectureship in Jewish law, the first to take place in November, 1995 in memory of the late Justice Henry Steinberg of the Quebec Court of Appeals.



France - M. Joseph Roubache, President, reported on the dangers of the National Front in France and the efforts of the Section to fight them through traditional political parties. The French Section has been elected to the 20 member directorship committee of CRIF; in addition, it has been attempting to strengthen cooperation between French and Israeli judicial and legal institutions.



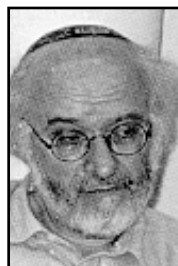
Hungary - Dr. George Ban, President, reported that altogether there are about two hundred Jewish jurists in Hungary and the Hungarian Section, which was only inaugurated a year ago, is making efforts to promote membership in the Association from among this group. The small number of existing members are seeking ways of increasing their involvement in national and international activities of the Association.



South Africa - Henry Shakenovsky, representative, reported on human rights developments since the accession of Mandela. Many Jewish lawyers have left, however those remaining have an important role to play. The Association is accepted and encouraged, members of the Association sit on the Constitutional Court. The Association functions well within the new regime: it forms an autonomous part of the Board of Deputies.



United Kingdom - Jane Marwitch, treasurer, reported on meetings, lectures on a variety of subjects and popular social activities, including the forthcoming third annual dinner to take place in September at Banqueting Hall, Whitehall Palace, with Judge Goldstone of South Africa as guest of honour. The Section is based in the Middle Temple and has members from all walks of the legal profession.



United States - Nat Lewin, President, reported that the American Section now has a functioning central office which is making efforts to increase membership throughout the US. The Section is involved in filing amicus curiae briefs in a variety of cases pending before the courts. The Section recently organized the successful Pursuit of Justice award at the Supreme Court and is presently planning its annual meeting to take place in February 1996.

The Tenth International Congress of Jewish Lawyers and Jurists

Jerusalem and Tel-Aviv, December 26, 1995 -January 1, 1996

Programme

Tuesday, December, 26, 1995

Dan Panorama Hotel, Tel-Aviv

- 09:00-14:00 Registration at the DAN PANORAMA Hotel, TEL-AVIV
- 15:00-16:00 Drive to Jerusalem by bus.
- 16:30-17:30 Visit the Supreme Court of Israel
- 18:00-19:30 Welcome Reception by the Mayor of Jerusalem, Mr. Ehud Olmert at the new City Hall
- 20:00 Opening Session:
In honour of Jerusalem's 3000th Anniversary I.C.C.
Jerusalem - International Convention Center, Binyaney Ha'ooma, Jerusalem
Opening Address:
Judge Hadassa Ben-Itto, President of the Association
Keynote Address:
"jerusalem The Eternal City"
By Sir Martin Gilbert
Oxford University, U.K.
Greetings:
Justice Aharon Barak, President of the Supreme Court of Israel
Professor David Libai, Minister of Justice of Israel
Mr. Ehud Olmert, Mayor of Jerusalem
Mr. Dror Hoter-Ishai, President of the Israel Bar Musical Programme
Return by bus to Dan Panorama Hotel, Tel-Aviv

Wednesday, December 27, 1995

Tel-Aviv, Dan Panorama Hotel, Tel-Aviv

- 09.00-12.30 Public Trial:
The Right of Minorities to be Equal and to be Different
Presiding: Justice Meir Shamgar, formerly President of the Supreme Court of Israel
Justice Pierre Drai, Premier President, Cour de Cassation, Paris, France
Justice Charles L. Dubin, Chief Justice of Ontario, Canada
Justice Menhaem Eylon, formerly Deputy President of the Supreme Court of Israel
Justice Richard Goldstone, Constitutional Court of South Africa; Prosecutor, U.N. International Criminal Tribunal for the former Yugoslavia, The Hague, Holland.

Justice Stanley Mosk, Supreme Court of California, U.S.A.

Justice Ellen A. Peters, Chief Justice of Connecticut, U.S.A

Pleaders:

Professor Arnold Enker, Faculty of Law, Bar-Ilan University, Israel

Mr. Nathan Lewin, Attorney at Law, President of the American Section, Washington, D.C., U.S.A.

Two more pleaders to be announced

10:45-11:00 Coffee Break

13:00 Lunch Break

16:00-17:00 Public Trial: Final Session

18:30 Transfer to the Tel-Aviv Municipality - Kikar Malkhei Israel

19:00 Reception by the Mayor of Tel-Aviv, Mr. Roni Milo at City Hall

20:00 Evening Programme under the auspices of Tel-Aviv Municipality, with performing artists - including music, singing, folklore dancing, - "shalom" dancers - at the new Enav Cultural Centre, Tel-Aviv Municipality.

22:00 Transfer back to Dan Panorama Hotel

Thursday, December 28, 1995

Dan Panorama Hotel, Tel-Aviv

09:00-12:45 Workshops:

- 09:00-10:45 (1) A New Economic Middle East - Vision and Reality
Chairperson and Moderator: Judge Meir Gabay, Judge of the....., Chairman of the International Council of the Association
- (2) Advocate Yigal Arnon, Israel, Chairman of The First International Bank of ,Israel
Another participant to be announced

10:45-11:00 Coffee Break

- 11:00-12:45 (3) Islamic Fundamentalism - A Threat to Whom?
Chairperson and Moderator: Professor Bernard Lewis, Princeton University, U.S.A.
Professor Martin Kramer, Head of The Moshe Dayan Centre for Middle Eastern and African Studies, Tel-Aviv University, Israel
Mr. Uri Lubrani, Government Coordinator for Lebanese Affairs

- 13:00 Lunch Break
 15:00-18:45 Workshops:
 15:00-16:45 (1) Disarmament and Non-proliferation Treaties - Are They Effective?
 Chairperson and Moderator: Professor Yoram Dinstein, President, Tel-Aviv University
 Participants to be announced
 16:45-17:00 Coffee Break
 17:00-18:45 (2) Jews As A "politically Correct" Scapegoat
 Chairperson and Moderator: Professor Irwin Cotler, McGill University, Montreal, Canada
 Judge Hadassa Ben-Itto, President, International Association of Jewish Lawyers and Jurists
 Professor Ann Bayefsky, Faculty of Law, University of Ottawa, Canada
 20:00 Dinner with the Prime Minister of Israel
 Mr. Yitzhak Rabin
 Dinner sponsored by Koor Industries

Friday, December 29, 1995

Dan Panorama Hotel, Tel-Aviv

- 09:00 - 12:30 General Assembly - Open Session
 Chairman: Mr. Itzhak Nener, First Deputy President of the Association
 Activities and plans of the Association
 Elections of Officers of the Association
 13:00 Lunch with the Minister of Foreign Affairs
 Mr. Shimon Peres
 Lunch sponsored by The First International Bank of Israel
 19:00 Traditional Shabat Dinner (optional) (*)

Saturday, December 30, 1995

- 10:30-13:00 Walking Tour of Tel-Aviv Jaffa and the old quarters of Tel-Aviv.
 Tour begins at Dan Panorama hotel and ends there.
 19:00 Reception by the (President?) Israel Bar at the building of the Israel Bar, 10, Daniel Frish Street, Tel-Aviv

Sunday, December 31, 1995

- 09:00-13:00 Half day tour of Tel-Aviv by bus - sponsored by the Municipality of Tel-Aviv. Leaving from the Dan Panorama Hotel and returning there.
 13:00 Afternoon - At Leisure
 20:00 Farewell - Gala Dinner
 Entertainment - Dance Music

Monday, January 1 - Wednesday 3, 1996

Post-Congress Tour to Jordan.
 See enclosed programme.

(*) not included in Registration Fees

Registration Fees:
 Participant \$350.00
 Accompanying person \$150:00

Bus transportation will be provided to Jerusalem and back to Tel-Aviv, in Jerusalem, to the Municipality of Tel-Aviv and for the guided tour of Tel-Aviv.

Refreshments - coffee/tea/fruit juice/pastry will be served during coffee breaks.

Simultaneous translations English/French/English will be available.

Post Congress Tour Amman and Petra

Mon. Jan. 1 - Wed. Jan 3 1996, 2 Nights/2 Days

Monday, January 1, 1996

Depart Tel Aviv via Sheikh Hussein Bridge. Sightseeing of Jerrash (Pompeii of the East) and of Ajlun (Crusaders Castle).
 Dinner and overnight at Philadelphia Hotel, Amman

Tuesday, January 2, 1996

Full day tour to Petra including horse back ride through the Siq.
 Dinner and overnight at Philadelphia Hotel, Amman.

Wednesday, January 3, 1996

After breakfast, city tour of Amman and return via Sheikh Hussein Bridge to Tel Aviv.

Package Rates
 Per person sharing a double room - \$385.-
 Single room - \$479.-

Package includes:-
 Transportation throughout (Tel Aviv-Jordan-Tel Aviv), 2 nights accommodation at a 5 star hotel in Amman (Philadelphia Hotel or similar), on half-board basis. Touring in Jordan includes Petra, Entrance fees, local and Israeli tour escorts, border taxes.

Package does not include:-
 Tips: to guide, horseboys in Petra, local and Israeli tour escorts.
 Visa fees: visa to be arranged individually in your country.
 Additional fees that may be imposed after September 1, 1995.

For those interested:
 Please send a cheque deposit of \$100 per person to the order of "Isram Israel Conventions" to ensure your participation. Space is limited and will be confirmed on a "first come first served" basis.