The International Association of Jewish Lawyers and Jurists

JUSTICE

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TABLE OF CONTENTS

PRESIDENT'S MESSAGE

In 1990 we went to press with the first issue of our Newsletter in English. Since then the publication has grown from 8 to 44 pages and is distributed in 3 languages - English, French and Spanish. As the Newsletter expanded in volume, it also developed in substance. As we kept adding new subjects and dealt with new issues, we came to realize that the publication also deserved a new format and a new title.

We are proud to present to our readers the new format of our publication, titled *JUSTICE*. The Hebrew words mean "Justice Justice shalt thou pursue". This title seems to us to appropriately express the aims of our Association. We hope that the response of our readers to this new format will be as positive as that expressed in a large number of letters constantly arriving in our office, in praise of our former Newsletter.

Justice will aim to furnish information, provide insights, encourage debates and point out injustice. It will also reflect the ongoing activity of our Association world-wide.

This maiden issue contains some new columns including a review of principles of Jewish Law and recent decisions of the Supreme Court of Israel.

We invite our Members to take an active part in this publication by contributing material in the form of background information, news items, letters to the editor and suggestions.

The Middle East peace process is again at the center of our attention. We are all following the intricate negotiations hoping for their success but at the same time we note with anxiety that the Palestinian Covenant, calling for the elimination of the State of Israel, has yet to be rescinded. We also despair at the continuing brutal murders of innocent victims perpetrated by Palestinians. If peace is to come to the region, violence must stop or be stopped.

The signing of an agreement and the forthcoming establishment of diplomatic relations between the State of Israel and the Holy See, is an event of historical magnitude. The viability of these accords can only be measured by the test of time. No document or ceremony can wipe out two millennia of persecution of Jews by Christians or the silence of the Holy See in the face of the Holocaust, but we welcome this development as a step in the right direction.

Jews and Christians have cooperated for many years and in many countries, in an effort to erase bigotry and combat anti-Semitism. We hope that the new formal commitment on the part of the Vatican to promote reconciliation will give added impetus to the struggle against anti-Semitism and will inspire the Vatican to play a major role in combatting historical revisionism and denial of the Holocaust.

Official recognition of the State of Israel has long been overdue. We hope that a new era has been opened and we plan to include this subject in the program of the meeting of the World Council of the Association which will take place in Rome in June 1994, coinciding with the commencement of diplomatic relations.

A Moscow court has recently ruled in favour of the *Jewish Gazette*, a Russian Jewish newspaper, and its editor, in a claim for libel instituted by the anti-Semitic organization *Pamyat*. Though there is reason for satisfaction at the outcome of the prolonged trial, there is also reason for disappointment, for the court's ruling clearly evaded the central issue of the trial, namely the authenticity of the *Protocols of the Elders of Zion*.
In view of the fact that Russians were responsible for the forgery of the *Protocols of the Elders of Zion*, which have caused so much anguish and injury throughout the years, we anticipated that a District Court in Russia - which has access to archive material and which in fact had before it unanimous expert testimony supporting the claim of forgery - would add its voice to those of courts and committees of experts in other countries which have declared the *Protocols* to be a blatant forgery.
Unfortunately, the court sidestepped the issue and the Court of Appeal, in turn, refused to exercise its jurisdiction to remedy the error. Now that the appeals have been heard, we are publishing the original judgment and an extract of the appeal lodged by the *Jewish Gazette*. We are informed that the Court of Appeal did not publish the grounds for its decision.

The forthcoming World Council Meeting, originally planned for Montreal, will be held in Rome. The change of dates and venue, due to organizational reasons, was unavoidable, and we apologize to our Members for any inconvenience caused to them. We hope that this is sufficient notice for travel plans to be rearranged and we urge all of you to attend the Rome meeting. We hope that the special program we are planning to initiate, to mark, in Rome, the establishment of relations between the Vatican and Israel, will make this meeting a very memorable one.

Yadassa Ben-Yito

The Declaration of Principles on Interim Self-Government Arrangements

Some legal aspects

Joel Singer

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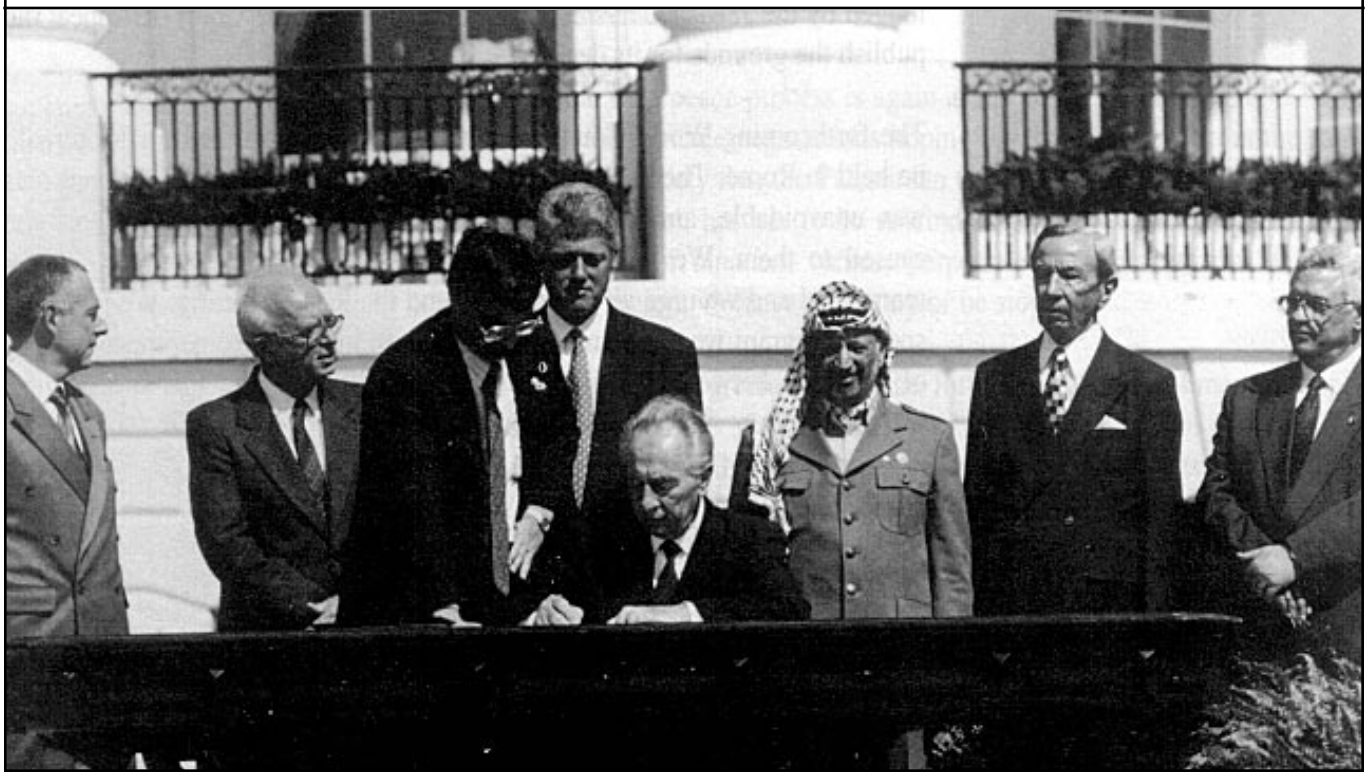
The views expressed in this article are his own, and do not necessarily reflect those of the Israeli Government.
Joel Singer is seen here, third from left.



The Declaration of Principles on Interim Self-Government Arrangements signed in Washington on September 13, 1993 ("the DOP"), comprises the following documents: (1) the text of the Declaration itself; (2) four annexes dealing, in turn, with elections, early withdrawal from the Gaza Strip and Jericho area, Israeli-Palestinian economic cooperation, and Israeli-Palestinian cooperation at the regional level; and (3) a series of Agreed Minutes amplifying various articles in the Declaration. These Agreed Minutes were separately signed by the parties, and, according to Article XVII of the DOP, they constitute an "integral part" of the DOP.

The DOP is supplemented by an exchange of correspondence dated September 9, 1993, confirming, among other things, the PLO's recognition of Israel's right to exist, renunciation of terror, an undertaking to amend the Palestinian Covenant, and Israel's recognition of the PLO as the representative of the Palestinians.

Between them, these documents set out a framework for the arrangements to apply in the West Bank and Gaza Strip during a transitional period of five years until the implementation of permanent status arrangements.

The timetable envisaged by the DOP for the transitional period is based on that included in the Camp David Accords and subsequently adopted as a basis for the Madrid peace process. In Article V, the DOP provides that a five year "interim" or "transitional" period will commence on the withdrawal of Israeli forces from the Gaza Strip and Jericho area. By the start of the third year of this five year period, negotiations will commence on the final status of the West Bank and Gaza.

The principles set out in the DOP cover a wide range of issues, which broadly fall into the following categories:

1. Arrangements to apply throughout the West Bank and Gaza Strip during the interim period, including arrangements for the holding of elections for a Palestinan Council.
2. Arrangements to apply in the Gaza Strip and Jericho area subsequent to an early withdrawal of Israeli forces implementing the "Gaza first" plan.
3. Arrangements for early empowerment, which constitutes a preparatory transfer of powers and responsibilities in agreed spheres to be implemented in the rest of the West Bank, concurrently with the early withdrawal from the Gaza Strip and Jericho area.
4. Permanent status arrangements.

As its title suggests, the DOP is not a comprehensive agreement, but rather a statement of agreed principles. In other words, it is not a self-executing document which purports to set out practical arrangements, but rather an "agreement to reach agreement", which leaves the details to be negotiated between the parties. Thus, the DOP provides that separate agreements are to be negotiated between the parties with respect to the special arrangements for the Gaza Strip and Jericho area (Annex II, Article 1), the elections for the Council (Article III and Annex I), and the interim period arrangements (Article VII). In relation to a number of other areas, such as economic and regional cooperation, the DOP provides that special liaison committees will be established in order to develop joint programs (see, e.g., Articles XI and XVI).

Although the practical details are left to be negotiated, the DOP nevertheless provides significant guidelines for these arrangements. The purpose of this article is to consider the main implications of the DOP in each of the areas outlined above.

The Interim Period

The DOP provides, in Article VII, that the agreement on the interim period to be negotiated by the parties ("the Interim Agreement") will specify, among other things, the structure of the elected Council, and the powers and responsibilities to be transferred by Israel to the Council.

Pursuant to Article III and Annex I, the parties will negotiate an agreement on the exact mode and conditions of the elections. While the details of the elections and the Council will be negotiated in these agreements, the DOP sets out a number of principles to apply to these, as well as to other aspects of the interim period:

a) Elections: The DOP sets out the guiding principle that "direct, free and general political elections will be held for the Council under agreed supervision and international observation" (Article III (1)).

Among the issues of contention in this regard is the extent to which Palestinians resident in East Jerusalem will be permitted to participate in the elections. During the negotiations, Israel agreed that such Palestinians would have the right to vote, but a Palestinian proposal that would have permitted these Palestinians to stand as candidates in the elections was not adopted.

The adopted text, in Annex I, Article 1, provides that:

> "Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides."

Thus, the exact extent to which Palestinians from East Jerusalem will be able to participate in the elections is left to be resolved by the parties in the negotiations on the election agreement. In these negotiations Israel will continue to oppose any participation of Palestinians of East Jerusalem as candidates in the elections. Participation in the election process does not require that Palestinians will be able to cast their vote in Jerusalem itself; their votes may be cast at polling stations situated within the territories. Indeed, during the negotiations on the DOP, a Palestinian proposal stating that Palestinians of East Jerusalem would cast their votes in East Jerusalem was not adopted.

b) Source of Authority: on the establishment of the Council, in accordance with Article VII (5), the Israeli Civil Administration will be dissolved; the Israeli military government, on the other hand, will not be dissolved, but will simply withdraw from the West Bank and Gaza Strip to Israel. In fact, the headquarters of the Regional Commanders of the West Bank and Gaza Strip are already situated within Israel, while only district offices are currently maintained in the areas.

The dissolution of the Israeli Civil Administration will have no impact on the status of the West Bank and Gaza Strip. The Civil Administration was created in the early 1980's as an organ of the Israeli military government in order to discharge the powers and responsibilities of the military government in civilian matters. It should be noted that prior to the establishment of the Civil Administration, the military government itself had been performing both civilian and non-civilian functions. Thus, with the dissolution of the Civil Administration, the military government will simply resume all the powers and responsibilities of the Civil Administration not transferred to the Palestinian Council. In this context, the fact that the military government in the West Bank and Gaza Strip will continue to exist is very significant. It emphasizes that, notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, the status of the West Bank and Gaza Strip will not be changed during the interim period. These areas will continue to be subject to military government. Similarly, this fact suggests that the Palestinian Council will not be independent or sovereign in nature, but rather will be legally subordinate to the authority of the military government. In other words, operating within Israel, the military government will continue to be the source of authority for the Palestinian Council and the powers and responsibilities exercised by it in the West Bank and Gaza Strip.

This provision resolves one of the ambiguities left open by the autonomy arrangements contained in the Camp David Accords. In these accords, which spoke of the military government being "replaced" by the Palestinian self-governing authority, it was left unclear as to where the source of authority lay, and in whom any residual powers would vest. The provisions of the DOP ensure that Israel, through its military government, shall continue to be the source of authority and, as discussed below, to retain any powers and responsibilities not specifically transferred to the Council.

c) Jurisdiction of the Council: Article IV of the DOP provides that the jurisdiction of the Council will not cover "issues that will be negotiated in the permanent status negotiations". A list of such permanent status issues is provided in the Agreed Minute to Article IV, which lists: Jerusalem, settlements, military locations and Israelis.

Article IV's formulation for excluding these issues from the Palestinian jurisdiction ("except for issues that will be negotiated in the permanent status negotiations") was adopted because it effectively enabled the Palestinian delegation to agree to put aside their demands in relation to these issues during the transitional period and to claim that discussion of these issues has simply been postponed until a later date.

In addition, the Agreed Minute to Article IV states that jurisdiction of the Council "will only apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it". In other words, the Council will have no jurisdiction in relation to powers and responsibilities retained by Israel.

In this context it should be noted that the wording proposed by the Palestinian side in the DOP negotiations, referring to the transfer to the Council of **all** the powers and responsibilities currently exercised by the Israel military government and the Civil Administration, was not adopted in the text. Instead, the DOP provides in Article VII that the Council will only have specified powers and responsibilities to be detailed in the Interim Agreement. This provision represents, from Israel's viewpoint, an advance on the Camp David arrangements, which left open the question whether or not all of the powers and responsibilities

of the military government and Civil Administration would be transferred to the Palestinians.

This functional limitation is only one of the factors defining the jurisdiction of the Council. In fact, as described in the DOP, the jurisdiction of the Council is limited by three cumulative criteria:

1) Territorial Jurisdiction: Article IV provides that "the jurisdiction of the Council will cover West Bank and Gaza Strip territory". Significantly, by declining to adopt Palestianian proposals to include the word "all" or "the" before the phrase "West Bank and Gaza Strip", the parties made it clear that they intended that the territorial jurisdiction of the Council will not necessarily cover the entire West Bank and Gaza Strip. The language of Article IV thus follows the wording of U.N. Security Council Resolution 242 which deliberately omitted the word "the" or "all" before the word "territories" in the phrase: "withdrawal of Israeli armed forces from territories occupied in the recent conflict". In both cases, the omission of the word "the" or "all" was deliberate and meant to leave for negotiation between the parties the extent to which the withdrawal (in the case of Resolution 242) or the Council's jurisdiction (in the case of the DOP) would apply to the West Bank and Gaza Strip. On the basis of this provision, during the Interim Agreement negotiations Israel may seek to exclude from the Council's territorial jurisdiction such areas as state lands or land privately owned by Jews which are located outside the Israeli settlements.

In addition, it is clear that the jurisdiction of the Council will not cover Israeli settlements and military locations which, as noted above, are defined by the Agreed Minute to Article IV as permanent status issues. This list of exceptions is not necessarily exhaustive; indeed, the text of the Agreed Minute to Article IV suggests that they come in addition to the requirement that the extent of West Bank and Gaza Strip territory over which the Council has jurisdiction be defined through negotiations.

2) Personal Jurisdiction: The Council's jurisdiction shall not include Israelis, who are excluded from the jurisdiction of the Council in the Agreed Minute to Article IV. Thus, Israelis will not be subject to laws legislated by the Council, to arrest or detention by Palestinian police or to the jurisdiction of the Palestinian courts.

In this regard, the DOP makes no distinction between Israeli civilians and soldiers, or between Israeli residents of the West Bank and Gaza Strip and Israelis visiting from Israel. Israelis, without distinction, shall remain under exclusive Israeli jurisdiction whether they are in the settlements or military locations or anywhere else in the West Bank and Gaza.

3) Functional Jurisdiction: As noted above, the Agreed Minute to Article IV limits the Council's jurisdiction to those powers, responsibilities, spheres and authorities transferred to it. As a result, the Council's jurisdiction shall not cover any powers and responsibilities not transferred to it. The DOP contains a number of specific issues in this category: external security, internal security and public order of Israelis and foreign relations. The parties may also agree on other matters to be excluded from the Council's jurisdiction. Thus, for example, if the parties agree that powers and responsibilities relating to the electromagnetic sphere in the West Bank and Gaza Strip shall not be transferred to the Council, then the issuing of broadcasting licences to Palestinians shall continue to be an Israeli responsibility, even where the application relates to broadcasting stations to be located within areas under Palestinian territorial jurisdiction. Similarly, if it is agreed that the administration of Jewish Holy Places, or of state lands, is not to be transferred, then although they may fall within Palestinian territorial jurisdiction, the administration of such places will continue to be an Israeli responsibility.

The DOP thus resolves one of the key issues left open by the Camp David accords, the question of whether, as the Palestinians claimed, their jurisdiction would be territorial, covering the entire West Bank and Gaza area, or, as Israel claimed, personal, covering only the Palestinian residents of the territory. The DOP resolves this conflict by providing that the jurisdiction of the Council shall be limited to a specific territory. Within that territory its jurisdiction shall only extend to non-Israelis, situated outside the Israeli settlements and military locations, and will apply only in spheres which have been specifically transferred to the Council.

d) Israeli Jurisdiction: As noted above, on the inauguration of the Council, the Civil Administration will be dissolved and the military government shall be withdrawn (Article VII(5)).

The Agreed Minute to this Article provides that the "withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council". This provision has three important implications:

First, it emphasizes the principle that not all of the powers and responsibilities currently exercised by Israel will be transferred to the Council.

Second, it stresses that powers and responsibilities not trans-

ferred to the Council shall be exercised by Israel. In this context, it renders untenable the suggestion that powers not transferred to the Palestinian Council will not necessarily rest with Israel, but may be suspended for the duration of the interim period.

Third, it indicates that Israel retains the residual powers in the West Bank and Gaza Strip. Thus, where no provision has been made in relation to a specific area of authority - that area shall be retained by Israel.

Accordingly, Israel's jurisdiction in the West Bank and Gaza Strip shall encompass the following:

1. Israelis, wherever they may be;
2. the Israeli settlements;
3. military locations; and
4. any functional issue which has not been transferred to the Palestinians.

e) Legislative Powers: The same general principles outlined above in relation to the jurisdiction of the Council will apply in relation to its legislative powers. Article IX provides that the Council will be empowered to legislate "within all authorities transferred to it". Accordingly, the Council shall not be authorized to legislate in fields which have not been transferred to its authority. Legislative powers in such areas will, as explained above, remain with Israel.

Moreover, even within the spheres of authority transferred to the Council, the power to legislate must be exercised "in accordance with the Interim Agreement". Thus, the Interim Agreement may limit the exercise of this power by, for example, requiring Israeli affirmation for legislation promulgated by the Council in order to enter into force.

It should also be noted that the power to legislate is vested in the Council itself. Israel rejected the proposal that legislative powers be vested in an independent legislator, to avoid the possibility that such a separation of powers might be construed as an attribute of independence.

As regards existing legislation, Article IX (2) provides that laws and military orders in spheres not transferred to the Council, shall be reviewed jointly by the parties. The provision emphasizes that the legislation promulgated by the military government shall remain in force in the territories in relation to areas of authority that it retains, although Israel is prepared to review such legislation together with the Council and to consider its suggestions.

f) Security in the Interim Period: The security principles contained in the DOP provide more clarity than those included in the Camp David Accords, which provided only that the parties would negotiate an agreement including "arrangements for assuring internal and external security and public order", but which gave no indication of which party would be responsible for these spheres.

The DOP (in Article VIII) establishes the following principles in relation to security and public order:

1. The Council will be responsible, by means of a strong police force, for guaranteeing "public order and internal security for the Palestinians of the West Bank and Gaza Strip".

   From the mandate of the Palestinian police force as expressed in Article VIII it is clear that it is only intended to be responsible for the protection of Palestinians, and not of Israelis, who will remain under Israeli responsibility.

   Furthermore, from the Agreed Minute to Article VIII, which speaks of the transfer of powers and responsibilities to the Palestinian police being "accomplished in a phased manner", it is evident that this police force will not receive all of its powers immediately on the implementation of the Interim Agreement, but rather that the transfer of powers to the force will take place in stages. The number of stages, the scope of powers and responsibilities to be transferred at each stage, and the extent of the intervals between these stages, are matters to be negotiated and agreed by the parties.
2. Israel shall remain responsible for defense against external threats.

   The DOP does not place any restrictions on Israel's responsibility for defense against external threats, nor is the phrase "external threat" limited in any way. The phrase thus covers both strategic threats and low-intensity threats such as terrorist infiltrations. Israel shall be entitled to take all necessary measures to prevent and defend against such hostile acts coming from outside the borders of the West Bank and Gaza Strip, as well as from the sea or the air.

   The phrase used in Article VIII that "Israel will continue to carry..." is significant in that it implies a continuation of the current arrangements while the words ".. the responsibility" indicate that the responsibility is indivisible and rests with Israel alone.
3. Israel shall remain responsible for "the overall security of Israelis for the purpose of safeguarding their internal security and public order".

   Again in this context, the phrase "Israel will continue to carry..." indicates a continuation of the current arrangements.

Additionally, the word "overall" underlines the fact that the security of Israelis is to be understood in the widest possible sense.

These principles will obviously need significant amplification in the Interim Agreement. Among the most sensitive of the security issues which need to be addressed in this Agreement is the treatment of criminal offenders, Israeli and Palestinian, from the moment of their arrest until the completion of legal proceedings against them. Broadly, there are four main scenarios:

1. An Israeli commits an offense against an Israeli.
2. A Palestinian commits an offense against a Palestinian.
3. An Israeli commits an offense against a Palestinian.
4. A Palestinian commits an offense against an Israeli.

The DOP indicates that where any criminal or security incident occurs in an Israeli settlement or military location, it will fall within Israeli responsibility, even if both the offender and the victim are Palestinian. Where the above scenarios take place in areas under Palestinian territorial jurisdiction some further thought is required.

With regard to the first two scenarios, no particular difficulty arises; it seems clear that where an Israeli commits an offense against an Israeli, the handling of the matter will be an exclusively Israeli responsibility. Similarly, where the offense is committed by and against a Palestinian, the responsibility will be exclusively that of the Council.

The third scenario, where an Israeli commits an offense against a Palestinian, is more complex. The Palestinian police is responsible for the security and public order of Palestinians and it may therefore be argued that the incident should fall within its responsibility. However, the DOP makes it clear that the jurisdiction of the Council does not extend to Israelis, and therefore the handling of the matter - at least as far as the Israeli offender is concerned - remains an Israeli responsibility.

The fourth scenario, where a Palestinian commits an offense against an Israeli, raises the question whether Israel has authority, in relation to an event which took place in territory under Palestinian jurisdiction, to arrest a Palestinian offender, or investigate him and bring him to trial before an Israeli court.

The DOP would seem to indicate that, where the victim of the offense is an Israeli, Israel does have this authority. Israel is entrusted with responsibility in relation to the security of Israelis by Article VIII, which states that Israel will "continue to carry... the responsibility for overall security of Israelis". As noted above, the phrase "continue to carry" implies a continuation of the current arrangements in this regard, while the word "overall" indicates that the responsibility is to be understood in the broadest sense. Moreover, as we have seen, the Agreed Minute to Article IV limits the Council's jurisdiction to those powers and responsibilities specifically transferred to it. Since the

The meeting of hands at the Taba talks. Na'bil Sha'ath (PLO) and Amnon Shahak (Israel)

responsibility for internal security and public order of Israelis remains with Israel, the Council has no jurisdiction in the matter.

g) Redeployment of Israeli Forces: Article XIII provides that:

> "after the entry into force of the Declaration of Principles, and not later than the eve of the elections for the Council, a redeployment of Israeli military forces in the West Bank and Gaza Strip will take place".

This redeployment is different in nature from the "withdrawal" from the Gaza Strip and Jericho area referred to in Article XIV and described below. Rather than requiring a removal of any forces from the territories, redeployment is intended to ensure a redistribution of forces within the territories, having regard to the general principle stated in Article XIII(2) that "military forces should be redeployed outside populated areas". That the redeployment is not intended to involve the transfer of forces outside the territories is also underscored by Article XIII(3) which speaks of redeployments "to specified locations". Locations within Israel itself would not need to be specified.

While Article XIII provides that a redeployment of forces is due to take place prior to the eve of elections for the Council, the DOP does not suggest that the process of redeployment be completed by that date. Rather, Article XIII(3) provides that "further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police". Thus, the process of redeployment is intended to continue through the interim period, its pace being dictated by the extent to which the assumption of security responsibilities by the Palestinian police makes such redeployment possible.

h) Displaced Persons: Article XII, dealing with arrangements for liaison and cooperation between Israel, the Council, Jordan and Egypt, provides that these arrangements will include the constitution of “a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder”.

This wording, taken directly from the Camp David Accords, is significant in that it indicates that the modalities for the admission of displaced persons can only be implemented along with those measures necessary to prevent disruption and disorder.

It should also be noted that the Continuing Committee is only intended to deal with those persons displaced from the West Bank and Gaza Strip in 1967. The question of the refugees arising in 1948 is not to be considered by this committee, but rather is designated by Article V as an issue to be included in the permanent status negotiations. In that context, it should be noted that Article V does not limit the issue to be discussed to Arab refugees; the permanent status negotiations may equally focus on the large number of Jews who were forced to flee to Israel from neighbouring Arab states. Nor does Article V give any indication as to the manner in which the refugee issue should be resolved. As with all issues to be included in the permanent status negotiations, all options remain open.

i) Resolution of Disputes: Article XV deals with the procedure to be followed in order to resolve disputes arising out of the application or implementation of agreements during the interim period.

Article XV(1) provides that such disputes "shall be resolved by negotiations through the Joint Liaison Committee". This committee, established under Article X, is intended "to deal with issues requiring coordination, other issues of common interest, and disputes".

Where the Joint Liaison Committee is unsuccessful in resolving the dispute, there is no mandatory next step. Article XV(2) provides that "disputes which cannot be settled by negotiation may be resolved by a mechanism of conciliation to be agreed between the parties". The use of the phrase "may be resolved" clearly indicates that this is a voluntary proceeding, while the fact that the method of conciliation is "to be agreed between the parties" indicates that there must be agreement between the parties both as to the need for conciliation and as to the appropriate forum and procedures.

Where conciliation fails, Article XV provides that "the parties may agree to submit to arbitration" the outstanding dispute. Once again, the word "may" indicates a voluntary proceeding. Similarly, from the second part of the sub-article, which provides for the establishment of an Arbitration Committee "upon the agreement of both parties", it is clear that there must be agreement between the parties both as to the need for arbitration and as to the appropriate forum and procedures.

Finally, it should be noted that the mechanisms proposed by Article XV relate only to disputes "relating to the interim period”. Disputes relating to the permanent status arrangements shall be resolved only through negotiations. This principle is stated in the letter of the Chairman of the PLO to the Prime Minister of Israel, dated September 9, 1993, which states that "...all outstanding issues relating to permanent status will be resolved through negotiations".

The Gaza-Jericho Arrangements

It appears that the idea that separate arrangements should be instituted in the Gaza Strip and Jericho area is based on the common belief that an agreement in these areas might be easier to reach than in the rest of the West Bank. This, because problems relating to such issues as security, water resources, Jewish population and holy places in these areas are less complex.

The agreement of the Palestinians to discuss a transfer of powers in a specified part of the territories represents a significant change from their previous stance of "all or nothing". It seems that they agreed to such an arrangement because Israel agreed to transfer more powers in these areas, and transfer them more quickly, than in the rest of the territories.

Negotiations on the special arrangements to apply in the Gaza Strip and Jericho area, including the early withdrawal of Israeli forces from these areas, began immediately on the entry into force of the DOP. As indicated in Annex II, the aim of these negotiations was to conclude and sign an agreement on the Gaza-Jericho arrangements within two months of the entry into force of the DOP (*i.e.*, by October 13, 1993), with the early withdrawal of Israeli forces being completed within four months from the signing of this agreement (*i.e.*, by April 13, 1994). However, the two month target for concluding an agreement was not accomplished, and the four month period for completing the withdrawal will therefore not end on April 13, 1994, but rather four months from the date such an agreement is signed.

The DOP addresses the Gaza-Jericho agreement in Article XIV and in Annex II, together with the Agreed Minute to that Annex. Among the subjects to be covered in the Gaza-Jericho agreement are the following:

a) Withdrawal of Israeli Forces: Article XIV provides that "Israel will withdraw from the Gaza Strip and Jericho area, as detailed in... Annex II". Annex II provides that the withdrawal of Israeli forces is due to commence immediately with the signing of the Gaza-Jericho agreement. Unlike the "redeployment" due to take place in the rest of the territories, this withdrawal will involve the removal of forces from these areas, though not all of the Israeli forces will be withdrawn. Indeed, a Palestinian proposal to use the phrase "withdrawal of **all** Israeli military forces" in Annex II(2) was rejected. Moreover, that some Israeli forces will continue to be present in the Gaza Strip and Jericho area is clear from a number of other provisions of the DOP:

1. The Agreed Minute to Annex II provides that even after the withdrawal of Israeli military forces, "Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis". It is evident therefore that those Israeli forces required to fulfill this responsibility will remain in the Gaza Strip and Jericho area.
2. The Agreed Minute to Annex II also provides that "Israeli military forces ... may continue to use roads freely within the Gaza Strip and the Jericho area". Clearly, those military forces making free use of the roads in these areas will not have been withdrawn.
3. Article XIII, dealing with the redeployment of forces in the West Bank and Gaza Strip on the eve of the elections, states that this redeployment is to take place "in addition to withdrawal of forces carried out in accordance with Article XIV". Since the withdrawal of Israeli forces from the Gaza Strip and Jericho area is due to take place before the elections, it follows that the DOP envisages, that subsequent to the withdrawal, there must be some remaining forces in those areas and it is these which will be redeployed. As noted above, the principle guiding this redeployment is not that military forces be removed from these areas, but rather that they "should be redeployed outside populated areas" (Article XIII(2)).

b) Jericho Area: While there is little difficulty ascertaining the extent of the area known as the Gaza Strip, the size of the Jericho area has been the subject of some debate. In this context, it should be noted that in the negotiations leading to the signing of the DOP, Jericho was always regarded by the parties as a limited and symbolic addition to the “Gaza first” plan. Moreover, the reason why Jericho in particular was found acceptable was precisely because no Jewish settlements were located in the immediate area of the city. In line with the above, a Palestinian suggestion to refer to the former Jordanian province of Jericho was rejected. In the course of negotiations on the DOP, however, Israel agreed to consider the inclusion of two adjacent refugee camps - Aquabat Jabber and Ein El Sultan - which led to the use of the term "Jericho area" instead of "Jericho city".

c) Establishment of a Palestinian Authority: Annex II of the DOP provides that the powers and responsibilities transferred by Israel in these areas will be exercised by a Palestinian authority. This will be an appointed body. Since the early withdrawal from

the Gaza Strip and Jericho area will take place before the elections, the offices of the Palestinian authority will be located in the Gaza Strip and Jericho area (Annex II, Article 5).

A number of limitations are placed on the scope of the powers and responsibilities of this Palestinian authority. In particular, Annex II, Article 3(b) provides that it will have no powers or responsibilities in relation to "external security, settlements, Israelis, foreign relations, and other mutually agreed matters". Moreover, unlike the elected Council, there is no reference in the DOP to the Palestinian authority in the Gaza Strip and Jericho area having legislative powers. In practice, however, Israel has indicated its willingness to transfer legislative powers to the Palestinian authority within its jurisdiction, in order to enable it to fulfill its functions effectively.

In exercising these functions, the jurisdiction of the Palestinian authority shall also be subject to the same limitations on territorial, personal and functional jurisdiction as the Council, contained in the Agreed Minute to Article IV and described above. This principle is explicitly stated in Section A of the Agreed Minutes, which provides:

> "Any powers and responsibilities transferred to the Palestinians... prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below."

d) Security and Public Order: In order to fulfill the Palestinian responsibility for internal security and public order, Annex II provides for the establishment of a Palestinian police force. At the same time, Annex II and the Agreed Minute to this Annex make it clear that this police force will have no authority in relation to external security, nor in relation to internal security and public order of settlements and Israelis. All of these will remain areas of Israeli responsiblity. As noted above, the withdrawal of Israeli forces from the Gaza Strip and Jericho area cannot derogate from these responsibilities.

The existence of concurrent Israeli and Palestinian security responsibilities will, no doubt, give rise to many practical complexities. Thus, Annex II provides that a joint Coordination and Cooperation Committee for mutual security purposes will be established (Article 3(e)). This committee will coordinate the allocation of security responsibilities, and serve as the mechanism for cooperation in matters of mutual security concern.

e) Safe Passage: Article 3(g) of Annex II provides that the Gaza-Jericho agreement will contain arrangements for "a safe passage for persons and transportation between the Gaza Strip and Jericho area". The use of the words "safe passage" (as opposed to the Palestinian proposal "free passage") is significant, since it indicates that Israel's obligation is limited to ensuring the security of the passage.

There is nothing in the DOP to support the suggestion that an "extra-territorial corridor" is envisaged. In fact, the phrase "safe passage for persons and transportation" indicates that a personal rather than territorial right is envisaged. In addition, it would be hard to sustain an argument for Palestinian jurisdiction when such jurisdiction, under Article IV, only extends to "West Bank and Gaza territory". Indeed, Israel has proposed that the implementation of its obligation to ensure safe passage be carried out through the use of not one, but a number of roads crossing Israel.

f) Passages between Gaza and Egypt and between Jericho and Jordan: The Gaza-Jericho agreement will also include arrangements for coordination regarding passages between Gaza and Egypt and between Jericho and Jordan, as provided in Annex II, Article 4. The arrangements to be agreed in this regard must be consistent with Israel's responsibilities for foreign relations and external security. Such issues as entry of foreign nationals, visas, passports, *etc*. are essential aspects of foreign relations, while control of border crossings is an integral part of the control of the borders, which, in turn, is an integral part of external security. It would make no sense for Israel to retain control along the length of the borders for security purposes, while at the same time not having control over persons passing through the border crossings.

It should also be noted that in Article V of the DOP the issue of borders is listed among the issues to be included in the final status negotiations, and that the issue is not to be determined in the interim period.

g) Status of Gaza Strip and Jericho Area: During the interim period, the status of the Gaza Strip and Jericho area, will be identical to that of the West Bank. This principle is emphasized in Article IV, which states:

> "The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period."

In addition, Annex II provides that the status of the Gaza Strip and Jericho area will "continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim

period" (Annex II, Article 6). It follows that, as in the case of the West Bank, the status of the Gaza Strip and Jericho area will continue to be that of areas subject to military government, with Israel remaining the source of authority therein (see Section 1(b) of this Article, above).

Two additional important principles are enshrined in Article 6 of Annex II: First, any attempt made by the parties to change the status of the Gaza Strip and Jericho area during the interim period will have no effect. Second, any such attempt would be a clear breach of the terms of the DOP, which may be considered a material breach and a ground for terminating the agreement.

Early Empowerment

Alongside the implementation of special arrangements in the Gaza Strip and Jericho area, Article VI provides for a preparatory transfer of powers and responsibilities with regard to five specific spheres in the rest of the West Bank. These powers and responsibilities will be transferred from the Israeli military government and the Civil Administration to "the authorised Palestinians for this task". The Agreed Minute to this Article indicates that these individuals are to be appointed by the Palestinian side, and their names notified to Israel.

The transfer of powers and responsibilities is due to commence on the completion of the withdrawal from the Gaza Strip and Jericho area. In particular, Article VI(2) provides that, immediately after the withdrawal, authority will be transferred to the Palestinians in the spheres of education and culture, health, social welfare, direct taxation, and tourism.

Other than these transferred areas of authority, the Israeli military government and the Civil Administration will continue to fulfill all of their existing functions pending the inauguration of the Council, though, as Article VI(2) notes, the transfer of additional powers and responsibilities may be negotiated between the parties.

The Permanent Status Negotiations

Article V(2) provides that permanent status negotiations are to commence "as soon as possible, but not later than the beginning of the third year of the interim period". This is with a view to implementing the permanent status arrangements at the conclusion of the five year transitional period.

Unlike the interim arrangements, for which the DOP gives extensive guidelines, the DOP is conspicuously silent about the form the permanent status arrangements will take. The list of issues provided in Article V(3) to be included in the permanent status negotiations ("Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest") is not inclusive. Neither the inclusion of an issue in the list contained in Article V(3), nor its non-inclusion, should be taken as any indication of the outcome of the permanent status negotiations. In fact, the principle that all options should be left open is explicitly stated in Article V(4):

> "The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period."

While the permanent status negotiations are not to be influenced by agreements for the interim period, they will still be subject to the principles which form the basis of the current peace process. Thus, Article I restates the fact that the permanent status settlement shall be based on Security Council Resolutions 242 and 338 (although Resolution 242, as noted above, is subject to differing interpretations), and the preamble reflects the letter of invitation to the Madrid peace conference in speaking of the attempt to "achieve a just, lasting and comprehensive peace settlement."

Conclusion

In conclusion, the DOP does not underestimate the practical complexities involved in negotiating and implementing the arrangements it envisages. But, as it states in its preamble, it is predicated on the conviction that "it is time to put an end to decades of confrontation and conflict". It is to be hoped that this conviction expressed in the DOP will distill the principles into practicalities and help bring to the people of the region, in President Clinton's words: "the quiet miracle of a normal life".

Development of the local economy in the event of Palestinian autonomy

Gil Feiler

Following the signing of the Declaration of Principles between the PLO and Israel on September 13, 1993, a series of hard negotiations are being conducted to establish the framework of the interim entity, known as "Gaza-Jericho First". While Palestinian negotiators see this entity as the embryonic Palestinian state, the Israeli side regards it as the beginning of autonomy for Palestinian Arabs. Whatever the outcome, it is clear that the success of the program for peace requires an overhaul of the economy of Judea, Samaria and the Gaza Strip, renovation of the local infrastructure, introduction of new health and social policies, and, of key importance, development of employment opportunities for Palestinian labourers within the territories and in Israel.

Developing the local economy and finding employment for Palestinian residents of the territories within the framework of the new autonomy is vital to both Israelis and Palestinians for political as well as economic reasons. These issues must be addressed immediately if stability is to be secured in the region, since present high unemployment rates and the absence of a viable local labour infrastructure creates fertile ground for dissatisfaction and potential open hostility to the full implementation of the autonomy plans. The prospect of a flourishing local economy with full employment spurred by massive injections of foreign investments, all occurring within the short term, is not realistic. Many problems stand in the way, some financial, others political and yet others caused by internal power struggles within the PLO. A serious by-product of such problems may be a decrease in employment opportunities as potential investors are disillusioned or as internal dissension results in financial allocations dictated more by politics than by pure economic priorities.

Consideration of some of the political problems, future employment possibilities within the territories and historical causes of demographic changes among the Palestinians, leads to the conclusion that side by side with the creation of jobs in the territories, the Palestinian labour market is still dependent on the Israeli economy and will continue to be dependent on the Israeli economy in the foreseeable future.

Difficulties in the Current Autonomy Talks

Many difficulties face the Palestinians on the road to economic development. The soaring expectations of some people, mainly politicians, on both sides of the Palestinian-Israeli dispute will almost certainly not be met in the short or medium term. It is therefore important to minimize expectations to achievable goals.

One obstacle which must be overcome if the Palestinians are to achieve rapid economic development is the conflict of interest between the political leadership of the PLO, which has displayed a desire to exploit foreign aid not only for developmental purposes but more often as a source of power which can be utilized to achieve specific political goals, and the technocrats who would prefer to make use of the aid on the basis of pure economic criteria.

Thus, entrepreneurs in the Palestinian diaspora planning the implementation of lucrative projects in the West Bank and Gaza Strip expect to exert complete control over the establishment and execution of these enterprises. They also expect to enjoy the lion's share of the resulting profits. Local businessmen, on the other hand, after years of economic depression, are naturally also anxious to gain control of some of the anticipated new profitable ventures.

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This unhealthy rivalry has manifested itself both in relation to planned economic developments within the West Bank and Gaza areas, and, where questions have arisen as to the relationship between Israel and the Palestinian autonomy.

It is probable that once aid has been granted we shall also see the problem of aid absorption emerging. "Aid absorption" refers to the degree to which the Palestinian economy can successfully integrate or exploit foreign aid. In view of the problems outlined here, it seems likely that, at least initially, levels of absorption will be relatively low as was the case in Egypt during the 1980s, when Egypt was only able to absorb 50 to 60 percent of the aid channeled to it by the U.S.

Thus, the main question is not how many dollars will be channeled to the territories, but how those dollars will be used. One practical proposal is the establishment of an aid-coordination agency to manage foreign aid flows. This agency can work hand-in-hand with institutions, such as data base service, to advise donors, co-ordinate donor assistance, help manage the aid, advise on economic development for the region and the territories in particular, and even provide technical assistance. For a successful aid program, it is imperative that there is transparency and accountability, so that the recipients reap its full benefits.

A second obstacle to rapid economic development has its roots in the political struggle and arises from more traditional suspicion between the two sides. Many Arabs fear that Israel has entered into the new peace arrangements in the hope of penetrating and dominating the regional Arab markets. In their view, the agreement merely serves Israel's long range sinister goals, by removing the political obstacle posed by the Palestinian issue to the establishment of normalized international, commercial and industrial relations between Israel and the neighbouring Arab countries. It has been claimed that Israel is looking to resurrect the old formula of cheap Arab labour plus financial investments from the Gulf plus Israeli technological expertise.

Another allegation is that Israel expects to take advantage of the billions of dollars in foreign aid and investment to give a powerful boost to its own economy which is suffering from a high balance of payments deficit. To counter these fears, official Palestinian spokesmen have declared that Israelis will be precluded from participating in commercial bids, in favour of Jordanian companies.

A third problem, which is linked to the second, arises out of the tariff and non-tariff barriers already in place; in particular, the primary and secondary Arab boycott of Israeli goods and industry. Clearly, this boycott, which is out of step with the new reality, will have to be eliminated if joint Israeli-Palestinian ventures targeting the region as a whole are to be established. The elimination of the boycott will not only benefit Israel but also the Arab countries themselves. Even in the absence of a customs union, free trade between Israel and the territories can and should be achieved very quickly; more gradually, free trade can also be established between the territories and Jordan and eventually between Israel and Jordan.

A fourth obstacle to rapid economic development, as well as successful cooperation between Israelis and Palestinians, lies in the perhaps justified fears of Jordanians as to the status and function of Jordan within the new economic framework.

Jordanians fear that foreign aid will flow into the territories at their expense, and that Jordanian industry will be undermined if the bridges over the Jordan River continue to be open to Palestinian exports with its high Israeli input, particularly if Palestinian and Israeli industrialists enter into partnership in the West Bank. Jordanians also fear a drain on Jordanian foreign currency reserves and withdrawal of Palestinian deposits now in Jordanian banks. On a deeper level it is feared that the Israeli-Palestinian relationship will strengthen at the expense of the Jordanian-Palestinian relationship.

In contrast, Palestinians have expressed the fear that Israel will reach economic agreements with Jordan, while excluding Palestinian interests.

There are no easy answers to any of these problems nor to the many others which are not mentioned here. Nevertheless, with good will and a lot of hard work, there is room for optimism.

The best partner Palestinians can hope for in the drive to develop the territories economically, is Israel, especially in the labour market. Israel already provides a direct market for Palestinian workers and, through the creation of joint ventures with Palestinian entrepreneurs, can assist in the creation of greater employment opportunities within the territories as well.

Israel and the Palestinians are already bound together by strong ties. They share many years of a close working relationship. They know each other and each other's social and cultural traditions. They live side-by-side in the same area and can complement each other in supplying the needs of the same regional markets. Many Palestinian businessmen know Israeli businessmen personally and want to work with them. However,

when it comes to the practical implementation of these desires many Palestinians are hesitant.

Bearing in mind the control structure of industry and local businesses in the Arab countries of the Middle East, with their emphasis on the local Arab partner retaining majority control, it seems to me that when joint ventures are eventually established between Israelis and Palestinians, Israelis will offer no objections to Palestinians retaining analogous majority control of those businesses established in the territories, and indeed, as is to be expected, the employees of such joint ventures will almost certainly all be Palestinians. Today, if one looks at Jordanian law, foreign firms cannot enjoy more than 49 percent control and cannot have any share in the equity of a Jordanian company. These laws have remained effective in the territories and it seems likely that they will be retained or similar regulations will be adopted by the Palestinian Interim Self-Government Authority.

Another charge brought by many Palestinians in various academic gatherings is that, in the past, the Israeli government has adopted a deliberate policy of perpetuating the stagnating, underdeveloped quality of the Palestinian economy, and that this policy cannot be expected to change. Israel recognized this problem in 1991, when the government introduced an active policy of accelerating the industrial development of the West Bank and Gaza Strip.

With regard to the fears for Jordan's place in the new scheme for regional cooperation, neither Israel nor the Palestinians have an interest in alienating Jordan. Israel would clearly benefit from a favourable economic relationship with the Palestinians, but it also knows that, if it wants to trade eventually with the rest of the Arab world, it will have to go through Jordan. For their part, the Palestinian authorities will not wish to be dominated economically by Israel.

As to the Arab suspicion that Israel intends to dominate the region's markets with its superior industrial and technological know-how, it should be noted that the Israeli business community is itself divided on the question of whether Israel will be able to take full advantage of the potential for trade with the Arab countries. The Arab world comprises 250 million people, a figure which doubles itself every 25 years. The market itself is worth 100 billion dollars. Many Israelis believe that Israel cannot offer the Arab markets any competitive goods or services. The Arab market does not operate in a vacuum, the West knows its potential well and is already supplying many of its demands. Thus, any Israeli effort to penetrate the regional market must be done on the basis of pinpointing specific demands, after thorough preparation and market research.

Today, the differing ultimate aims of Israel and the Palestinians dominate both where large infrastructure developmental projects are concerned and where individual businessmen desire to establish joint ventures. Palestinians seek opportunities to set up businesses which will reflect their national aspirations while Israeli businessmen look at the region as an autonomous area which will retain that status indefinitely.

These conflicting approaches must be overcome if economic cooperation is to be successfully achieved. Some level of compromise will obviously be necessary. Common goals should be set, such as the creation of creditworthiness, which in turn will encourage increased foreign financial assistance. Emphasis should be placed on the rehabilitation of vital infrastructure, such as public utilities, telephones, sewage drainage, electricity and highways. Immediate steps must be taken to address the high rate of unemployment; joint ventures and small business should be established to create new employment opportunities. The role of the private sector in promoting economic growth in the territories should be strengthened through export financing programs and investment incentives. Effective revenue sharing and revenue collection arrangements should be developed. Finally, impractical dreams should be put aside for the present, such as the immigration of hundreds of thousands of Palestinians from abroad who can only put an enormous strain on limited resources.

As far as Israel is concerned, it is clear that it is in its own best interest that this new chance for local economic improvement leading to the creation of opportunities in the regional economy, should not be missed.

The Information Network

With the implementation of the development stage, prospective local and foreign investors will be forced to deal with the lack of business information, including, in particular, accurate and up-to-date information on business opportunities in the territories.

Such business information data base services should be urgently established. Such services will assist the full realization of potential business opportunities and enable the Palestinian economy to become properly integrated into the regional economy. Accurate business information will lead to increased exports without having a detrimental effect on local industry.

Without such information, the Palestinian economy will eventually decline. Even within the territories, it is common for established Palestinian businessmen to know their own businesses but be unaware of the scope or quality of competitors within their own business or industrial sectors.

The creation of appropriate data base services can help to overcome another problem which has stood in the way of increased investment in and grants to the territories. To date, one of the principle reasons why Non Profit Organizations have channeled less money than they can actually afford to Palestinian ventures, has been their inability to conduct accurate feasibility studies on such projects. Ideally, every foreign loan or investment should be based on a feasibility study. Lack of such studies either delays the grant, or, in many cases, prevents allocations altogether.

Future Trends

Although the intifada threatened at first to shake the Palestinian work market, no large scale differences have been felt through the end of 1993. Even during the periods when general strikes were called, many workers from the territories continued to work in Israel. This fact indicates that even in the event of a political settlement, such as the planned autonomy, Palestinian labourers will be forced to continue to work in Israel, a fact that has been recognized by senior Palestinian economists.

A new factor was introduced, however, at the end of 1989 with the massive immigration of Russian Jews. Given the high unemployment rate in Israel and the desperate need of the new immigrants for a source of income, the immigrants are likely to replace the workers from the territories in the medium term. In the long run, in a normal, full employment market, the workers from the territories can be expected to complement the new immigrant labour. In particular, it seems likely that Palestinian workers will still be required in fields in which they have developed expertise such as construction.

Conclusion

In the current economic-political state of the Middle East, regional cooperation in the employment sphere, aimed at finding a solution to the employment crisis of the Palestinians, seems unrealistic. Even before the invasion of Kuwait, the Palestinians were considered an undesirable workforce in many places, following the invasion their situation became immeasurably worse. Alternative labour markets such Jordan are also unwilling to absorb Palestinian workers, in view of high unemployment at home and fear of generating political instability.

In the long term, high Israeli unemployment rates, shorter hours worked by Palestinians within Israel, substitution of Palestinian labourers with new immigrants and the anticipated further massive immigration of Jews from the CIS will also reduce the availability of work in Israel for Palestinians.

Aggravating the problem of Palestinian unemployment is the anticipated desire by huge numbers of Palestinians currently living outside the territories to enter the territories in the event of autonomy. The labour market in Israel cannot, under any circumstances, provide by itself a solution to the unemployment crisis of the Palestinians, and the economy of the territories cannot provide a solution to the employment problems of such sizable numbers of Palestinians.

These factors, combined with a situation where half of the current Palestinian labour force is employed outside its residential region, means that the need to invest in the creation of jobs within the territories, is imperative. Encouraging the creation of such work places in the territories is also very likely to benefit Israel in the long run and lead to beneficial cooperation in both labour markets.

In the context of the autonomy negotiations some Israeli economists have called for the separation of the Israeli labour market from that of the territories, in order to reduce hostility between Palestinians and Israelis and encourage independent technological progress in Israel.

However, while economic separation of the two areas would cause negligible damage to the Israeli economy, unemployment in the territories could be expected to rise by 50 percent bringing with it economic and social disaster. Such a disaster can only be avoided by huge investments in the creation of a minimum of 130,000 new jobs.

The inevitable conclusion is that substantial political, practical, economic and social advantages are to be gained by a program of regional cooperation. Willingness to work with Israel would have an enormous impact on the economic development of the Palestinian autonomy, thereby creating an opening for reconciliation, and a new and more healthy relationship between Israelis and Palestinians.

DOCUMENT

Fundamental Agreement between the Holy See and the State of Israel

The Fundamental Agreement between the Holy See and the State of Israel was signed in the Vatican and Jerusalem in December, 1993. This 15 article agreement to institute full diplomatic relations with Israel puts an end to two thousand years of bitter animosity on the part of the Catholic Church towards the Jewish people. The agreement goes beyond the purely formal trappings of diplomacy and recognizes not only the need for reconciliation but also the obligation to condemn anti-Semitism in all its manifestations, and, on a different plane, the connection between the Jewish people and the Land of Israel.

Preamble

The Holy See and the State of Israel,

Mindful of the singular character and universal significance of the Holy Land;

Aware of the unique nature of the relationship between the Catholic Church and the Jewish people, and of the historic process of reconciliation and growth in mutual understanding and friendship between Catholics and Jews;

Having decided on 29 July 1992 to establish a "Bilateral Permanent Working Commission", in order to study and define together issues of common interest, and in view of normalizing their relations;

Recognizing that the work of the aforementioned Commission has produced sufficient material for a first and Fundamental Agreement;

Realizing that such Agreement will provide a sound and lasting basis for the continued development of their present and future relations and for the furtherance of the Commission's task,

Agree upon the following Articles:

Article 1

1. The State of Israel recalling its Declaration of Independence, affirms its continued commitment to uphold and observe the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party.
2. The Holy See, recalling the Declaration of Religious Freedom of the Second Vatican Ecumenical Council, *Dignitatis humanae*, affirms the Catholic Church's commitment to uphold the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party. The Holy See wishes to affirm as well the Catholic Church's respect for other religions and their followers as solemnly stated by the Second Vatican Ecumenical Council in its Declaration on the Relation of the Church to Non-Christian Religions, *Nostra aetate*.

Article 2

1. The Holy See and the State of Israel are committed to appropriate cooperation in combatting all forms of anti-Semitism and all kinds of racism and of religious intolerance, and in promoting mutual understanding among nations, tolerance among communities and respect for human life and dignity.
2. The Holy See takes this occasion to reiterate its condemnation of hatred, persecution, and all other manifestations of anti-Semitism directed against the Jewish people and individual Jews anywhere, at any time and by anyone. In

particular, the Holy See deplores attacks on Jews and desecration of Jewish synagogues and cemeteries, acts which offend the memory of the victims of the Holocaust, especially when they occur in the same places which witnessed it.

Article 3

1. The Holy See and the State of Israel recognize that both are free in the exercise of their respective rights and powers, and commit themselves to respect this principle in their mutual relations and in their cooperation for the good of the people.
2. The State of Israel recognizes the right of the Catholic Church to carry out its religious, moral, educational and charitable functions, and to have its own institutions, and to train, appoint and deploy its own personnel in the said institutions or for the said functions to these ends. The Church recognizes the right of the State to carry out its functions, such as promoting and protecting the welfare and the safety of the people. Both the State and the Church recognize the need for dialogue and cooperation in such matters as by their nature call for it.
3. Concerning Catholic legal personality at canon law the Holy See and the State of Israel will negotiate on giving it full effect in Israeli law, following a report from a joint subcommission of experts.

Article 4

1. The State of Israel affirms its continuing commitment to maintain and respect the *Status quo* in the Christian Holy Places to which it applies and the respective right of the Christian communities thereunder. The Holy See affirms the Catholic Church's continuing commitment to respect the aforementioned *Status quo* and the said rights.
2. The above shall apply notwithstanding an interpretation to the contrary of any Article in this Fundamental Agreement.
3. The State of Israel agrees with the Holy See on the obligation of continuing respect for and protection of the character proper to Catholic sacred places, such as churches, monasteries, convents, cemeteries and their like.
4. The State of Israel agrees with the Holy See on the continuing guarantee of the freedom of Catholic worship.

Article 5

1. The Holy See and the State of Israel recognize that both have an interest in favouring Christian pilgrimages to the Holy Land. Whenever the need for coordination arises, the proper agencies of the Church and of the State will consult and cooperate as required.
2. The State of Israel and the Holy See express the hope that such pilgrimages will provide an occasion for better understanding between the pilgrims and the people and religions in Israel.

Article 6

The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to establish, maintain and direct schools and institutes of study at all levels; this right being exercised in harmony with the rights of the State in the field of education.

Article 7

The Holy See and the State of Israel recognize a common interest in promoting and encouraging cultural exchanges between Catholic institutions worldwide, and educational, cultural and research institutions in Israel, and in facilitating access to manuscripts, historical documents and similar source materials, in conformity with applicable laws and regulations.

Article 8

The State of Israel recognizes that the right of the Catholic Church to freedom of expression in the carrying out of its functions is exercised also through the Church's own communications media; this right being exercised in harmony with the rights of the State in the field of communications media.

Article 9

The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to carry out its charitable functions through its health care and social welfare institutions, this right being exercised in harmony with the rights of the State in this field.

Article 10

1. The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to property.
2. Without prejudice to rights relied on by the Parties:
   (a) The Holy See and the State of Israel will negotiate in good faith a comprehensive agreement, containing solutions acceptable to both Parties, on unclear, unsettled and disputed issues, concerning property, economic and fiscal matters relating to the Catholic Church generally, or to specific

Catholic Communities or institutions.

(b) For the purpose of the said negotiations, the Permanent Bilateral Working Commission will appoint one or more bilateral subcommissions of experts to study the issues and make proposals.

(c) The Parties intend to commence the aforementioned negotiations within three months of entry into force of the present Agreement, and aim to reach agreement within two years from the beginning of the negotiations.

(d) During the period of these negotiations, actions incompatible with these commitments shall be avoided.

Article 11

1. The Holy See and the State of Israel declare their respective commitment to the promotion of the peaceful resolution of conflicts among States and nations, excluding violence and terror from international life.
2. The Holy See, while maintaining in every case the right to exercise its moral and spiritual teaching-office, deems it opportune to recall that, owing to its own character, it is solemnly committed to remaining a stranger to all merely temporal conflicts, which principle applies specifically to disputed territories and unsettled borders.

Article 12

The Holy See and the State of Israel will continue to negotiate in good faith in pursuance of the Agenda agreed upon in Jerusalem, on 15 July, 1992, and confirmed at the Vatican, on 29 July, 1992; likewise on issues arising from Articles of the present Agreement, as well as on other issues bilaterally agreed upon as objects of negotiation.

Article 13

1. In this Agreement the Parties use these terms in the following sense:

(a) The Catholic Church and the Church - including, *inter alia*, its Communities and institutions;

(b) Communities of the Catholic Church - meaning the Catholic religious entities considered by the Holy See as Churches *sui juris* and by the State of Israel as Recognized Religious Communities;

(c) The State of Israel and the State - including, *inter alia*, its authorities established by law.

2. Notwithstanding the validity of this Agreement as between the Parties, and without detracting from the generality of any applicable rule of law with reference to treaties, the Parties agree that this Agreement does not prejudice rights and obligations arising from existing treaties between either Party and a State or States, which are known and in fact available to both Parties at the time of the signature of this Agreement.

Article 14

1. Upon signature of the present Fundamental Agreement and in preparation for the establishment of full diplomatic relations, the Holy See and the State of Israel exchange Special Representatives, whose rank and privileges are specified in an Additional Protocol.
2. Following the entry into force and immediately upon the beginning of the implementation of the present Fundamental Agreement, the Holy See and the State of Israel will establish full diplomatic relations at the level of Apostolic Nunciature, on the part of the Holy See, and Embassy, on the part of the State of Israel.

Article 15

This Agreement shall enter into force on the date of the latter notification of ratification by a Party.

Done in two original copies in the English and Hebrew languages, both texts being equally authentic. In case of divergency, the English text shall prevail.

Signed in Jerusalem, this thirtieth day of the month of December, in the year 1993, which corresponds to the sixteenth day of the month of Tevet, in the year 5754.

For the Government of the State of Israel:
Dr. Yossi Beilin
Deputy Minister for Foreign Affairs

For the Holy See:
Rt. Rev. Msgr. Claudio Maria Celli
Under Secretary for Relations with States

Jewish Law in the State of Israel

Sinai Deutch

It is my pleasure to open the new Jewish Law section in the journal of the Association. In a multicultural society such as Israel, it is especially important to learn from our Jewish heritage. This opening article will briefly portray some basic features of Jewish Law and its application to Israeli law. In addition, it will examine the difficulties in locating Jewish Law sources. Finally, a case study of Jewish Law will be presented. Anyone interested in publishing a note, a comment or an article on Jewish Law is invited to submit it to the editor of *Justice* for consideration.

What is Jewish Law?

By the term Jewish Law I mean those parts of Jewish tradition which are comparable to secular law which concentrate on areas such as criminal law, consumer law, employment law and so on. Jewish tradition includes also many other parts which handle moral ethics and the relations between man and God. The relations between man and God are part of Jewish *Halacha* but are not considered to be part of the Jewish Law.

The Effect of Jewish Law on Israeli Law

Jewish Law influences Israeli law in several areas. In the area of family law, basic Israeli law is Jewish Law. A law of 1953 provides that matters involving marriage and divorce of Jews in Israel should be governed by Jewish Law, which means that in this important area of life, Jewish Law is the law of the State of Israel. Other related areas of family law such as maintenance, custody of children, *etc*., are also governed mostly by Jewish Law, but proceedings can be held either in religious rabbinical courts or in the regular court system. However, when dealt with in the regular court system, the law applied in those cases is basically Jewish Law.

Professor Sinai Deutch is the Dean of the School of Legal Studies in Bar-Ilan University, Israel

Jewish Law has also influenced legislation in general. From 1965, great efforts have been made to replace previous law with original Israeli legislation. The general trend was to replace the mixture of obsolete law with a solid body of modern law. In a period of ten years, from 1965 to 1975, the entire body of civil law in Israel was replaced and re-enacted. Just to mention a few laws, the Inheritance Law, Property Law, General Contracts Law, Sales Law, Remedies for Breach of Contract Law, Tangible Property Law, and many more.

During this period of extensive legislation, a Department of Jewish Law was established in the Ministry of Justice, to provide memoranda on Jewish Law on every single piece of legislation. When Members of the Knesset, or experts of the Ministry of Justice, decided the substance of a certain piece of legislation, they also had the attitude of Jewish Law on the subject. It is evident that much of Israeli legislation in the area of civil law is influenced to some extent by Jewish Law.

Jewish Law sources and precedents were cited in support of the Court's decision in many published cases of the Israeli Supreme Court. However, many Israeli lawyers and judges have difficulty in locating and understanding the original Jewish Law sources.

The Jewish Law Service

At least 90 percent of the lawyers in Israel are not familiar with the sources of Jewish Law or with its terminology. Israeli Universities offer only two courses in Jewish Law. A first year course which is the introduction to Jewish Law; and a course in the third year which deals with one area of substantial Jewish Law. This training is certainly insufficient to conduct independent research on any complicated issue such as administrative regulation, or even to pose a question about unfair competition in the market in the legal terms used in Jewish Law.

In order to overcome these obstacles the Jewish Law Service was established in 1978 at Bar-Ilan University with the goal of promoting the use of Jewish Law in the Israeli courtroom. Now

every lawyer and judge can apply for material in Jewish Law. The service is a computerized retrieval system using the most modern techniques for retrieving traditional Jewish texts.

From 1978 to 1993 the Jewish Law Service has prepared more than a 1000 memoranda regarding various issues of Jewish Law. The system allows the user to use modern legal terms in fields such as torts, employment contracts, products liability or family law; in some cases he does not even have to pose a question. He just submits the suit or his appeal to a higher court, and asks: "How can Jewish Law help me with this suit/appeal to the higher court?"

The following example of a question presented by a judge about the limits to judges' intervention in court proceedings, will serve as a sample case. The main issue was whether a judge can decide the case by considering legal rules which have not been raised by the parties but stem from the facts of the case. The following is the essence of our memorandum to that judge.

Judges' Intervention in Court Proceedings

How does Jewish Law view the judge's intervention and active involvement in court proceedings especially when one of the litigants is unable to manage his own affairs?

The Jerusalem Talmud (4th Century, Tractate *Sanhedrin* 3rd Chapter *Halacha* 8) is the main source on the subject. It states the following:

"The plaintiff sues, the defendant defends himself and the judge decides the case." Namely, the judge silently listens to the arguments of both sides (*Pnei Moshe* - commentator on the Jerusalem Talmud). In a further discussion, *R. Huna* criticizes a judge who assists one of the litigants by presenting issues in his favour. As our Rabbis formerly stated in *Ethics of our Fathers* "**Judges should not play the roles of lawyers in court**". However, if one of the parties is not capable of properly presenting his case, the judge is obligated to assist him as it says in *Proverbs* 31:8 "Open thy mouth for the mute".

In the interpretation of this law, scholars of Jewish Law have taken two distinct approaches: one is that of the *Maimonides*, the other that of *R. Yaacov Ba'al Haturim* (14th Century) in his work *The Tur*.

Maimonides (*The Laws of Sanhedrin*, Chapter 21:10-11) is cautious about the over involvement of a judge in legal proceedings. However, when one of the litigants is incapable of properly presenting his case for whatever reason, the judge can help him but with two restrictions. The first is that the judge should help the litigant only in properly phrasing his argument but not in suggesting new arguments the litigant had not thought of. The second is that this should be done with great discretion so that the judge does not become counsel for one of the parties.

The *Ba'al Haturim* in his important work *The Tur* (*Hoshen Mishpat, The Law of Judges* 14:17) cites the *Maimonides* but does not agree with his interpretation of the above passage of the Jerusalem Talmud. According to *The Tur, R. Huna* categorically stated that if one of the litigants had not mentioned a particular argument it is incumbent upon the judge to assist him under the category of "Open thy mouth for the mute".

The *Shulchan Aruch* (*Hoshen Mishpat* 17:8) cites *Maimonides*' opinion as the binding rule and *The Tur's* view is omitted. A study of the commentators on *The Tur*, the S*hulchan Aruch* and the responsa of various *Halachic* authorities validates the approach of *The Tur* and leaves it to the discretion of the judge to decide when and whether to intervene. The underlined principle is the pursuit of justice.

There is a consensus between *Maimonides* and the *Shulchan Aruch* that when the litigant's difficulty is merely the proper presentation of his argument, the judge may assist him. A more serious issue arises when the judge interferes actively in presenting new arguments for either side. The common approach is that the judge should not do so unless he is certain that his interference is necessary in order to attain a just result.

The *Lechem Mishne* (commentator of *Maimonides*) explains that *The Tur* supports intervention of the judge when an argument is based on the facts of the case and the litigant has difficulties in presenting it or even when he has completely disregarded some legal aspects to his favour. But when an argument does not directly stem from the facts but is merely a formal claim which may not be true under the circumstances, the judge should not raise such an argument when it is not raised by one of the litigants.

The responsa of *R. Haim Palagi* (Izmir, 19th Century, Chapter 45) cites the controversy between *Maimonides* and the *Tur* regarding the issue of the judge's participation on behalf of any side. *R. Palagi* cites also the approach of the commentators of the *Shulchan Aruch* who contend that when the judge realizes that the litigant is incapable of properly presenting his case, it is incumbent upon the judge to advise him. The obligation derives from the duty to return a lost property to its owner.

In practice *R. Palagi* decides that *a priori* one has to follow *Maimonides*' more restrictive approach which permits the judge

to intervene only to the benefit of a litigant who is unable to properly present his case. But, he adds, that if the judge did assist either side he can rely on the opinion of *The Tur*.

There are other cases in which the judge is allowed to intervene in the proceedings and assist one of the litigants. This occurs when the litigant's position is inferior, if he is mute, retarded or suffers any other physical or emotional disorder which impairs his ability to adequately defend himself (Tractate *Ketubot* 31). Orphans also fit the above category where the judge is required to assist them in their cause.

The responsa of *Benyamin Ze'ev* (Greece, 16th Century, Chapter 250) deliberated the question when is the judge required to assist orphans in court and when he has to assign them a guardian to plead their cause. His conclusion is that orphans are no different from anyone else who cannot plead his own case. Specifically regarding guardians, *R. David Eben Zamra* stated in his responsa (Egypt, 16th Century, Chapter 2, paragraph 148) that when the guardian has difficulty in presenting the cause, he too should be assisted by the judge as cited in *Proverbs* :"Open thy mouth for the mute". One should note that all the above cases relate to court proceedings in which the litigants are not represented by a lawyer. According to Jewish Law, the parties present themselves in court, and representation by a lawyer is the exception rather than the rule. Under such circumstances it is evident that the mental ability of the parties involved is very relevant to the handling of the case. Hence, it is arguable that in a court system where lawyers represent both parties the judge's role in court proceedings should be more limited.

R. Issachar Ilinberg (Italy, 17th Century) in his responsa *Be'er Sheba*, Chapter 71, states that when the suit is based on a legal document and the validity of the document is being contested by the defendant, the judge may intervene and assist the plaintiff holding the document when he sees a defensible argument which stems from the document itself to the benefit of the plaintiff.

In Rabbinical Court Decisions No. 4 p. 175 (Israel, 20th Century) the rabbinical judge wrote the following:

A. If it is evident to the judge that the plaintiff was in error, he can, and is even obliged to assist him because there is no greater opportunity of "Open thy mouth to the mute".
B. The judge is obligated to assist a plaintiff in his case when the facts support the plaintiff's claim but for some reason the plaintiff had presented wrong arguments. In such cases, the judge has to decide whether he should consider the plaintiff's wrong arguments or disregard the plaintiff's arguments and make a decision according to the facts. The principle is to follow the facts and not the arguments presented to ensure that the plaintiff gets his just award.

Summary

Dealing with a litigant whose position is inferior such as orphans or the retarded, the judge is permitted to assist them under the principle of "Open thy mouth for the mute". The judge is also required to assist other litigants when they are unable to properly state their case. *Maimonides* and *The Tur* disagree in regard to other cases of judicial intervention. Generally the later commentators' view is to minimize judicial intervention and to allow it only when the judge feels that his intervention would lead to a better execution of justice.

In deciding the case, the judge's decision should not be based exclusively upon the arguments presented by the litigants. He may rely on arguments which were not specifically heard in court if they are obvious conclusions from the facts or the documents presented.

Civil resistance in a society of law

Michael Ben-Yair

A citizen who is dissatisfied with acts committed by the authorities need not feel that he is without recourse. He has at his disposal a range of options which can enable him to change the course of government, the number and effectiveness of such options are a function of the nature of the government.

Democratic government, being a government which desires to allow the materialization of individual freedom and autonomy, offers the citizen a number of ways of opposing policies with which he disagrees: free expression, political organization, assemblies, propaganda, demonstrations and, most important, the right to select his representatives to state institutions. In some cases, however, a citizen may dissent so fundamentally from the decisions of the authorities, that he engages in illegal activities in order to force the authorities to conform to his political views.

Israeli society has been witness to illegal protests which have occasionally spilt into violence against people and property. Such acts have not been confined to specific periods in Israel's history, and are not within the sole province of any particular sector of the population.

The law recognizes three types of illegal activity:

* Conscientious objection
* Civil disobedience
* Insurrection

Each of these forms of objection attract criminal sanctions. The criminal sanctions are not affected by the distinction between breach of the law committed for personal profit and an offence committed for ideological reasons. Some believe that different motives should bear different consequences at the penalty stage, however, before considering the practical question as to whether a political offender should be treated differently from an ordinary criminal, a more fundamental question must be asked: does a citizen have the moral right, in special circumstances, to commit a breach of the law where he believes that the government has acted improperly?

Michael Ben-Yair is the Attorney-General of the State of Israel. He is a former judge of the District Court of Tel Aviv.

On the 28 December 1993, in his first public address, Attorney-General Michael Ben-Yair talked to a public meeting of the Council of the Association on the subject of civil disobedience. We are publishing some extracts from the address, freely translated.

The Legal Question and the Moral Question

Law has no value in itself, it is an implement for enforcing the values which society has chosen for itself and by which it wishes to abide; thus, laws may also be judged - as good or bad - according to societal standards. Bad law or bad policy must be changed. Where societal institutions do not afford change, it is important that responsible individuals rise and warn against possible consequences. Does the task of "national alarum" legitimize illegal acts? The answer lies in the extent of the moral obligation of a citizen in a state of law - to obey the law.

Justification for the Duty to Obey the Law

The duty to obey the law means the duty to obey the law because it **is** the law, and not because the law is good and promotes goals with which the individual can identify.

The three most persuasive justifications for this view, are:

1. Equal share in the burden of sustaining the legal system.

When a citizen discards this burden he evades his responsibility to safeguard the effectiveness of the system of law from which he himself benefits. This argument is based on the presumption of fairness, according to which when a group enjoys a particular benefit, a moral obligation is imposed on all the members of that group to share equally in the burdens attached to attaining that benefit.

2. Prevention of damage to the legal system.

   Where a citizen breaches a law, his offence is not limited to an evasion of his obligation to participate in the burden of sustaining the law. His principle offence is to cause damage to the legal system itself. Reference is not to the preclusion of the beneficial purpose which the law attempted to achieve; the damage is better expressed as an impediment to the viability of the law as an instrument for achieving the values of society. Every breach of law impedes the efficiency of enforcement of the law, sets a "bad example" to others and diminishes the confidence of the public that the law will be honoured.

3. Defence of democracy.

   At the foundation of a democratic regime is the equal allocation among all citizens of the right to participate in the determination of policy. The attempt to achieve a particular goal by unlawful means undermines this equality.

Moral Legitimacy for Breach of the Law

As noted, the duty to obey the law has been justified on a number of grounds, however, there have been a number of historical events which have shown that obedience to the law is not always justified. One prominent example may be found in the Nuremberg Trials where it was held that there is even a duty to refuse to obey some laws. Another example may be found in the civil disobedience and unlawful demonstrations of Martin Luther King. In time, King's actions changed the course of the law, and although they did not thereby become retroactively legal they were recognized as justified.

These, and other historical examples, show us that from a moral point of view a citizen need not blindly follow the law. There may be considerations which allow disobedience to the law in special circumstances. Numerous problems may arise: is the sovereign right to legislate subordinate to a supreme law, so that where a law does not conform to the supreme law it need not be obeyed? Should a citizen who decides not to obey a law be punished, even though *prima facie* his breach may be justified in the circumstances? What is that supreme law and who has the authority to determine its content?

The Purpose of the Moral Right of Resistance

Historical sources have considered the limited right of resistance. Judge *Haim Cohn* considered the historical progress of the *ius resistendi* in his article *The Right and Duty of Resistance (Revue de l'homme*, 1968). His conclusion was that the right of resistance played an important complementary role in defending basic human rights. This right is conferred on a person when his basic human rights are denied and is in effect the last bulwark against dictatorship. For this reason the right of resistance may find positive expression in a number of declarations of independence.

Nevertheless, the right of resistance cannot exist within the legal system. The law cannot recognize a limited right of resistance and the right may therefore only exist outside the system of positive law. The right of resistance is therefore in essence a moral right, which confers on the citizen the ability to balance his moral duty to obey the law and his legitimate desire to defend his rights.

The process of decision making by majority rule enables the majority to dictate to the minority. Democracy limits the power of the majority to harm the minority. The accepted tool of limitation is a constitution. However, since a constitution cannot guarantee the protection of the rights of either the majority or the minority, it is also necessary to recognize the moral right of the minority to rise and resist the law or policy of the majority, in the event that their rights are ignored.

Does the moral right to resist also exist where a citizen is not motivated by a desire to protect his basic human rights but rather by his desire to change a law or government policy which does not conform with his own principles? No authority has a monopoly on truth, therefore it is the duty of a responsible citizen to warn the authorities of their errors. The nature of the measures which the citizen may take is dependent on whether the government enables its citizens to participate in decision making. In a totalitarian regime, where the citizens have no power to influence the decisions of the ruler, there is a strong moral justification for struggle, even through breach of the law, to prevent the wrongdoing of the regime. However, where the regime is

democratic, each citizen has an equal right to influence decisions, and the contest is therefore not between the citizen and the government, but between the citizens themselves.

Thus, as long as the dispute relates to public matters which equally affect the entire population, the decisive consideration must be the defence of equality in the ability to influence conferred on each citizen. Only where a decision may directly violate the rights of a specific group, and the democratic process does not enable that group to oppose it as a minority in a legal and effective manner, does the minority have the moral right to resist the majority, including by use of illegal means.

Where the dispute does not relate to rights but to a debate over policy or beliefs, neither party has entrenched rights in the democracy and neither side has a monopoly on justice or the truth. In such a case, where the entire public is affected, the principle of equality in political decision making takes over, and this restricts the moral rights of a group which holds a particular view to lawful dissent only.

The moral right to breach a law, as a means of influencing a political decision, embodies serious dangers: the minority has no greater rights on the truth than the majority, so that conferring legitimacy on breaches of the law in such circumstances only increases the danger of reaching bad decisions. Second, breaches of the law, as a form of political pressure, may lead the majority to be coerced into accepting minority views. Third, the reaction of the majority may express itself in breaches of the law as well, setting all on a short road to anarchy.

Preconditions to the Right of Resistance

Where a citizen has concluded that he can longer endure the acts of the government and that he must resist, the means of resistance available to him are first and foremost the legal means available in a democratic society, such as free expression and demonstration.

Even when a citizen has a moral right to breach the law, the illegal activity must meet a number of tests in order to retain its moral character:

A. Initial use of all legal means to defend the individual's rights.
B. Respect for the rights of others.
C. Proportionality.
D. Willingness to submit to sanctions.

Civil disobedience is characterized by two elements: it is motivated by political beliefs and not by personal gain. It does not reject the rule of law and the authority of the legislature and the government. It does not attempt to determine norms by itself, but rather to persuade the establishment to accept its beliefs. By recognizing the rule of law, a protester gains the admiration of the public and support for his cause. Willingness to submit to sanctions, while admitting the illegality of the actions concerned, results in a number of goals being attained:

A. Submission of "the right of resistance" to the rule of law.
B. Willingness to submit to sanctions guarantees that the law will not be breached for private gain, but for sincere ideological reasons only.
C. Submission to sanctions will preclude damage being caused to the confidence of the public in the regime of law; unhampered breaches of the law would lead to the system being undermined.

Breach of the law accompanied by submission to sanctions cannot be defined as disobedience to the law, but rather as the outcome of a choice, given to every citizen, to act either in accordance with, or, contrary to, the law.

Basic Law: Human Dignity and Freedom - 1992

1. The object of this Basic Law is to protect human dignity and freedom, in order to entrench the values of the State of Israel as a Jewish and democratic state in a Basic Law.

2. No injury may be caused to the life, person or dignity of a human being as a human being.

3. No injury may be caused to the property of a person.

4. Every person has the right to protection of his life, his person and his dignity.

5. The freedom of a person shall not be removed or restricted by detainment, imprisonment, confinement or in any other way.

6. (a) Every person is free to leave Israel.
(d) Every Israeli citizen located abroad has the right to enter Israel.

7. (a) Every person has the right to privacy.
(b) The private domain of a person shall not be infringed without his permission.
(c) No searches shall be conducted in the private domain of a person, on his person, in his person or in his belongings.
(d) The privacy of a person's conversation, writings or works shall not be infringed.

8. The rights conferred by this Basic Law shall not be infringed save where provided by a law which accords with the values of the State of Israel, which was intended for a fitting purpose, and only to the extent necessary.

9. The rights conferred by this Basic Law on persons serving in the Israel Defence Forces, the Israel Police, the Prison Service or other state security forces, shall not be restricted, nor shall the rights be made subject to conditions, save as provided by law and to an extent which shall not exceed what is required by the substance and nature of the service.

10. This Basic Law shall not derogate from the validity of any law existing on the eve of this Basic Law coming into force.

11. Every authority of the government authorities is under a duty to respect the rights conferred by this Basic Law.

12. Nothing in any emergency regulations shall be effective to alter this Basic Law, to suspend its validity temporarily or to stipulate conditions to it; however, where the State is in a state of emergency by virtue of a declaration under Section 9 of the Law and Administration Ordinance 5708-1948, emergency regulations may be promulgated under the said Section which will have the effect of revoking or restricting rights under this Basic Law, provided however that the revocation or restriction shall be for a fitting purpose and for a period and to an extent which shall not exceed what is required.

The Basic Law: Human Dignity and Freedom was relied on by the Supreme Court in both of the cases reviewed next in our new column "From the Supreme Court of Israel". In view of its importance it is set out here in full.
This is a free translation. The Israel Ministry of Justice has not yet published an official translation of the Law.

The right to inscribe non-Hebrew characters on tombstones

Civil Appeal 294/91, The Burial Society "Jerusalem Community" v. Lionel Kastenbaum, 30.4.1992.
P"M 46 (2) 464.
Before the President M. Shamgar, the Deputy President M. Elon and Justice E. Barak

Precis

This case concerned the issue of principle whether a relative or friend of a deceased person buried in a Jewish cemetery in Israel is permitted to inscribe non-Hebrew characters on the tombstone of the deceased. In a majority judgment, the Supreme Court sitting as a Court of Civil Appeals held that such a person was entitled to use non-Hebrew letters within the framework of his basic rights to freedom of expression, conscience and human dignity.

Facts

The brother-in-law of a deceased woman contracted with the appellant Burial Society for the funeral and burial of the deceased on the terms of a "funeral order form". The form contained a provision incorporating the Burial Society's regulations and an explanation sheet, which the applicant acknowledged with his signature.

Under the terms of these regulations any writing on the tombstone was to be limited solely to Hebrew letters; all numbers, designs and pictures were prohibited. The respondent husband of the deceased requested permission from the Burial Society to inscribe the name and date of birth and death of his wife in English, on the grounds that she had lived most of her life in the U.S.A., was known by her English name and had conducted her affairs according to the Gregorian calendar, this had been her wish and grant of permission would allow her family and friends who came from abroad to commune more easily with her memory in the cemetery. The husband's request was refused.

The appellant is a non-profit organization and the largest burial society operating in Jerusalem. Some other burial societies do allow requests of the type made here. Thus, when the appellant was made aware that tombstones had been erected with non-Hebrew dates, the appellant agreed to allow the respondent to inscribe the Gregorian dates on the back of the tombstone but only in Hebrew letters and not in numerals. During the course of the hearing the appellant also agreed to numerals, provided these were inscribed on the back of the tombstone.

First Instance

The respondent petitioned the District Court for a declaratory judgment confirming his right to inscribe the name and dates of birth and death of his wife according to the Gregorian calender in English letters and numerals on the tombstone. The District Court granted the petition.

Court of Appeal

The Burial Society appealed.

In long and exhaustive judgments the Justices of the Supreme Court held as follows:

The Majority

According to President Shamgar the issue at hand was to be resolved by the application of norms prevailing in public and private law concerning the basic rights of an individual, including his individual freedom of expression, as well as elements of contract law intended to protect vital societal interests. The dominant principle is the public value in recognizing the individual's personal-emotional interests and human dignity, provided that in doing so no substantive harm is caused to the rights of others.

A free society is under an obligation to recognize an individual's personal-emotional interests and human dignity as a matter of tolerance and understanding. At the same time, society has a right to nurture its culture, national language and historical traditions.

Individual freedom is legitimately barred only where a person's acts lead to a breach of the law or substantive infringe-

ment of another's rights. The gravity of the breach or infringement are subject to the test of the reasonable man, *i.e.*, an objective as opposed to subjective test.

Every person has the right to honour the memory of his loved ones in a manner corresponding with their values and life styles, provided that by doing so the feelings or legitimate interests of another are not injured.

A tombstone is not a public construction but a memorial for the living reflecting their personal relationship with the deceased. A distinction has to be drawn between a visitor to a cemetery and the person who erects the tombstone. The former has no right to interfere in the personal actions or decisions of the latter, so long as the circumstances are such that a reasonable man would not feel compelled to interfere.

The respondent's request was not so extreme or unusual as to substantially injure the feelings of another. While the Burial Society's interest in ensuring that inscriptions on tombstones are confined to the Hebrew language is a legitimate public interest, it cannot be forced on the respondent.

From the point of view of contract law, the respondent had no real freedom of choice and in his distressed state could not be considered in the same terms as a buyer under an ordinary sales contract. Further, the Burial Society has to be considered in the light of its public functions and status analogous to statutory bodies, and its contracts are governed by public law principles and not ordinary contract law provisions.

The test proposed by Justice Barak was slightly different. Justice Barak noted that as a public body the Burial Society is under a duty to act honestly and reasonably and as a trustee of the public interest. In deciding how to respond to a request such as the respondent's, the Society has to consider a number of factors. First, preservation of the Hebrew language in cemeteries. This is one of the objective values intended to be served by the establishment of the Burial Society. Second, the human dignity of the individual and his freedom of conscience, and third, the need for tolerance.

As a public authority the Burial Society has to balance these conflicting values. Here the human dignity of a reasonable man would only be injured if a public authority insisted that a tombstone inscription could **not** be in Hebrew. On balance, the value of human dignity, which reflects a basic human right from which many other fundamental rights are derived, outweighs the goal of preserving the Hebrew language.

A government authority wishing to infringe the human dignity of an individual must receive express legislative sanction to do so, and since the enactment of the Basic Law - Human Dignity and Freedom, such sanction has to be derived from a law "which accords with the values of the State of Israel, which was intended for a sound purpose, and only to the extent necessary." (Section 8).

Further, in the instant case, the contractual clause relating to the Hebrew characters, is an oppressive clause in a standard contract, and cannot be maintained. An issue of "public interest" is at stake, the Court will not sanction a contractual condition which opposes the public interest, which it is the Court's duty to safeguard.

The Minority

In the view of Justice Elon, the appellant is subject to both public and private law norms. It also has a duty of special sensitivity directed at the preservation of traditional values, the character and dignity of the cemetery and funeral service. The decision of the appellant to restrict inscriptions to Hebrew letters was not arbitrary or unreasonable and could not be defined as "national duress". Writing in non-Hebrew characters involves an element of harm to the interests of others buried in the same cemetery and their families who assumed that the tombstones would be inscribed solely with Hebrew characters.

An issue of mutual tolerance is at stake, including tolerance of the minority for the majority. Only very cautious use should be made of the term "public interest", in view of the great value which should be placed in preserving freedom of contract. Here the contractual clause was not oppressive but fair and reasonable. The basic rights safeguarded by the Basic Law - Human Dignity and Freedom, are rights founded on the values of the State of Israel as a Jewish and democratic state. Use of the Hebrew language is fundamental to the basic values of the State of Israel.

The right to leave the country

Criminal Applications 6654/93, Binkin v. State of Israel
Supreme Court, 14.12.1993, (unreported).
Before Deputy President E. Barak

Precis

The right to leave the country is a basic right which must be given substantial weight when the Court exercises its discretion whether or not to grant an accused permission to leave the country. This is the case even where the criminal proceedings brought against the accused are still in their preliminary stages.

Facts

The appellant was charged with a number of offences of fraud and breach of fiduciary duty. Within the framework of criminal proceedings he applied to the District Court of Haifa for an order allowing him to leave the country. The Court refused to grant the appellant general permission to leave but was willing to grant him limited leave upon deposit of a bank guarantee, as a security for his return.

The appellant appealed against this decision to the Supreme Court.

Justice Barak

The underlying premise in this type of case is that every person has the right to leave Israel. In the past, this right was protected by judicial precedent, today it is entrenched in the Basic Law - Human Dignity and Freedom (Section 6 (a)).

The basic right to leave is impaired by Section 44 of the Criminal Procedure (Consolidated Version) Law - 1982, which empowers a court to make a release on bail conditional on refusal of permission to leave the country.

Section 44 is preserved by the pre-existing law validity provisions of the Basic Law. However, the Basic Law is also to be used to interpret Section 44.

Thus, where a Court exercises its discretion in respect of an application to leave the country, it must give substantial weight to the basic right of the accused to freedom of movement. The right is not absolute but relative, and may be limited in the interests of the public. The primary issue of public interest at stake in criminal proceedings is the suspicion that the accused will fail to return to stand trial. The suspicion must be reasonable or almost certain. Even where the suspicion meets this standard, the Court must consider whether there are other means of ensuring that the accused will return to stand trial which are less grave than restricting his freedom of movement. Restriction of the right to leave should be the final sanction in every case and not the first.

In the instant case, the level of suspicion that the accused would not return to the country was not of a sufficiently reasonable or almost certain standard as to warrant restricting his right to leave the country on the grounds of public interest. Indeed, in view of the legal nature of the basic right to leave, the accused was entitled to a general travel permit, as opposed to a special permit in respect of each trip. Restricting an accused to a special permit was only justified in special cases and depended on the standard of suspicion in the particular case.

Legal problems concerning the sale of nuclear weapons

Introduction

How can the international community cope with the threat of the uncontrolled use of nuclear weapons? Over the past few years, this question has become increasingly pressing as it has become clear that many states possess such an arsenal. The fear is that states may themselves misuse nuclear weapons or may sell them to the highest bidder. Nuclear weapons could find their way into irresponsible hands who would consider employing them in the service of their cause and who could thus visit destruction upon humanity.

Does international law provide tools to combat this danger? This was the question considered by a Jerusalem tribunal in a public moot court held in the framework of the Ninth International Congress of the Association in December 1992. The court sat as an international tribunal and was constituted by judges who came to Jerusalem from around the world.

The President of the tribunal was the Hon. Justice Moshe Landau, former President of the Supreme Court of Israel. With him sat the Hon. Justice Myriam Ezratti, Premier President of the Paris Court of Appeals, the Hon. Justice Gabriel Bach of the Israeli Supreme Court, the Rt. Hon. Sir John Balcombe, Lord Justice of Appeal of England, the Hon. Justice Richard J. Goldstone of the South African Court of Appeal, the Hon. Justice William Kaye, former Justice of

The Judges


Judge Moshe Landau


Judge Myriam Ezratti


Judge Gabriel Bach


Judge John Balcombe


Judge Richard Goldstone


Judge William Kaye


Judge Alex Kozinski

the Supreme Court of Victoria, Australia, and the Hon. Justice Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit, California.

Arguing for the prosecution were Professor Amos Shapira of the Tel Aviv University Faculty of Law and Mr. Jonathan Goldberg, Q.C., of London. The lawyers pleading for the defence were Mr. Nathan Lewin of Washington D.C. and M. Joseph Roubache of Paris, France.

The script for this public trial was prepared by Adv. Yair Ben-David, Director General of the Israeli Bar. The academic adviser for the preparation of the trial was Dr. Yaffa Zilbershats of the Bar Ilan University Faculty of Law. The public trial was opened by Adv. Itzhak Nener, First Deputy President of the Association, who *inter alia* considered the impact of terrorism being perceived to be the espousal of a political cause: "the simple process of law enforcement is too frequently impeded by the sense that some governments still have, that they must deal with terrorism not only as a criminal phenomenon, but also as a political one."

The Issues

The tribunal was presented with a scenario, set out below, and was called upon to contend with the following legal issues:

A. Does international law prohibit the sale of nuclear weapons by a state to a terrorist organization that threatens the welfare of another state? Does such a sale of arms amount to giving aid to the terrorist acts of the organization and endangering the security and territorial integrity of the state against which the terrorist organization acts? Can it not be argued that the sale of nuclear arms is a matter that is at the discretion of the state, and that any attempt to prevent or limit such sales should be deemed interference in the internal affairs of the seller?

B. May a state take preventative measures when faced with a nuclear threat? Is it at liberty, for example, to seize a vessel transporting nuclear arms and to confiscate such arms as it fears may be used against it? Can such acts of seizure and confiscation be carried out when the ship is still in the port of the selling state or only after the ship has set out for sea?

C. Can a state that fears that nuclear arms are to be used against it bring a suspect to trial in its domestic courts upon a charge of purchasing atomic weapons or of attempting to make wrongful use of such arms against its citizens? Is jurisdiction contingent upon the suspect being a national of the threatened state, or are the domestic courts competent to try any person who purchases nuclear arms with intent to employ them against the state, regardless of his nationality?

D. What is the status of persons suspected of purchasing nuclear arms and attempting to use them, who have been brought to the threatened state against their will? Will jurisdiction be tainted by the suspects having been forcibly brought to the state?

Answers to these questions are enunciated in the international tribunal's decision, and as the tribunal's president, Justice Landau noted: "This case is in some of its aspects an international one, raising, as it does, in an acute form, questions in international law regarding the possible use of atomic weapons, the danger of which hangs over mankind like

The Prosecution

Professor Amos Shapira

Mr. Jonathan Goldberg

The Defence

Mr. Nathan Lewin

M. Joseph Roubache

a dark cloud. These questions have been dealt with in international treaties and declarations and in academic writings, but to our knowledge they have not as yet been the subject of judicial decision."

The Scenario

Protekistan is a country in Asia, which until recently belonged to the Union of Asian Republics (UAR). Following the dissolution of the Union, Protekistan declared its independence, was admitted as a member of the United Nations, and acceded to many international treaties including: the 1899 and 1907 Hague Conventions Respecting the Laws and Customs of War on Land; the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; the Four Geneva Conventions of 1949 and their two additional Protocols of 1977; and the 1979 Vienna Convention on the Physical Protection of Nuclear Materials.

Calamira is a country located in south-west Asia. It is a member of the U.N. and is a party to the above-mentioned international treaties.

A vast arsenal of weapons was left within the territory of Protekistan, including a stockpile of missiles armed with atomic warheads of the PS2 type. Protekistan announced that as a sovereign state it reserved the right to preserve the stockpile of missiles located in its territory and that it will do everything to maintain international peace and security. But Calamira's security services became aware that as part of its efforts to fill its empty treasury, Protekistan had begun secretly to sell its vast secret arsenal. Among those interested in this "free-for-all" sale were representatives of the "Front for the Liberation of Calamira" - a fanatical terrorist organization whose objective is the overthrow of the existing regime in Calamira and its replacement by a government under the control of the Front.

Relying on intelligence information, on August 1, 1992, a submarine of Calamira penetrated the waters of a Protekistanian harbour. A marine commando unit which emerged from the submarine overpowered a small cargo vessel flying a Protekistanian flag, which was still in the harbour but had started to sail towards the open sea. The cargo vessel was fired on by the submarine and was forced to sail towards the military port of Calamira.

Upon her arrival at the port, the vessel and her cargo were thoroughly searched. During the course of the search twenty model PS2 atomic missiles were seized together with their launch systems. The persons that were found on board the vessel were Protekistanian crew members and Protekistanian military experts who were due to supply the know-how and training needed to operate the missile systems. Also on board the vessel were members of the "Front for the Liberation of Calamira" who were either Calamira citizens or citizens of Calamira's neighbouring countries that supported the ideology of the Front.

In the course of investigation of the persons found on the vessel, it became apparent that the Front had purchased the missiles from Protekistan for enormous sums of money, with the intention of using these missiles in the struggle for the replacement of the Government of Calamira.

Calamira confiscated the vessel and the atomic missiles. All the persons found on board the vessel were put into custody to await criminal proceedings on charges of:

1. Buying or assisting to buy atomic weapons without authorization from the Calamirian government.
2. Attempt to use nuclear weapons against the inhabitants of Calamira.

Protekistan filed a suit against Calamira at the International Tribunal sitting in Jerusalem. This tribunal exercises jurisdiction over the parties to the dispute, applying the rules of international law.

The Arguments

Protekistan argued that:

1. (a) Being a sovereign state, it is not prohibited under international law from selling any kind of arms to anyone who wishes to buy them. Any act by a foreign state trying to limit Protekistan's ability to sell arms, including nuclear weapons, is considered to be interference with Protekistan's internal domestic affairs and contrary to international law.

   (b) The penetration of the Calamirian submarine into Protekistan's port and the firing on a Protekistanian vessel forcing it to sail to Calamira is a breach of Protekistan's sovereignty and is a breach of Article 2(4) of the U.N. Charter.
2. (a) According to international law principles, Calamira has no criminal jurisdiction over any of the persons found on board the vessel.

   (b) Even if Calamira has criminal jurisdiction under international law against the persons on board the vessel or any of them, such jurisdiction is negated by the fact that the persons entered Calamirian territory as a consequence of the forcible

abduction of their vessel by the armed forces of Calamira.

Protekistan is claiming from Calamira:

1. A public apology to the Secretary-General of the U.N. for breaching its sovereignty and interfering with its domestic affairs.
2. Damages for breaching its sovereignty and harming its property and citizens.
3. An immediate release of the vessel and all the weapons found on board.
4. An immediate release from custody of the people found on board the vessel and a commitment not to start any criminal proceedings against them in Calamira.

Calamira argued in its Statement of Defence that:

1. (a) "The Front for the Liberation of Calamira" is a terrorist organization which has been threatening the peace of Calamira for many years. Buying the atomic missiles with the intention of using them against Calamira is an act of terrorism committed by the Front's members and their supporters. The sale of these missiles by Protekistan and the provision of military instructors for the use of missiles are acts of assisting terrorism. Acts of terrorism and acts of assisting terrorism contravene international law and threaten international peace and security.

   (b) Being in a situation where its peace and security is being threatened, Calamira has the right to self-defence according to international customary international law and Article 51 of the U.N. Charter. According to this right, Calamira was

Dr. Yaffa Zilbershats
Academic Adviser

entitled to overpower the vessel carrying the atomic missiles, force her to sail to Calamira, confiscate the vessel and the missiles and put under arrest the terrorists, their supporters and assistants, found on board.

2. (a) According to international law, Calamira has criminal jurisdiction over all the persons found on board the vessel: the Protekistanian citizens, the Calamirian members of the "Front" and their supporters, including citizens of other countries.

   (b) The fact that these persons were brought into Calamira against their will after the vessel was forcibly abducted, does not affect the criminal jurisdiction of the Calamirian courts in any way.

   Calamira states that no apology has to be made by it to the U.N. Secretary-General and that it is not obliged to pay any damages to Protekistan.

   Calamira plans to keep the seized vessel and missiles, and insists upon not releasing any of the persons found on board the vessel, so that they may stand trial in Calamira.

The Judgment

1. The Tribunal finds that the sale of atomic weapons to a group of private persons like the "Front for the Liberation of Calamira" was a breach of international law.
2. The Tribunal finds that in seizing the vessel with the weapons and the persons on board, Calamira acted in self defense under international law. However, Calamira did not discharge the onus of proof which lay on it that it did not exceed the principle of proportionality, which applies to the plea of self defense, by entering the territorial waters of Protekistan. The only sanction in that regard will be this declaration by itself.
3. The Tribunal finds by a majority of four to three that the Calamirian court has jurisdiction to try all the persons found on board the vessel. The minority (Justice Goldstone, Lord

Adv. Yair Ben-David
Script

Justice Balcombe and Justice Kaye) is of the opinion that the Court has jurisdiction to try only Calamirian citizens. The other persons on board are to be released.

4. The Tribunal finds unanimously that the vessel itself is to be returned to Protekistan without atomic weapons and without the persons on board.

Note: A special booklet devoted to this public trial, comprising the complete text of the Tribunal's reasoned judgment, has been published separately and is available upon application to the Association.

Itzhak Nener appointed First Deputy President of World Jurist Association

Attorney Itzhak Nener, First Deputy President of the Association and Chairman of the Council of the Israel Bar, was elected First Deputy President of the World Jurist Association in a secret ballot at the recent bi-annual conference of the WJA in Manila.

The WJA is a Washington based organization which represents 150 countries; it lays special stress on legal aspects of current political problems. The Manila Conference, attended by some 3,800 members, including many Chief Justices, professors of law and prominent attornies, considered such issues as international terrorism, human rights, minorities and children in wartime.

Advocate Nener gave an address on "Human Rights and Minorities", criticizing the state of human rights throughout the world and noting the futility of discussing human rights when tens of thousands of people are being killed, wounded or raped in the middle of Europe.

Advocate Nener's speech was broadcast on television channels in the Philippines and on CNN, as the main item of the Human Rights Session.

Association holds Presidency Meeting

In accordance with resolutions adopted during the Ninth International Congress, the Association held a meeting of its international Presidency on the 7th November 1993. The President of the Association reported on the activities of the Association and Heads of Sections reported on the activities and plans of their chapters.

The meeting approved the proposal put forward by the European sections for the formation of a European Committee. The aim of the Committee will be to promote collaboration between European sections and to establish representation and contacts with the European Community.

The Committee will act within the Association, under the guidance of the Presidency and the Executive Committee of the Association and in full cooperation with these elected bodies. The Heads of the European Sections have undertaken to prepare a detailed plan of their proposed activities to be approved at the World Council Meeting.

From right to left: Adv. Itzhak Nener First Deputy President of the Association; Judge Hadassa Ben-Itto President of the Association; Colonel Ahaz Ben-Ari, Head of the International Law Branch in the Military Advocate - General's Dept, I.D.F.; M. Joseph Roubache, President of the French Section of the Association.

American Section files amicus curiae brief in new Demjanjuk case

John Demjanjuk v. Joseph Petrovsky, *et al.* United States Court of Appeals for the Sixth Circuit, No. 85-3435.

On Appeal from the United States District Court for the Northern District of Ohio

On June 5, 1992, a panel of three Circuit Court Judges "on its own motion" issued an order concerning information that "had come to the attention" of the Court in respect of the Demjanjuk extradition proceedings. According to the panel, the information suggested that its affirmance in 1985 of the denial of *habeas corpus* challenging the extradition warrant was "improvident".

The panel ordered counsel to appear and thereafter appointed a Special Master who also held hearings, took evidence and made extensive findings.

In a decision of November 17, 1993, the panel rejected the conclusions of the Special Master and held that "prosecutorial misconduct that constituted fraud on the court" had invalidated the District Court's judgment and the panel's earlier judgment in the extradition proceedings. Accordingly, the panel vacated both judgments.

In an *amicus curiae* brief filed in January 1994 by Mr. Nat Lewin, President of the American Section of the Association, the American Section argued in support of the Justice Department's position that the case be reheared *en banc* by the full Court.

The main grounds relied on by the American Section, are as follows:

1. The decision of the panel, which involves issues of both fact and law, deserves some form of appellate review. To date it has received none. The nature of this judgment requires that it be recorded in history as the fully considered judgment of the entire United States Court of Appeals for the Sixth Circuit rather than the unreviewed conclusions of a panel of three Circuit Judges, who themselves initiated the proceedings and then retained jurisdiction over it while assigning fact-finding to a Special Master.

2. The issues presented satisfy the "exceptional importance" standard that has heretofore been applied by the Court. By its decision to reopen the extradition appeal and demand explanations from the Department of Justice the panel went far beyond the power that appellate courts and trial courts have in international extradition cases. Further, the case concerns the validity of the extradition of an individual who fled to the United States after he had knowingly and actively participated, in one form or another, in one of the greatest crimes against humanity known to human history.

By setting aside the judgment handed down in Demjanjuk's extradition case, the panel has effectively pardoned unspeakable offences on grounds unrelated to the accused's guilt or innocence. Such a ruling is not only unjust in the particular case before the Court but will have damaging consequences for the judgments made by world opinion and, ultimately, by history, on the participants in the Nazis' mass murder of the Jewish people. It may also be misused as a precedent for future attempts to question, challenge, and seek to re-open court judgments that have heretofore been finalized in other cases involving war criminals.

3. The panel‘s decision unjustly condemns government attornies and the Office of Special Investigations. In fact, the Special Master found that there were only good-faith failures by government counsel to provide details that were marginally relevant to issues in the denaturalisation case.

Anti-Semitism in the Ukraine two years after independence

Zvi Magen

The Jews of the Ukraine have a history which has spread over 1,000 years on that land; their experiences in that country have been bedevilled by a multitude of problems. Throughout the golden periods of cultural and spiritual development, the Ukrainian and Jewish populations lived in a state of constant discord, accompanied by the most extreme revelations of anti-Semitism.

The Soviet period also left behind its adverse legacy, particularly the most recent generation which was associated with unrestrained anti-Zionist and anti-Jewish propaganda.

As did all the post-Communist countries, independent Ukraine, established over two years ago, inherited a fund of complex problems affecting all the fundamental spheres of life. In addition, some 600,000 people - comprising one of the largest Jewish communities in the world - remained in the territory of the Ukraine.

The phenomenon of official anti-Semitism, a remnant of the Soviet era, disappeared with the establishment of the Ukraine as an independent state. This achievement must be credited to the present national leadership and to the democratic forces which operated even before the establishment of the independent state (such as the RUKH movement; the Democratic and Republican movements, the Ukrainian Revivalist movement, and others). President Kravchuk contributed personally to this process - both through his consistent policies and through his open condemnations of anti-Semitism, and support of the Jewish people and the State of Israel.

During these two years of independence, the Ukrainian authorities permitted the revival of Jewish culture and education; allowed joint activities with the Jewish population of Israel; permitted Israeli and Western public bodies to operate on Ukrainian territory; and let Jewish emigration proceed unhampered. However, almost immediately, pre-independence state anti-Semitism was replaced by new anti-Semitic factions - mainly from nationalist-radical elements. At the same time, other political bodies have also become prominent, such as DSU (National Independence for Ukraine); UNA (National Assembly of the Ukraine); the National Conservative Party; the Conservative-Republican Party; radical para-military organizations, such as UNSO, and others. Recently, extremist movements of a patently Nazi orientation have appeared, in the main attracting nationalistic youth.

The idealogues of these political forces adhere to extreme xenophobic philosophies, generally directed against Russians and Jews, presenting them as the enemies of the Ukraine both within the country and in the international arena.

These organizations are still relatively few in number and their influence is limited. Public opinion polls estimate that support for them does not exceed 2 percent of the population. However, the difficult socio-economic reality of the country means that they are consistently gaining additional support.

To date, expressions of anti-Semitic activity may be found in the propaganda disseminated by the media, organized demonstrations, and, to some extent, acts of vandalism. The latter includes desecration of cemeteries, synagogues, memorials, *etc*. Anti-Semitic propaganda is spread by radical right-wing media, such as the journals: *Golos Nattzii; Ukrainski Orbity*; and *Neskorenna Natsiya*, which are distributed by activists. In addition, numerous articles are written in other publications, some by anonymous authors. The extent of anti-

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Semitic publications in the different types of media has increased in the past two years, from an average of one or two a month, two years ago, to twenty to thirty a month, today.

The main concentration of nationalist and anti-Semitic activities is in Lvov, Galicia, in Western Ukraine. In relation to this region it can safely be said that there is organized anti-Semitic propaganda which is directed by the radical right-wing parties and movements, some of which are now illegal. Another center of anti-Semitic activity today, is the capital of the Ukraine - Kiev.

In the southern and eastern areas of the country, widespread ideological anti-Semitism cannot yet be discerned, although there have been signs of local anti-Semitism in such places as Odessa, Viniza, and Dnieper-Potrovsk. In these areas, while Russian nationalism is more popular, accompanying elements of Russian anti-Semitism are being introduced. At present, these are still at an insignificant level.

The declarations and slogans distributed by anti-Semitic elements in the Ukraine may be summed up as follows:

* Calls to prohibit Jews from holding senior positions in the fields of economics, education, law, communications, *etc*.
* Charging the Jews with causing all the troubles of the Ukraine, including Bolshevik terrorism and the famine of 1932-1933, while calling for their punishment and deportation from the Ukraine.
* Denial of the Holocaust and past manifestations of extreme anti-Semitism in the Ukraine, or, alternatively, accusing the Jews themselves of provocations which brought about these events.
* Defamation of the Jewish people in relation to world conspiracies (various versions of the *Protocols of the Elders of Zion*) and accusations against Jews of encouraging anti-Ukraine policies world-wide.
* Economic defamations, including the accusation of "pillage of the Ukraine", by Jewish businessmen and by emigrants moving to the U.S., Israel, *etc*.
* Recently, particularly vicious articles have also started to appear, laced with overt racist and Nazi insinuations.
* It should be noted that an especially large number of anti-Semitic publications appeared against the background of the Demjanjuk trial, while, in practice, the media failed to give any objective coverage to the trial.

The main reasons for the present phenomenon of anti-Semitism in the Ukraine are threefold:

1. The economic and political crisis afflicting the country, causing a worsening of the socio-economic condition of the population and general disillusionment with post-Communist reality.
2. The power struggle in the government, while the radical camp uses the Jewish issue as a lever against the liberals and the democrats.
3. Feelings of revulsion against a market economy and private property, a distancing from democratic values and a hatred of foreigners on the part of a large segment of the population, translated in the general consciousness to "Jews taking over control".

It may be said, that anti-Semitism has become a constant factor in Ukrainian life and is even gathering momentum.

Although, as noted, the Ukranian authorities have eradicated official anti-Semitism, confronting anti-Semitism within society has proved to be much more difficult. The reason for this can be found in the monumental task facing the authorities, of contending with a complex economic, social and political situation, which has given rise to its own order of priorities.

Nevertheless, the seriousness of the phenomenon of anti-Semitism should not be exaggerated. It is still of relatively minor importance in the life of the public, and the official position still supports the State of Israel. However, a continuing state of crisis in the country may result in increased and worsening anti-Semitism. Thus, it is necessary to act in order to contain this terrible process. There is also room for further intensive action on the part of both the Ukrainian authorities and the international community.

At the same time, it should be recalled that the Ukrainian and Jewish people have travelled together down a long path of history, marked by many milestones. Of course, one must not forget the painful past, but it should not prevent the development of future co-operative relations.

With effort, mutual understanding between the two peoples can still be achieved. We are standing at a crossroad which may lead to a deterioration of relations and to mutual hatred, but a path of conciliation between our peoples and our countries and the cessation of the downward slide is still possible. It is to this end that I shall work to the best of my ability in my capacity as Israel's ambassador to the Ukraine. ■

"Pamyat" v. The "Jewish Gazette"

Judgment

In the name of the Russian Soviet Federal Republic,
26 November 1993.
The Cheryomushkinsky District Court (Moscow City).
Presided over by Judge Belikova and Magistrates Bounin and Yakovleva.
With the participation of the procurator Beloventzeva N.A. and Advocate Axelbant D.M.
In the presence of the Secretary Zabaluyeva.
Examined in open court the civil suit of the newspaper "Pamyat" owned by D.D. Vasiliyev against the "Jewish Gazette" [*Evreiskaya Gevzeta*] in respect of defamation and loss of reputation [literally: protection of honour and good name, ed.].

Holds:

The newspaper *Pamyat* and Vasiliyev, its founder and chief editor, filed a suit in court against the *Jewish Gazette* in respect of defamation and loss of reputation.

The grounds of the claim are that on the 7 May 1991, in its Edition 9/51, the *Jewish Gazette* published a list of "anti-Semitic publications" in which the newspaper *Pamyat* was named. By including *Pamyat* in the list of "anti-Semitic publications", the *Jewish Gazette* injured *Pamyat* and its editor and founder Vasiliyev in the eyes of its readers.

This allegation of the *Jewish Gazette* incites national hatred.

The newspaper *Pamyat* and Vasiliyev applied to the court for an order forcing the *Jewish Gazette* to retract its defamation and apologize for the insult, as well as an order requiring the *Jewish Gazette* to pay compensation for aggravation caused in the sum of 20 million rubles.

The representative of the *Jewish Gazette*, editor-in-chief Golenpolski, denied the validity of this claim and stated to the court that *Pamyat* was included in the list of "anti-Semitic publications" because of the fact that in its last two issues *Pamyat* had published the *Protocols of the Elders of Zion*, which is an anti-Semitic publication. The *Jewish Gazette* expressed its subjective view.

After hearing witness and expert testimony and after hearing the opinion of the representative of the State Prosecutor's office, who believed that the claims should be dismissed, and following an examination of the case file, the court held that the claims would be dismissed.

According to Section 7 of the Criminal Law of the Russian Federation, a citizen or organization is entitled to apply to the court for an order reversing statements which are defamatory or which result in a loss of reputation. At the same time the law does not require that a preliminary demand of the same sort be directed to the defendant himself, even in cases where the claim relates to media which published items, which in the view of the plaintiff, are unfounded and defamatory.

If the plaintiff did approach the media which published the untrue item which defamed or lowered the reputation of an individual or organization, or which infringed the legally protected rights or interests of a citizen, and demanded that a denial or reaction be published, then the court may examine this demand, but only on condition that the editorial staff of that media refused to allow such publication or did not effectuate it as required by law (Section 7 of the Civil Code of the Russian Federation, Section 46 (4)(b) of the Russian Federation Law on Mass Media).

During the court hearing it was found that in 1991 the *Protocols of the Elders of Zion* were published in two issues of *Pamyat*. The first issue also contained the introduction by Sergei Nilus. As a result of the publication of the *Protocols* in *Pamyat*, the *Jewish Gazette* placed *Pamyat* on its list of anti-Semitic publications since it regards the *Protocols of the Elders of Zion* as an anti-Semitic publication directed against the Jews as a people and as inciting national hatred.

In the opinion of the newspaper *Pamyat*, its inclusion in the list of anti-Semitic publications maligned its honour and good name in the eyes of its readers, the distribution of the newspaper decreased and the newspaper was caused financial damage. In addition, inclusion of the newspaper in the list of anti-Semitic publications injured the honour and good name of the founder and chief editor Vasiliyev.

During the court hearing it was found that the parties had different views in respect of the publication of the *Protocols of the Elders of Zion*. The determination of the authenticity or lack of authenticity of this work was not within the power of the

court. However, according to existing law, the parties were entitled to express their views in respect of the publication of this work.

By including *Pamyat* in the list of "anti-Semitic publications", the *Jewish Gazette* expressed its views as to the publication of the work.

In the opinion of the court, the *Jewish Gazette* did not spread any statements maligning the honour and good name of *Pamyat* and the chief editor Vasiliyev.

The witnesses, both of the plaintiff and of the defendant, who were examined during the court hearing, expressed their subjective views in respect of the *Protocols of the Elders of Zion*, and their testimony in court was not proof of the issue.

In consideration of the above, the court concludes that there is no basis for granting the suit, and the claims are dismissed.

By virtue of Section 91 of the Civil Sanctions Act of the Russian Federation, the newspaper *Pamyat* is ordered to pay costs in the sum of 250,000 rubles.

Decides:

The claim of the newspaper *Pamyat* and Dmitri Dmitriyevitch Vasiliyev against the *Jewish Gazette* in the matter of defamation and loss of reputation - dismissed.

To order the newspaper *Pamyat* to compensate the *Jewish Gazette* for legal costs in the sum of 250,000 rubles. An appeal may be filed against this decision to the City Court of Moscow within 10 days.

Comment: In an appeal filed by the *Jewish Gazette* and its chief editor to the Civil Division of the City Court of Moscow, the *Jewish Gazette* claimed that while the operative parts of the District Court's decision were right, the District Court had not given sufficient weight to the vast quantity of material examined by the court, and had not given this material its rightful place in the context of the grounds of the judgment.

The appellants noted that when publishing the *Protocols of the Elders of Zion*, *Pamyat* had deliberately supplemented the text with quotations from other publications which stated, *inter alia*, that the *Protocols* comprised a "strategic plan formulated by the leaders of the Jewish people under which Israel the anti-Christ would conquer the world". Further, *Pamyat* had added its own editorial comment that there was a massive brainwashing campaign aimed at causing people to believe that this plan was a forgery, when in fact it was true.

The appellants noted that the *Protocols* were in fact an anti-Semitic forgery and the entire *Pamyat* article was intended to incite national hatred and hatred of Jews.

In determining whether the *Protocols*, as published by *Pamyat*, were of such a nature as to justify charging *Pamyat* with anti-Semitism, the court had heard evidence from a long list of historians and other experts, all of whom were unanimous in declaring the *Protocols* to be a forgery and anti-Semitic.

The *Jewish Gazette* concluded that in issuing its decision the court had ignored the primary dispute between the parties, namely whether the *Protocols* were a forgery as alleged, despite the fact that Section 177 of the Criminal Code of the Russian Federation enabled the court to make that determination.

In the event, on January 12, 1994, the City Court of Moscow dismissed this appeal.

A second appeal filed by *Pamyat* was also dismissed.

Princz Case brought to President Clinton's attention

In Newsletter No. 9 we reported that the American Section of the Association is participating in an *amicus curiae* brief in the case of Hugo Princz. Princz has applied for reparations from the German government for his sufferings in Nazi concentration camps during World War 2. The German government has rejected this request, *inter alia*, on the grounds that Princz has always been an American citizen and has denied the American courts' jurisdiction in reliance of the Foreign Sovereign Immunity Act.

In a recent move, Mr. Nat Lewin, Head of the American Section, wrote to President Clinton asking him to raise the issue of Princz with German Chancellor Helmut Khol during the NATO summit in Brussels. The letter noted that "Germany's failure to accept financial responsibility to Mr. Princz simply because of his American citizenship at the time of his capture and later rescue... is a serious injustice." A number of other organizations, such as the ADL, Hadassa, and Jewish War Veterans of the USA added their support to the letter.

In November last year Princz received support for his cause from the American Congress which passed a resolution urging the German government to compensate Princz.

Reclaiming Jewish property in Eastern Europe

The following article was supplied to us by the World Jewish Restitution Organization which is concerned with reclaiming Jewish property in the former communist countries. In later issues we will look at the legal implications of some of the restitution laws. Members who deal in this field are invited to send us legal background material for publication.

With the lifting of the Iron Curtain from Eastern Europe, it became possible to investigate at close hand the fate of the Jewish communities in these countries after fifty years of being severed from the Jewish people in the free world. During those five decades, Jewish communal life almost ceased to exist, while the communal and public institutions, such as synagogues, schools, hospitals, yeshivot, ritual bath houses, clubs, youth centers and other public buildings which had served the communities for centuries, are still in existence. Hundreds of thousands of households were abandoned after their Jewish owners were slaughtered and left no heirs to their property.

With the transition of the governments in the Eastern European countries to a democratic system, the possibility arose to claim the Jewish properties, both of communities and individuals, which were first confiscated by the Nazi regime and later by the communists.

At the beginning of 1993, the leading world Jewish organizations established the World Jewish Restitution Organization (WJRO) for the purpose of dealing with claims against Eastern European countries of heirless property, once belonging to Jewish individuals communities, and organizations.

The WJRO is registered in Israel as a non-profit organization (*amuta*) in accordance with the Law of Amutot, 1980.

Organizations of this kind in Israel are subject to that Law and to their Rules of Association, which are approved by the Registrar of Amutot.

In accordance with its Rules of Association, WJRO is structured as follows:

There are eight Founding Members of WJRO, each one of them a leading Jewish Organization. These are:

* The Jewish Agency for Israel
* The World Zionist Organization
* The World Jewish Congress
* The American Joint Jewish Distribution Committee
* The Conference on Jewish Material Claims Against Germany, Inc.
* B'nai Brith International
* The American Gathering of Jewish Holocaust Survivors
* Center of Organizations Holocaust Survivors in Israel

WJRO has three governing bodies: the Council, the Executive Committee and the Control Committee. The Council is made up of two representatives of each of the Members of WJRO, and it is responsible for setting the policy and annual budget of WJRO.

The Executive Committee of WJRO is composed of one representative of each of the Members, and is responsible for the management of WJRO and for the implementation of policy set by the Council. The Executive Committee may appoint representatives to act for and on behalf of WJRO in negotiations with Jewish communities and foreign governments.

In accordance with the Rules of Association, the Executive Committee has set up two committees: a Legal Committee, which is responsible for all legal matters pertaining to WJRO; and a Research Committee, which is responsible for the gathering, storing and analysis of data concerning Jewish individual and communal assets in the countries of Eastern Europe.

Prior to its incorporation as an *amuta*, WJRO succeeded in coming to an agreement in principle with the Government of Israel concerning cooperation and coor-

dination between WJRO and the Government of Israel.

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

At the end of World War II, some of the countries in Eastern Europe, such as Hungary, Romania, Poland, Bulgaria and Czechoslovakia, introduced decrees of restitution but they have not in fact materialized.

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

So far, the governments of most Eastern European countries have done almost nothing, or very little to redress the material wrongs caused to the Jewish people in their respective countries. In none of these countries has legislation been enacted for the return of heirless and unclaimed property of communities, associations or individuals. The only exception is Bulgaria, where such legislation was enacted and implemented. The other country which passed a law only partially solving this problem is Slovakia.

Legislation for the privatisation of nationalized property, which has been undertaken in some of the Eastern European countries, does not provide for the restoration of Jewish property to the original owners.

The WJRO intends to deal with the following claims:

1. The return of heirless and unclaimed properties of communities, associations, organizations and individuals, to the Jewish people as the legal heir and successor of the extinguished communities and annihilated people;
2. Payment of full compensation in cases where restitution is impossible.

A distinction should be drawn between those states which during World War II were Allies of Nazi Germany, *i.e.*, Hungary, Romania, Bulgaria, Slovakia and Croatia, and states such as Poland, the Czech Republic, the former Yugoslavia and the three Baltic States - Lithuania, Latvia and Estonia - which were under German occupation. The case, however, to be presented by WJRO against all Eastern Europe countries, is based on the legal and equitable argument that these countries should be obligated to restore that property, illegally seized during the occupation from the original legal owners.

There is still of course a long road ahead of the WJRO in its attempts to achieve its goals. What is needed and would be greatly appreciated is the assistance of the legal community around the world and especially the worthy efforts of the Jewish international legal community.

Dr. Meir Gabay elected to U.N. Administrative Tribunal

In November 1993 the United Nations General Assembly elected Dr. Meir Gabay, Chairman of the Council of the Association, to the post of a judge of the United Nations Administrative Tribunal. The Administrative Tribunal is a judicial body which serves the U.N. itself as well as a number of other international organizations.

Dr. Gabay's election was supported by 99 member states of the U.N. This is the first time that an Israeli candidate has been appointed to such a senior position in the U.N. system.

Dr. Gabay served in Israel as Deputy Attorney General, Director General of the Ministry of Justice, and until recently as Civil Service Commissioner. He served as a member of the negotiating teams in the peace process following the Camp David Accords and the Madrid Conference. He is also a member of the pool of arbitrators serving under the World Bank International Center for Settlement of Investment Disputes.

Dr. Gabay represents Israel in many international conferences dealing with human rights, international trade and intellectual property law.

Association urges against screening of Nazi film

In a letter addressed to Mrs. Leuthauser Scharrenberger, Minister of Justice of the Federal Republic of Germany, the Association called for the removal of the Nazi film Beruf Neonazi ("Profession: Neo Nazi") from German screens:

"Knowing the views of your government on the need to combat neo-Nazism and anti-Semitism, we venture to draw your attention to the recent making and the current screening, in the Federal Republic of Germany, of a film titled *Beruf Neonazi*.

We are shocked that a movie of that kind could have been funded directly by four states of the German Federal Republic.

It is inconceivable that this movie, which in effect champions the neo-Nazism phenomenon in post World War II Germany - even if we are told that its original goal was quite different - could have been made and publicly funded in 1993's Germany.

We understand that some measures are currently being taken to remove this film from the screens. We urge that its screening be totally banned throughout the Federal Republic and that all necessary executive and legal measures be taken to prevent the dissemination of similar Nazi propaganda, under any guise, in the future.

Your personal intervention, as Minister of Justice, is vital in a matter of this kind.

As our members in forty countries are most anxious to learn what is being done to stop the ongoing dissemination of hate propaganda, we shall be grateful for any information concerning the steps taken in this matter."

Judge **Hadassa Ben-Itto**
President

Adv. **Itzhak Nener**
First Deputy President

We are pleased to report that since sending this letter, pressure from the Jewish community has resulted in the cancelling of the screening of the film.

Argentinian Court applies anti-discrimination law in criminal prosecution

On the 23 May, 1992, Argentina enacted an "anti-discrimination law", providing criminal sanctions for various offences of racism.

Section 3 of the law provides for imprisonment of those who "take part in an organization or perform propaganda based on theories or ideas of superiority in race or religion, ethnic origin or colour, the purpose of which is the justification or promotion of race or religious discrimination by any means and those who by any means encourage or incite persecution or hate of any person or groups because of their race, religion, nationality or political ideas."

In the first case under this provision, criminal charges were brought against Carlos Schellast, the head of a neo-Nazi organization called the "Nationalist Socialist Party of the Workmen".

On 22 March, 1993, Dr. Orfeo Maggio, Judge of the Criminal Court of Quilmes, Buenos Aires, pronounced judgment.

Dr. Maggio found that the accused had in his possession a great quantity of Nazi propaganda material which was offensive to the Jewish community and rejected the defence argument that the charges revolved around a conflict of interpretation of history. Dr. Maggio accepted that "the history and experience of life have clarified what happened in those years [of the Holocaust]" and placed emphasis for this purpose on the verdicts of the Nuremberg Trials and the historical facts laid out there.

Finally, following a thorough review of the original parliamentary debate in which the anti-discrimination law was enacted, the Court concluded that the material held by the accused was indeed intended for propaganda purposes within the meaning of the law. This judgment, with its call to abide by democratic values, has been widely welcomed by the Jewish community of Argentina.

PLEASE NOTICE CHANGE OF DATES AND VENUE

WORLD COUNCIL MEETING

Rome, Italy
June 26-29, 1994

The 1994 World Council Meeting of the Association will be held in Rome, Italy between June 26 - June 29, 1994.

Lectures and debates will concern major economic, legal and public issues, among them: Economic Ties with Middle Eastern Countries in the Peace Era; The Struggle against the Arab Boycott; The GATT-EC Agreement and its Ramifications on Trade and Investments in Israel and Other Countries; Legal Aspects of Investment and Trade; The Middle East Peace Process and its Legal Aspects; Relations between Christians and Jews after the Establishment of Diplomatic Relations between the Vatican and Israel; Combatting Anti-Semitism and the Denial of the Holocaust; Reclaiming Jewish Property in Eastern Europe.

In addition, there will be a Business Meeting of the World Council; optional tours to various sites of interest; cocktail receptions and a Gala Dinner.

The sessions and events of the Meeting in Rome and other cities in Italy are open to all members of the Association and registrants of the Meeting. Registration fees are US$ 250 each for members and US$ 100 for their spouse.

Further program and registration details will be provided to members in due course.