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Cover: One of the two oldest manuscripts in the Gross Collection. This *Ashkenazi Siddur* from the 13th-14th centuries, is lacking the beginning and the end. But the remaining portion contains part of the *Haggadah* and some delightful illustrations and decorations. The names of the owners are mentioned in the parts regarding the *Chatan Torah* and the *Chatan Bereshit* (Courtesy of the Gross Family Collection, Tel-Aviv).

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PRESIDENT'S MESSAGE



A

s I write this message, on the eve of Passover, Israel is burying the victims of the most recent terrorist attacks by Palestinian suicide bombers. Unfortunately, we have become used to seeing on our screens blood, lots of blood, destruction, bereaved families whose lives are shattered forever, and lists of names and faces that will forever stay in our consciousness. The hurt and the shock never go away.

Perhaps we have become used to these sights, but we are trying very hard not to become insensitive to human suffering. We cling to our firm belief in the value of human life.

We also watch on our screens the Palestinian victims and their mourning families. We watch and we hurt. We are trying very hard not to become immune to the death and suffering of our neighbours.

The pictures we see do not come to us *via* satellite from a far away land, they are right here, almost next door. Those who live in the areas governed by the Palestinian Authority are the people with whom we are destined to live side by side.

We live in different societies - not only because we are a true democracy, a free and open society, and they are not; but because we educate our children to respect different values, to seek a different future.

We must believe that one day we shall resolve our conflicts, we shall have peace in this region and we shall live in neighbourly co-existence. We keep wondering how this will be possible when a whole generation of young Palestinians, from kindergarten age, are raised to become holy martyrs, when they adorn their walls with pictures of 17 and 18 year old boys - and now also girls - who tape televised messages before going out to murder young Israelis in restaurants and at wedding receptions. These children listen with their parents to religious leaders who use their mosques to praise the suicide bombers, who teach that there is no greater goal to which these children can aspire than becoming "*shahids*" who will be rewarded in heaven for sacrificing their lives in the act of killing innocent civilians.

What do children feel when a father appears on television rejoicing at the death of his suicide bomber son, and declaring his hope that his other children will follow the same path?

When one conditions one's children to become killers, when one does not raise them to value human life, even their own, when terror becomes not only a strategic choice but a recommended way of life, one endangers not only the chance for peace with one's neighbours, but also the very fabric of one's own society. One can never erase the images implanted in the minds of the young; one cannot reverse the direction in which they have been pointed at an early and impressionable age.

In spite of the hatred and the rage, on both sides, we say to our Palestinian neighbours: if you share our hope for a lasting peace in this region STOP RAISING SHAHIDS!

Hadassa Ben-Zur

The Jerusalem Conference

Our Association, in collaboration with the Jewish Agency, convened an international conference in Jerusalem (December 12-14, 2001) under the title: *Standing by Israel in Time of Emergency*, confronting the issues that have become a major part not only of our Jewish agenda, but also of the world agenda. 200 members and guests of the Association from ten countries attended the Jerusalem Conference. *JUSTICE* continues highlighting presentations delivered at this conference. More will appear in the next issue of *JUSTICE*.

Detering Terrorism: States, Organizations, Individuals

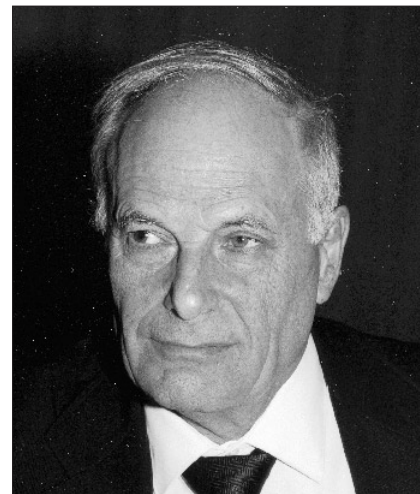
Ariel Merari

For a number of years people in academia researching terrorism, as well as government officials, especially in the United States, have been worried about the possibility of unconventional terrorism, *i.e.* terrorism by weapons of mass destruction, nuclear, biological and chemical. Interestingly, works both in government and in academia on unconventional terrorism started as early as the 1960s. At that time, people expressed concern about the possible use of such weapons by terrorist groups, for instance, a number of renowned physicists claimed that it was quite within the reach of some terrorist groups to build a crude, home-made nuclear device. A famous historian, Roberta Wohlstetter, even wrote an article comparing the possible results of a small crude nuclear device exploding in Tel Aviv and in Cairo. Her conclusion,

Prof. Ariel Merari is a Professor of Psychology at Tel Aviv University; Director of Program for Political Violence at the University. These are highlights from his presentation at the Jerusalem Conference, on the panel on International Terrorism: A Global Threat.

based on various physical formulae, was that a device of this sort on Tel Aviv would result in the deaths of approximately 9,000 people whereas in Cairo, due to the high density of the population, it would result in the deaths of 36,000 people.

However, academics wrote, government committees met, and no instance of non-conventional terrorism occurred for decades, until March 1995. In March 1995, a Japanese cult called *AUM Shinrikyo* (Supreme Truth) carried out what later turned out to be a number



of chemical attacks in Tokyo, only the last of which was detected as such. It consisted of spreading the nerve gas Sarin in the underground system in Tokyo and it resulted in the deaths of 12 persons. A very large number of people, reportedly some 6,000, were affected; although it is not quite clear whether all of them were physically affected.

Since then, concern about non-conventional terrorism has grown tremendously and in the US for instance, millions of dollars have been spent since March 1995 in analyzing the possibilities and establishing the procedures of preparedness. Still, no other incident of the terrorist use of weapons of mass destruction took place until very recently, indeed until September 2001. Despite all the talk, despite the preparations, despite the concern, nothing happened. The question is why? Despite the availability of chemical agents, despite the great capability of at least some terrorist groups, they have not used these weapons. Why is that so?

The only possible answer is that the terrorist groups have not used these weapons because they were considered taboo in world public opinion. The terrorist groups were actually afraid of breaking this taboo as they thought it would create a devastating backlash; it would allow a very devastating response on the part of states and the use of such weapons would certainly meet unfavourable international public opinion. Even recently, a *Hamas* web-site hosted a question and answer session - the questions were answered by a high-ranking operative of *Izadin al-Qassam* - Salah Shehadeh, the man who founded the military arm of *Hamas*, concerning why *Hamas* was not using poison in attacking Israelis. The answer was because this would give Israel the legitimacy to react very strongly. The answer was pragmatic. It was not based on any moralistic consideration - such as that gas should not be used because it was morally unacceptable or internationally forbidden - rather the pragmatic answer was that use of it would be counter-productive. This was basically the reason why most terrorist groups which considered using non-conventional weapons - did not do so until September 2001.

What happened on September 11 2001 was an act of terrorism that in many respects has been unprecedented in the history of terrorism. It was not only the number of casualties that was so outstanding; the number of casualties from the attacks in September in the United States was about 10 times higher than any single previous terrorist attack in history. The outstanding feature was the daring; the blatant challenge to the mightiest nation on earth. The act that was exhibited for the whole world to

see on that date reverberated around the world, to be heard by all terrorist groups, whatever their cause, whatever their motivation. A taboo was broken; September 11 marks the breaking of a taboo, and the question now, of course, is - what will be the effect of September 11 on the behaviour of terrorist groups in the months and years to come? Many journalists asked after the attack what will happen now? How will other terrorist groups react? Are we going to see a copycat phenomenon? In the past, terrorists have indeed copied terrorist successes quite fast. The answer is that so far, at least, terrorist groups have been sitting on the fence; they have been sitting on the fence watching to see whether or not you can get away with it. This is the critical question; most terrorist groups are pragmatic; they may be extreme, they may be fanatic, but when it comes to decision-making, they are pragmatic. *Hamas*, for instance, is a pragmatic organization; very extreme, very fanatic, very reckless but pragmatic. It is pragmatic to the extent that in 1996, when the Palestinian Authority really clammed down on *Hamas* as a result of American and Israeli pressure, after a series of suicide bombing attacks in Israel, and the PA shut down *Hamas* offices, took over *Hamas*-controlled Mosques, and took over *Hamas* bank accounts, the organization made a decision and stopped suicide attacks for quite a while because they decided that it was counter-productive for them at that point to continue this policy.

Basically, what we are considering is - can we deter terrorism? Can we deter states that support terrorism? We can approach this question of "can we deter terrorism?" in two ways: one way is to look at the theoretical literature on deterrence and the other way is to look at the empirical evidence, the history of attempts to deter terrorism. The theoretical literature on deterrence does not help us much; there are two types of research that are hypothetically applicable. One is the political science literature on deterrence that primarily deals with nuclear deterrence, and only a small part of which deals with conventional deterrence, but none of this literature deals with deterring sub-state groups and individuals. And on the other hand there is the criminal justice literature that deals with deterring ordinary criminals, but it does not relate at all to politically-motivated groups and individuals. This is a very significant element that we have to take into account when we talk about the deterrence of individuals and organizations.

The question of rationality is central in deterrence theory, which is not always, or not automatically, applicable to the case of terrorist groups. By and large, both legs of deterrence theory - the international relations theory, political science theory and the

criminal justice theory - leave us with a pretty big black hole when we come to analyzing and to looking for theoretical bases for analyzing the deterrence of terrorist groups and organizations.

Experience teaches us something; however, experience is rather limited. The only state that has systematically used military force against terrorist groups, on one hand, and state sponsors of terrorism on the other hand - has been Israel. The United States has occasionally also used military force in an attempt to deter state sponsors of terrorism and terrorist groups. It is interesting to take a brief look at these two countries in their attempt to deter terrorism and to see whether they have succeeded, whether they have failed and if they have failed, why and what can be learned from it.

I would suggest that there are basically two possible approaches to coping with international terrorism: one of these ways has been pretty well represented by Israel, and that is to see terrorism as a war. The other approach has been fairly well represented by the United States, and that is to see terrorism as a legal problem. One can give two examples: in 1968, after a couple of attacks on El Al airplanes in Europe, Israeli paratroopers landed at Beirut Airport and blew up 13 empty civilian Arab aircraft on the tarmac, as retaliation. Israel made a statement: if attacks on Israeli aviation would continue, and these attacks, Israel knew, were sponsored by organizations that were situated in Lebanon, Lebanon would have to pay the price. That was a clear case of use of military force in an attempt to deter a country from sponsoring terrorism. Next, one can take a look at an American example: in December 1988, an American civilian airliner, Pan Am flight 103, exploded in mid-air over Lockerbie. The result was that 259 passengers and crew were killed, and eleven more on the ground, inhabitants of Lockerbie village. After three years of very thorough investigation, an American Grand Jury indicted two medium-rank Libyan officials for the attack. The US and the United Kingdom demanded their extradition to stand trial for the attacks; Libya, of course, refused as expected. So the US and the UK got the support of the UN Security Council and obtained the imposition of diplomatic and economic sanctions on Libya. Libya was under these sanctions for a few more years until eventually, after long negotiations, the Libyans kindly agreed to extradite these two suspects to stand trial in a neutral country - Holland - by a Scottish court. In the end, after a very long ordeal, one accused was found guilty and the other was set free for lack of evidence. This was the end of what actually amounted to an act of war by one state against another state, in breach of all accepted laws of war. The end was just

ordinary criminal procedure in which one individual was found guilty while the other was set free. In looking for an analogy, one can think of it as the United States, after Pearl Harbor in December 1941, not waging war on Japan but indicting the Japanese pilots who bombed Pearl Harbor. This, to me, does not make much sense.

This, with only a few exceptions, has been the typical approach of the United States to combating international terrorism. Israel, on the other hand, has regarded terrorism as a form of war and has bombed terrorist strongholds, it has also bombed or otherwise attacked neighbouring states that have given shelter to terrorist organizations or supported their operations against Israel. And the question is again - has this approach been effective? In the case of the United States approach, we know that it has not been effective. For one thing, Libya has indeed stopped direct sponsorship of terrorist attacks against the United States, but it has continued to support other terrorist groups that have continued operations against the US. Has Israel's approach been more successful? Israel's record actually has not been very convincing as a case for the use of military force to deter state sponsors of terrorism. If we look, for example, at the period of the 1950s in response to *Fedayeen* raids from Egypt and from Jordan into Israel: Israel used to carry out retaliatory attacks, in the beginning against civilian targets in the hope that the population would put pressure on their governments to stop allowing terrorists to operate against Israel from their territory, but this did not happen; and then against military camps - Egyptian military camps, Jordanian police stations and so on. Did this policy result in deterring Egypt and Jordan? No. Only the Sinai Campaign of 1956 stopped Egyptian support of terrorism for a period of eleven years - until 1967. Between 1967 and 1970, Israel carried out, again systematically, retaliatory attacks against Jordanian targets and PLO strongholds in Jordan, in response to PLO incursions into Israel. Did this deter Jordan from allowing the PLO to operate from its territory? No. It did not - because the Israeli threat was not sufficient to counter-balance the alternative for Jordan. For Jordan the alternative was worse than suffering Israeli retaliatory strikes. At that time, Jordan was surrounded by Arab nations which were radical and supported the PLO: Syria from the North, Iraq from the East, Egypt under Nasser. All these were countries that put very strong pressure on Jordan to continue to let the PLO operate from their territory. Add to this the fact that more than half of the Jordanian population was Palestinian, suppressing the PLO at that time meant a real danger to King Hussein's government

and to the continuation of his rule over Jordan. And the only thing that prompted him to confront the PLO head-on was when the PLO challenged him for the throne. Only then - not Israeli retaliatory strikes, but the PLO's rebellion and open challenge to the authorities in Jordan - was King Hussein spurred to unleash his army against the PLO.

Lebanon is another interesting case. In the late seventies, early eighties, the PLO was in Lebanon and it carried out terrorist attacks against Israeli settlements along the northern border. Israel responded more intensively in some periods, less intensively in others, but in principle Israel responded with retaliatory strikes against the PLO. Did it work? Did it deter the PLO? Not really. What did the Israeli retaliatory strikes against the PLO in Lebanon achieve? They achieved a sort of containment; the PLO did not completely stop attacks against Israel but it did operate much below its capability at the time. The PLO could have carried out many more attacks and the self-limitation was clearly because of the threat of massive Israeli response; not small retaliatory strikes, but massive Israeli responses. As the PLO's second-in-command, Abu Ayad, wrote in his memoirs: "If the PLO loses Lebanon as a base, it would be a very severe blow to the organization; the struggle would go back forty years". This was the fear.

Likewise, in the case of Syria's operations in Lebanon, Israel managed, by the threat of retaliatory strikes, to reach certain agreements with Syria and then with *Hizbullah* on the so-called "red lines"; so though absolute deterrence was not achieved, some sort of containment was achieved.

What do we learn from this history now? The reason for the failure of deterrence was that in the case of Israel, the severity of the punishment threatened was not enough. There was credibility, but severity of punishment was lacking. In the case of the United States, the contrary was true. There was no credibility, in as much as the use of military force was concerned; and the severity of punishment only applied to individuals when they were caught, but not to organizations. Now with the breaking of the taboo that so far has limited the actual conduct of terrorist organizations in what they decide to do or not to do, the question is can we not only maintain deterrence at its previous level, but perhaps improve it?

I think that we can achieve a pretty good level of deterrence on two assumptions: that the threatened punishment is sufficiently severe, as applied to both state and sub-state organizations; and two - that the punishment is credible. I do not believe that there are genuine 'crazy states'; no state is quite crazy. There may be sub-state organizations that are irrational (not including

Hamas and *Hizbullah* which are rational organizations), cult-like organizations which cannot be deterred because their perception of reality is highly distorted. These are organizations that think in terms of Armageddon.

In their case, the issue is not deterrence, its compellence. Other organizations and groups may be deterred. The question, therefore, is - to what extent is the free world in general willing to go in imposing sanctions, including military sanctions and including general war if necessary, to stop states from sponsoring terrorism and to stop organizations from resorting to terrorism as a mode of promoting their policies and solving their grievances. In the past, the situation was pretty stable and terrorism was contained within tolerable levels. Now, for the first time in the history of terrorism, we have on one hand a situation where the danger is very grave, including the danger of use of weapons of mass destruction by terrorist organizations, and on the other hand, there is a great opportunity for achieving concerted action on the part of the free world to make terrorism almost obsolete as a mode of struggle, at least in so far as international terrorism is concerned. Domestic terrorism is a different issue. Domestic terrorism is a problem for the legal system but in respect of international terrorism there is now an opportunity for the first time in history to achieve an international consensus for concerted action that would make terrorism obsolete, much like piracy or slavery.

Low Intensive Conflicts Versus Regional War

Eitan Ben-Eliahu

Terror activities have been continuing for many years. Today we are facing what may be described from the Palestinian perspective as very efficient terror attacks which together we term “a low intensive conflict”. The reason I use this term is to explain that actually the strategic situation in the Middle East has changed in the last twenty years. If we take a quick look back at the history of Israel since independence, statistically, every decade, we have had to face a “war”: it started in 1948, followed by 1956, 1967, the War of Attrition, 1973 and the last one, which more or less followed the same model, in 1982 in Lebanon; each of them had the characteristics of being very intensive and short, which means all out. How is it that since 1982, which is already twenty years ago, the situation has not improved, but there is no total war? There is an ongoing low intensive conflict and one should ask oneself - why has the way that war breaks out in Israel changed?

The reason is that the only way in which the conflict could be turned into violence from 1948 to 1982 was for a war to break out every ten years. But then most of the countries, starting with Egypt and followed by Jordan, took a strategic decision to



accept the existence of Israel in the region. They had territorial requirements and we satisfied them. We have peace with Egypt and Jordan, and maybe we are halfway to a peace with Syria. Still, the Palestinian conflict goes on. They realized that the only way to change the situation and pursue the relative advantage they have over us, is by a low intensive conflict and not by confronting us in a hi-tech war as was the case up until 1982.

There are pilots in Israel, soldiers and commanders who are praying to bring back the battlefield to 30,000 ft. and engage our enemies with Israeli airplanes, where

we can take advantage of our own relative superiority. But the Palestinians realize this and the conflict has shifted to a low-intensive cold terror; a situation in which we cannot bring into the battlefield our relative advantage.

Instead back in the seventies, the Palestinians increased their power in Jordan. In 1970 during Black September the King suppressed the terror in Jordan, understanding that he was under an existential threat. He destroyed the terrorists infrastructure and pushed the Palestinians out of the country.

A few years later, Palestinian terror again rose, this time in Lebanon. The government of Lebanon was very weak, Syria had not yet come in nor had Iranian influence yet been exerted. The Palestinians realized that they had an opportunity to rebuild their forces in Lebanon. It took them about 10 years. After the Lebanon Operation in 1982, they were pushed out of Lebanon by Prime Minister Sharon, at that time Defence Minister. Arafat found himself in Tunisia; suddenly there was no way for the Palestinians to fight and no way for them to execute their terror attacks. Historically, Palestinian terror moved out of Lebanon, through

Major-General (retired) Eitan Ben-Eliahu is the former Commander of the Israel Air Force. He retired in 2000 from active duty in the IAF, and was appointed president and general partner of East-West Ventures Ltd., which is an Israeli branch of East-West Venture Business Group. Gen. Ben-Eliahu was one of the pilots involved in the strike against the Iraqi nuclear reactor in 1981. These are highlights from his presentation at the Jerusalem Conference.

Tunisia back into the territories. This was the first time we had to face the terrorism, which in the beginning was called an *Intifada*, inside Gaza, Judea and Samaria and indeed in the entire State of Israel.

When we face this conflict, apart from considering how to fight with the terrorists, whom to kill, whom to assassinate, what to do and how, we must also be concerned with two more elements which I believe are very important. One is how to manage the crisis/war against terror; and the second is to ensure that we keep the linkage between managing the current crisis and a long-term policy. If we ignore the long-term policy and manage the crisis without thinking about the future, we may handle it very well, but once the crisis is over, we will not be ready for the future. On the other hand, we must also manage the crisis and make sure that at the same time it is kept under control. As long the crisis is kept as a low-intensive conflict, it can be controlled; but once out of our control, it may escalate into a regional war. One knows how one gets in to such a war, but not how one gets out of it. Even though I am sure of our success, the linkage between the war and the policy afterwards, the pressure that we would have to face in such a war, and the involvement of the Europeans, Americans and all the others, is a different issue. So it is for the benefit of Israel to make sure that we keep walking on the edge between going as far as needed within the low-intensive conflict, and not letting it turn into a total regional war.

In order to understand this, it is necessary to very briefly describe what is meant by a total war in the Middle East. First, it is a war in which the home front might be involved from the very beginning. Second, thousands of ballistic missiles might be involved in this war; there are hundreds of missiles in Lebanon in the hands of the *Hizbullah*; thousands in Syria; a few in Iraq; many in Saudi Arabia and many in Egypt.

At the same time we will have to deal with terror in the country. If a war breaks out, we may have to spread our forces because every other day a different front may appear in the region. If missiles are launched from Iraq into Tel Aviv, Iraq is a front; if Syrian missiles are launched into Tel Aviv, Syria is a front; and if ballistic missiles or katyushas are launched from Lebanon, Lebanon will suddenly become a front.

This might push the Israeli government into dramatically using very hard ammunition in order to take care of such a complicated situation. It might even push the region into using and facing mass-destructive ammunitions in the area. But this is not the whole story: in a war like this it is certain that we would not be the

only players. If the war escalates into other countries, we will not stay alone. Our defence doctrine was based on one very important principle in the past: we did not want anyone else to fight our war. This is not relevant any more, not even to the Americans. When the Americans go to Afghanistan, they do not go alone; they go with a coalition, and once one goes with a coalition, one owes one's partners. Every deal is a deal that must take into consideration one's partners. Thus, it is in the best interests of the Israeli government to take care of the war that we are facing right now but to make sure that it does not escalate into a regional war.

What keeps the region out of a regional war? **Iran** - although Iran is a very extreme Muslim country, it is not an Arab country. Iran knows and feels that once the conflict between Israel and the Arab countries is over, it may face a conflict with the other Arab countries. This is perhaps one of the explanations why the Iranians are so much against the peace process. Secondly, they aspire to play a major role among the Arab countries. Iran has always been in competition with Egypt for hegemony over the Arab countries. In practical terms the Iranians support the *Hizbullah*, they have some control in Lebanon. They do this together with and in very careful coordination with the Syrians; they contribute a lot of ammunition, money and terrorist training.

But Iran is far away; and the further a country is away the less its influence. **Lebanon** has been relatively quiet since our withdrawal a year and a half ago. Lebanon is even enjoying a so-called peace, or at least a cease-fire. Somehow this is what we expected and hoped that the Palestinians would feel after the Oslo process began. In other words, we hoped that they would feel what the good life is all about and that they would have something to lose if they fought. This is more or less what the Lebanese are feeling today, but more than that, the **Hizbullah** - which is a key player in Lebanon - has lost its momentum. The *Hizbullah* has lost one of its main pretexts for fighting against Israel because its rationale around the world and its power in Lebanon was based on one argument: fighting to try to get the Israelis out of Lebanon. Israel's withdrawal has actually neutralized to some extent the argument of the *Hizbullah*. The *Hizbullah* is still dangerous - it has the time, the pleasure and the expertise to help the Palestinians fight us - but its role in Lebanon has been changed.

Syria, which 20 years ago used to be a very major player, is no longer so for the time being. The regime is very weak. The President is very weak. Syria knows that it cannot fight Israel because it does not have the choice of a low-intensive conflict. If it were to act, our retaliation would be very strong. What Syria

does therefore is to control Lebanon. It is very important for the Syrians to keep Lebanon under control on the ground as well as in the air, because if one keeps the map in mind one sees that Syria actually needs the space of Lebanon in order to protect their country. Syria is surrounded - from the south, through Jordan and *via* Lebanon. They know that Lebanon does not exist in terms of military power and actually that it is the gate into Syria. It hardly needs to be said how important it is for them to control the government of Lebanon. This is also the reason why Syria did not want the unilateral move that we made in Lebanon. They were against it because at that time they enjoyed the fact that we had to fight against the *Hizbullah*; and they used to control them then as they do today.

Whereas Lebanon is enjoying the cease-fire and Syria is not ready for war, **Jordan** is in a bunker all the time because it knows that it would be the first loser, no matter what happens. Even the **Egyptians** are against war, and we see President Mubarak say every once in a while "We are not going to fight against the Israelis." Now this position seems almost obvious but if one looks back one year, to September or October 2000 - everybody in Israel felt that we were very close to a total war and that Egypt would be a major threat in military terms. Today the Egyptian position seems very obvious: why? Because the Egyptians are enjoying the current situation. As noted, we have fulfilled all of their territorial requirements; their main concern now is the standard of living in their country. They behave like a super-power in the region. They are very strongly supported by the Americans; perhaps this is the bright side of them having so many F-16's and other American weapons. On one hand the arming is very bad for us, but on the other hand, it subjects them to some political control by the Americans.

To summarize - and **Saudi Arabia** is obvious - all the countries apart from Iraq are of the view that "the Palestinians are doing a good job; they fight their war and, so far, have caused the Israelis a lot of trouble without a need for them" because they know what is meant by a total regional war in the Middle East. It might be devastating not only for the small countries but for all the countries in the region. At the same time as it is perceived that a regional war is bad and dangerous, and that we are very close to it - there is a perception that it has to be counter-balanced by the interests of all the countries of the entire region which are - not to let it escalate and get out of control.

The only reason why war might erupt is **Iraq**. The Iraqis are still interested in instability in the region and they continue to develop weapons of mass destruction. They eliminated the international

control in their country; they want to strengthen themselves and they also want a better position among the Arab countries. On the other hand, they also have some practical reasons for not pursuing war right now. First, their military power is very weak; their systems, airplanes, air defence and ammunition are obsolete. Maintenance is very bad; they do not have spare parts. They have a few launchers and ballistic missiles that can reach Israel. They even have a small quantity of chemical and biological warheads. The bottom line, from the perspective of the Iraqis, is that they know that they are under the threat of potential attack from the Americans - after Afghanistan. Their concern right now is to prevent the Americans from attacking them under these conditions. There is one more thing that they understand: in order for the Americans to attack Iraq, the coalition that the US today has against Afghanistan is not adequate. The US would need to re-structure the coalition. More Arab countries surround Iraq than Afghanistan. Bases would be needed in Turkey and Saudi Arabia. The US would have to fly over Jordan and the Americans do not have the same pretext against them as they had against Bin Laden.

While the Iraqis understand that they need to neutralize any reason for the Americans to attack them, they also have to raise obstacles to a US formed coalition. Once a coalition is formed, it will have to be destroyed before the Iraqis themselves are demolished. Why is this important? The main point argued here is that it is in Israel's interest to try to avert the situation from escalating into a regional war. The scenario described above is one in which, through Iraq, the region might get into a regional war. We have to think how to deal with this and our main concern is what would happen if ballistic missiles were to be launched by Iraq into the home front of Israel. We have to expect this because this is exactly what happened in '91, with almost no delay. Thus, we have to expect missiles to fall in Israel immediately after the war begins. But the situation is not simple in my opinion because Saddam Hussein will face a dilemma, namely, the coalition. On one hand, if he launches missiles against Israel, which obviously he might do, he would provide the Americans with a very good excuse to knock him down as fast as possible. Further, if one compares the situation to the one back in 1991, the military steps needed from the time the war starts until the point where his regime falls - are much shorter today than they were then. The Americans, from the beginning, are much closer to the point where they would knock him out. So Saddam Hussein has a very narrow margin; now he has to think:

"If I launch, they may use everything to knock me down within a few days. If I don't, then it might be too late, they'll knock me down anyway and when I do want to launch, it will be too late for me. What I have to do is maybe delay a little bit and try to play the role of trying to destroy the coalition. I will be the under-dog for a few days; they will come closer to my palaces, to Baghdad, and then peace might come if I play it right. Maybe I can destroy the coalition if I play it right and stop the war."

Such a strategy is very risky and the margin is very narrow. Here we come to a point where I believe that we have to consider an option that if Saddam Hussein has to play in such a small margin, he might say:

"If I do launch missiles, then I'll go all out and I'll try to shock the region by launching chemical or even biological missiles, because I have no time. If I can create a shock, that might stop the war."

I believe that this is the reason why we do not see the Americans moving very fast or as easily as they promised at the beginning, when voices could be heard from the United States, before the war against Afghanistan had even started, that three regimes had to go altogether - Iran, Iraq and Afghanistan. I believe the Americans acted tactically, strategically and politically very smartly - in not going all out without caution. The strategy is that if you have the privilege of superiority over the enemy, and all the time that is needed, because of lack of retaliation, then one must play it slowly

and carefully to keep the situation under control. One must play a nice combination between military moves in the battlefield and political moves diplomatically.

When we are excited and see the day-to-day events, the buses, the killings, the attacks, the helicopters, the airplanes bombing over Judea and Samaria and so forth, we have always to keep in mind that actually there are another two deeper levels underneath that we should be concerned with: one is the possibility of escalation and the other is the linkage to the long-term future of Israel in the entire region.

Israel is relatively very united right now. We have a unity government; no deep conflict appears in society; not many arguments are seen on TV - in my view, a pre-condition for winning the war. But if one takes off the cover, one discovers the debate. The debate, the problem and the linkage to the future is that currently, between the Jordan and the Mediterranean, the population ratio is 50:50 - 50 per cent non-Jews and only 50 per cent Jews. If one looks at the forecasts for 25 years from now, and the situation stays the same, we may face a ratio of 35% Jews and 65% non-Jews. Some people think "*It'll be all right*"; others say we must have a plan, because it is not enough just to win this war. We have to make sure that Israel will exist safely with a high standard of living, as a home for all Jews, one thousand years from now.



Mr. Meir Sheetrit, Israel's Minister of Justice, addresses the Jerusalem Conference.

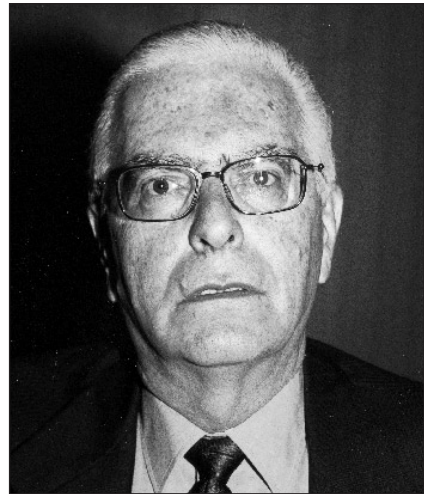
International Media and Public Opinion: Setting the Record Straight

Inroducing the panel on “International Media and Public Opinion: Setting the Record Straight”, Professor Amos Shapira noted the important questions raised by the role of the media in modern day conflicts:

“Patently ours is a theme with baffling dilemmas, it is common knowledge that conflicts such as the one we are faced with can in part be won or lost in the courts of domestic and international public opinion. It is also widely accepted that the media, local and international, plays a major role in shaping public opinion. What then ought to be the relationship between national policy making and its portrayal in the media?

What are the dynamics of this often uneasy relationship when partisan national policy makers and supposedly objective correspondents, domestic and foreign, may have entirely different agendas, interests and concerns? Can the media in seeking to cover intricate emotionally loaded and bitterly controversial conflicts ‘get it right’? And what does ‘right’ mean in this context? Where and how should one draw the line between mobilized journalism acting much like a faithful spokesman in the service of a protagonist asserted national interest, and professional journalism, one that should aspire to maximize detachment and objectivity in delivering its message to the public? And finally how does present day technology; television, internet *etc.*, affect the treatment of these problem areas?”

In the following pages (11-20) we bring highlights from the three panelists.



Prof. Amos Shapira is the former Dean of the Faculty of Law, Tel-Aviv University, member of the presidency of the Israel Press Council and member of the presidency of the IAJLL.

Why Does the Media get it Wrong?

Ehud Yaari

I will concentrate on three points related to the current crisis:

First, is what I will call the ploy, the game plan of Chairman Arafat, and how it affected and still does the media coverage of this war.

Second, is the mechanism on the ground which distorts the picture, or at least tends to influence some of the foreign media to offer coverage biased in a certain direction.

Third, is the Israeli contribution to this picture.

What has happened here since September 28th 2000?

"*Intifada*" is the Arabic term to describe a popular explosion of protest, anger and rebellion. In this sense, there has not been one day of *Intifada* in the last 15 months, but the message and the way in which this war was ignited, have created certain difficulties for the media to understand what is going on. What did go on? Mr. Arafat, on the 28th of September in the evening, before one drop of blood was spilt, issued instructions for a flare up, on all fronts, and he personally gave instructions to certain Palestinian officials and security chiefs as to what their roles would be. It was no secret then and it is certainly no secret now. The ploy was the following: the Palestinian Authority, headed by Chairman Arafat, would not be, under any circumstances, at the front line. This was not to be perceived as a challenge by Chairman Arafat, or his security forces or the Palestinian authority against the State of Israel. It would be structured, configured as a quasi *Intifada*, basically by irregular forces taking over the street and generating fluctuating degrees of violence against the Israelis. The Palestinian authority, Chairman Arafat, would take shelter behind those irregular forces. Who were the irregular forces? The irregular forces were the militia of the *Fatah*, his own faction, armed by Chairman Arafat several years before, and other organizations: *Hamas*, *Islamic Jihad*, the Popular Front, Democratic Front, and certain elements from his own security structure, such as the Presidential Guard, called Force 17, and some elements

of the general intelligence units.

All these were instructed to maintain a certain volume and make sure that the whole thing stayed its course.

Something that was almost unacceptable to Western and also to Israeli media was taking place, the leader was dismantling and to an

extent paralyzing, his own structure of power. One does not expect a politician in charge, to dismantle, paralyze, clip the wings of his own authority, but this is what Arafat consciously, intentionally did. He instructed his own police, in reality the military brigades of the PLO that were allowed by Israel back into the territories, as a result of the 1993 agreement, to stick to the sidelines, not to interfere or participate as military formations in actions against Israel. Indeed, in not one case since the outbreak of the *Intifada* have we had a Palestinian unit, as a military unit, a formation, a squad, or certainly as a battalion or brigade, involved in any fighting. Individuals, of course, do. This is one of the answers to the question: Is Arafat in control? Of course Arafat is in control, there is no doubt about it. He paralyzed the ministries of the Palestinian authorities, except for the two essential ones, health and education. Education was extremely important in the initial phase because it was the teachers, and not the parents, who sent the children to demonstrate, throw stones and Molotov Cocktails at the nearby Israeli roadblocks.

Here Arafat dismantled his own organs of power in order to allow the emergence of a parallel, not alternative, structure, having revolutionary legitimacy. It was an alliance, still existing, between *Hamas*, *Islamic Jihad*, and Arafat's own *Fatah*. The two rival structures of power were allowed to fight it out sometimes in the territories, and the friction generated the amount of violence needed to keep up the pace. The Western media had real difficulty,



Mr. Ehud Yaari is a leading expert on Middle Eastern affairs. Since 1987 he has been an associate of the Washington Institute for Middle East Policy and since 1990 he has been an associate editor on Middle East affairs for the Jerusalem Report, he is a highly-awarded commentator on Arab and Middle Eastern Affairs on Israel TV 2nd Channel (formerly with 1st Channel). These are highlights from his presentation at the Jerusalem Conference.

deciphering, analyzing and understanding a very complex mode of operation like this. They were unable to accept that Arafat had exercised a willing suspension of control. He gave up willingly a good amount of authority and control, in order to create a semblance that it was the irregulars and not the PA which was generating the friction.

In the Israeli press too, one could read the learned articles describing what was happening as if we were ten years earlier, in the early *Intifada*. It was also difficult for Israelis to understand the “game plan”, and how it works.

The Western media, as expected by Arafat and others, simply fell into the trap. “The uprising was a very popular event”; “Arafat is in trouble, he needs help” and “he’s not in control”. We were told for over a year that Mr. Marwan Barguti, the chief of the *Fatah’s Tanzim*, was challenging the authority of Mr. Arafat. There were very long articles by American correspondents explaining the intricate struggle for power between Barguti and Arafat. An anecdote: the first time that Arafat came to Ramallah during this round, was just before Colin Powell made his first visit here. Barguti was in Ramallah, Arafat was spending most of his time before that in Gaza. Arafat landed near Ramallah with his helicopter, and of course all the *Intifada* notables came to greet him, including Barguti. Arafat knew that people were saying that Barguti was challenging his authority, so Arafat whispered when they approached, but loud enough for everybody to hear: “and who is this one?” Then Barguti came in, there was no seat for him, he had to go outside and bring a plastic chair. Later on Arafat hugged him, embraced him and kissed him. This is how it works. But it was very difficult for the Israelis to understand Arafat. This is the ploy. It worked for many months, it does not work anymore.

Why does the media get it wrong? The Palestinians have managed to turn the territories under their control into *Judenrein* territories. The Israeli press is unable to operate in Palestinian territories. Journalists can only operate in the territories on two conditions: either they write what the Palestinians authorities like to read, *i.e.*, serve their purposes, or, they can go, provided they are invited and accompanied by minders, seeing what they are allowed to see and talking to persons with whom they are allowed to talk. Otherwise it is impossible in the West Bank as it is in Gaza. The Israeli Press Association, to the best of my knowledge, has never taken action in order to explain to the Israeli public, what kind of coverage the Israeli public is getting. And the foreign media gets a lot of it’s coverage from the Israeli press. The foreign media have more flexibility in going about the territories but they are still very restricted.

To sum up the situation, 95% of the video tapes coming out of the territories, covering the *Intifada*, are taken by Palestinian cameramen and Palestinian crews. Many of them are fine journalists but their hearts are with their people and with their

cause. They take the pictures accordingly. Most of the wire reports are based on local Palestinian stringers, many of them politically affiliated to different organizations. Israel has managed to lose real access to the coverage of its own fronts. One of the peaks was when an Arab journalist was sent by CNN to cover the disco bombing at the Dolphinarium in Tel Aviv. They have taken over. And they have taken over completely.

We have been, for the past seven or eight years, acting as if we were the PR agency for Chairman Arafat. We went around the world asking for donations for him. We brought Arafat the Nobel Prize. We marketed the notion of the golden beaches of a New Middle East within sight! It was our production, not Arafat’s. The whole Oslo process has been very costly for us.

When I say that Israel now has to destroy the good PR work that we were engaged in for seven years, I mean that we have to undo what we did for Arafat internationally.

I will end with a final picture. The scene is as follows according to reliable media reports: Arafat enters Palestine, in peace, for the first time after Oslo, with our blessing. His brigades, called “police”, are already in the Territories. He arrives at the border point between Egypt and the Gaza Strip in Rafiah, and he asks that there be no Israeli politicians and no officials. Only a few military personnel are there as his passport is stamped, and he crosses to Gaza where a huge rally is waiting for him. As he crosses the border in an armored Mercedes, a young Israeli soldier, remarks: “I didn’t know Arafat was that tall!”. Yet, sitting in the front seat of the car, his *kafia* was scraping the roof. And it turns out that Arafat, coming in peace after Oslo, was sitting on one Jihad Amarin, who has been doing a lot of the shooting in Gaza over the past fifteen months. Amarin was one of the few whom the late Prime Minister Rabin said could not come in, at least not initially. Arafat was trying to smuggle him in, by sitting on him. In the trunk, hiding was one Mamduh Nawfal, military leader of the Democratic Front, responsible for the massacre in 1974 in *Ma’alot* (in northern Israel), and also refused entry by Rabin. In the car were three unregistered Kalachnikovs and night vision equipment. That was the scene: Arafat arrives in Palestine in peace. A lot of care was invested in an effort, at that time, not to have this scene reported too extensively.

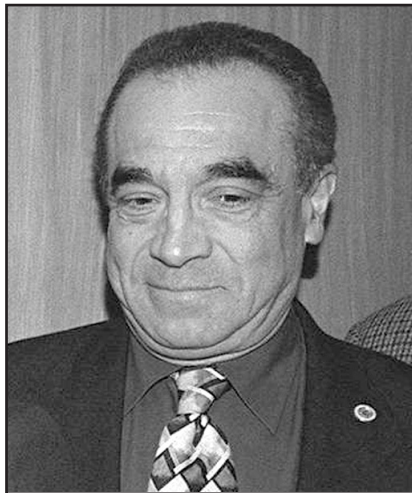
We built Arafat’s image for seven years before many of us discovered the truth. We were selling the notion of a two state solution, and that Arafat was willing at the end of his days to become a nice harmless “grandpa”, in a modest beach-house in Gaza, only to discover now that it is our interest to have a Palestinian state, but that we will have to fight for it against an Arafat who is not interested. Now we must undo all the briefings, and all the television interviews in which we said differently. This is the third complex problem with which we are now faced.

Low Intensity Conflict With High Resolution: Can We Win?

Raanan Gissin

Three months ago the title of my presentation would perhaps have looked like something taken out of science fiction, but there is no doubt in my mind that after September 11, there is great truism to the slogan that says, a picture speaks more than a thousand words. September 11 was the apex of the “low intensity conflicts” which have developed over the last 20 years. What happened was that the whole world, in this global shrinking village, was able to see the actual impact of these wars. The wars were brought to the homes of everyone in an immediate way which had not occurred in the last 400 years of warfare. So, in a sense, the shift to what I term “low intensity conflicts”, has actually caused us to rewrite the principles and the laws of war.

Everyone talks today about international observers. I had an encounter with Mr. Saeb Erakat, in which I told him that the Palestinian people did not need international observers, what they needed was international investors. The role of the international observers was already fulfilled by the media and by the coverage of the high resolution cameras. The picture we saw on September 11, when the whole world stopped to see the horrendous attack in living colour, shows how this kind of conflict, although it is termed low-intensity in military terms, can engulf the whole world, and actually change perceptions of how we deal with conflicts in the 21st century.



That picture is perhaps a symbol of the kind wars we are likely to engage in, in the 21st century. But where does it start from the perspective of the Israeli people and Israeli society? I would have to put an arbitrary date on October 16, 1973. On that date, after the crossing of the Suez Canal, realization dawned on the Egyptian leadership, then leading the Arab world, that Israel could not really be defeated on the conventional battlefield. Other ways had to be sought. This marked a watershed in Arab thinking in terms of how to conduct this conflict. Conventional wars which are high intensity and short in

duration give an advantage to Israeli society. Indeed, they give an advantage to any democracy that can mobilize quickly for a short period of time, concentrate its energies, conduct a war, finish it and go back. Where democracy fails, or where democracy is most vulnerable, is in low conflicts that stretch over time. Israel cannot be defeated from the outside; it must be defeated from within - by unraveling Israeli society and causing it to divide at the seams. Therefore, the victory of 1973, the fact that we snatched victory out of the jaws of defeat, and under the most unfavourable conditions, convinced Arab thinkers that there had to be another way to lead a war.

This thinking came to fruition in 1982. The war in Lebanon was our first media war, *i.e.*, a war in which the media actually played an active role in determining both the steps to be taken during the war and its outcome. This was not the case in World War Two or in other wars that were fought far away. In those cases, reports were published about the fighting, decision makers had time to learn the lessons of the war, use the wins on the battlefield, and then translate them into political gains. This was not the case in

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the Lebanon war where, for the first time, we found that there is a lot that the media does that affects not only the outcome of the war but decision making throughout the war. We did not take that into consideration. I can recall 2 incidents in this connection:

* By profession I am a strategic analyst and at the time of the Lebanon war I worked in the strategic planning department in the IDF. In the first days of the war, the IDF spokesman and the Chief of Staff decided that in order to maintain the element of surprise there would be no coverage of the war from Israel's side. This would have been viable had we been in a different era, but this was 1982 not 1942, and so the first mistake was made and the Palestinians gained the upper hand. They had already learned that the way to win a war is to make good use of the media in such a way as to create the right public opinion. General Ehud Barak called me into his office and told me of the IDF spokesman's problem - there was no one to give explanations on the ground. I knew English and I also had some experience in the media. So like the "Dutch Boy" I went there, I saw the dam, how many holes were in the dam and how much water was pouring out.

My first lesson in stopping the flood or learning about low intensity conflicts was given to me by Fathi Arafat. It is called "FFB" - be first, be fast and be brief - then you can gain the upper hand in the battle of the day, the battle of gaining the attention of public opinion. What did Fathi Arafat do on the first day of the war? It was brilliant. He appeared in the white gown of a doctor, with a Red Crescent, in Beirut, in front of about 300 journalists; the IDF forces had already invaded Lebanon - no announcement had come from us, we wanted to maintain the element of surprise. Fathi Arafat stood in front of the world media and made one statement, he said: "As a result of the Israeli invasion, 10,000 people are dead and 600,000 are homeless." This became the motto of the war for 10 days and no one could refute it. We came afterwards and said it wasn't true, that all the casualties belonged to the civil war, but no one knew the truth. History started at that point with his announcement. The reason - he got the attention of the media first, he was fast and he had a very short message.

* My second lesson was on about June 13 or 14 in Rashidia. I started learning the ground, mostly from journalists - they knew where to go, they were seeking interviews and I had to escort them. I was asked to escort Keith Graves, then the BCC correspondent, with a fascination for Lebanon. We went

to Rashidia, I took him around the camp, explained to him how the PLO actually built their infrastructure, how they took over the camps and eventually put their military infrastructure in place, and how they used the camp as a staging ground and as basis for attacks. I explained this whole history with fervor. We went through the whole camp, he talked with people, and I explained the situation to him for about 30 minutes. At the end of this, Graves said: "Major, yes, could you please summarize what you just said in 30 seconds." That is what he gave me, 30 seconds, and that was the real test, to be brief.

The Palestinian spokesmen have learned. They learned in 1982 because they emulated the lessons of 1973. They understood that they do not have a military option against Israel. They learned that they do have a media option. They understood that the conflict has to be low intensity, but the resolution must be high, *i.e.*, that the cameras must be focused on what they want. They have also developed, and not by coincidence, the methods to do it. The working practices of the Palestinian authority in the territories are no different than their practices in Lebanon. I refer to the book by Tom Friedman: *From Beirut to Jerusalem*. There is a chapter there that speaks about the working practices of the traveling journalist in Lebanon, what I term "journalism under terrorism". This is what it was - intimidation, insinuations, not the sort of thing to kill the journalist but sufficient to make it very difficult for him to work there if he failed to toe the line. This the journalists learned and therefore the pictures that one saw and the messages that came out were of this sort.

We came to the FFB - first, fast, brief - only later. It took us another war, another *Intifada* to start moving in that direction. But above all it was very difficult for us engage in that kind of activity, because we could not look straight in the camera and tell lies, in the same way as Yasser Arafat and his deputies can do.

As noted, there has been a reversal of the principles of war. If I had to give credit to the person who actually brought about this shift, it would not be to Yasser Arafat or Saeb Erakat, but to Vo Nguyen Giap, the architect of the victory of North Vietnam over the Americans. He understood that in modern warfare, with the presence of the electronic media, one can win if one carries the war into the enemy's territory. But the war must be carried into the enemy's territory, not in the traditional military way, rather it must be brought into its living rooms, and in a very telling biography, written by French journalist, he is quoted as saying: "in 1968 I realized that I could not defeat 500,000 American troops who

were deployed in Vietnam, I could not defeat the 7th fleet, with its hundreds of aircraft, but I could bring pictures home to the Americans, which would cause them to want to stop the war, which would cause them to reject the war.” The generals, including General Westmoreland, who was running the campaign, did not realize that all the time Vo Nguyen Giap, with the aid of American journalists, was doing a vertical envelopment operation and the war was carried into American territory, with the pictures.

That was the beginning; the apex was seen on September 11 2001, when the war was carried into American territory, literally by hitting that territory and by showing the pictures to the Americans. The effect was such that it boomeranged. The terrorists probably did not want to achieve that kind of mobilization of the American public; they simply underestimated or did not understand the spirit of the American people. The attack caused something that does not often happen in history, where a president who was supposed to just pass through history, was placed in a situation where history made him. He did not make history, history made President Bush. When one sees the interviews before he was president, or when he was just elected, and then one looks at the interviews after September 11, one sees a totally different person, and not just because of the PR people around him.

Talking about that picture, there is another picture which did not escape many people in Israel. The picture which speaks more than 1000 words was the picture of the 3 month commemoration of September 11th, where the President stood with his hand on his heart and behind him, the Israeli flag. Knowing the people in the White House, this was not by coincidence.

I am showing how high resolution pictures can actually shape the course of events. For example, in relation to international observers, we are always accused that things happen in the territories without sufficient supervision. My answer is that the best supervision is the international media on both sides. They cover the territory, they can reach everyone, particularly those who toe the line, they can go to any place they want and looking at all the pictures that come out - there are no secrets, nothing can be hidden. The media becomes the watchdog of what is happening in the territories. In a sense, it puts many jurists out of work, because the media has also become the legal watchdog. There is no need for international observance, everything is there.

Our problem is how to ensure that our side of the story will also come through. This is very difficult because the reality is that there is only so much makeup that one can put on an army

which fights a civilian population. We see the makeup dissolve from Arafat’s face, but we cannot even begin to put makeup on an Israeli tank. We cannot make an Israeli tank a vehicle of peace when we see it in the territories. The media is not responsible for justice; it is not concerned with historical accuracy. It wants to bring a story, and if the story shows a tank in Beit Jallah, facing a poor Palestinian child, then all the arguments that the night before the Palestinians were the ones who fired into residential homes and wounded a poor woman - become irrelevant. Every day is a new day.

In a low intensity conflict, one has to use different methods. One of the lessons that we have learned is that tanks are not the best way to deal with problems. One needs special operations and one needs to use special forces. At the end of the day, targeted interception has less impact than a picture of a tank or soldiers confronting civilians. The attempt to stage the big demonstrations that started at the beginning of the *Intifada*, which followed from the first *Intifada*, succeeded at first, but with marginal returns as we moved along with this *Intifada*. The result, of course, was a loud outcry and many pictures that showed how Israel has done wrong in this affair, but it did not result in anything of substance for the Palestinians. There was a lot of positive media coverage but very little return as far as politics were concerned.

In Israel we have been fighting the same low intensity war since 1982, it is a war which taxes the resilience, tenacity and unity of Israeli society. It is based on the effort to try and unravel Israeli society from within, to cause the Arab population to rise up, by inciting it. Television and the media at large is a very important instrument in trying to create that image. This was one of the macabre ironies about Bin Laden. While he was trying to drag us back to the Middle Ages and destroy Western civilization he was using the elements of globalization that we invented, whether it was planes or television in order to bring about that result. He was against the other elements of modern society, but he was using technology against Western society.

This approach has forced the Sharon government to adopt its current policy and first and foremost, to create a government of national unity. From the strategic point of view, as long as that unity is maintained, the Arabs find themselves banging their head against an iron wall, because whether or not there are debates in the government, the Israeli public stands firm and wants to fight back. Rage can be a very important, powerful element in democracies which face this problem of weaknesses. One can see what rage and retribution have done in the war in Afghanistan,

contrary to previous assumptions that American public opinion would not support a war. But that rage and the quest for retribution is what enabled the Americans to achieve what they have achieved up to now in Afghanistan. The ability of the terrorists to bring the war back home was stopped because of the fact that the pictures originally created that kind of a change. In other words, one needs a shocking picture worldwide in order to create the kind of impact which is sometimes stronger than any massive military operation. And so the rules of war have changed, the element of surprise that one thought to use in the past is no longer there. The media is always there to cover with the result that there can be no operational surprise. But one can also create support through the right use of the media. The front is everywhere. The war does not take place somewhere distant. One is part of it, and therefore when one has a leader who knows how to lead his people and how to bring them together and create a consensus, then one can actually win that kind of a war and win the media battlefield. But one always has to focus on the fact that in this kind of war, there will be situations where one needs to loose on the ground in order to win in other ways. One has to be the underdog on the ground; the pictures that come from "ground zero" have to be "ground zero" pictures. For example, there were ground zero pictures in the Gulf War, we were attacked, we did not win the war, but we reaped the fruits of the war.

My motto in all the above is the need for passion and conviction. Our stories are complex stories, they cannot be told in thirty seconds. The Palestinians did a brilliant thing when they started using the media, they talked about "rights" and we talked about "security".

But, satisfying our security requirements can be fulfilled by positioning six aircraft carriers in the Mediterranean. The modern aircraft carrier gives perfect security, but one does not have rights. Our major error throughout the years is that we never stood up and said "Jews also have rights". Rights are on a higher moral pedestal than security, and the Palestinians stand on that pedestal.

Nonetheless there are some very basic truths. The land belongs to the Jews by birthright first of all. Israel recognizes the fact that there are other people living on the land, because it is an ancient nation of four thousand years, it has learned about compassion, about the misery of other people. But the Palestinians have not recognized the Jews' right to this land, only their might, and that is the problem. Israel has become the strongest military power in the Middle East and its might is recognized, its rights are not, and those are what have to be claimed. Our spokesmen need conviction and compassion in making this claim.



Panelists on "International Media and Public Opinion: Setting the Record Straight":
(L to R) Ehud Yaari, Dr. Raanan Gissin, Prof. Amos Shapira and Dan Pattir.

Does the Media Affect National and Defence Policy Making?

Dan Pattir

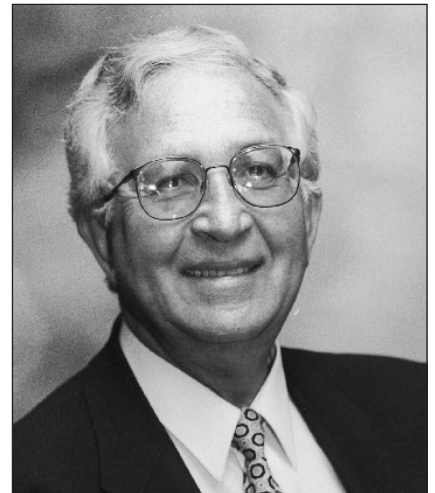
The recent release of the Bin Laden tape in Washington is a good example of the inter-relations between media, policy-makers, governments and target audience - *i.e.* the public. It illustrates exactly what a tape can do to shape or affect national policy; in that case, with great success. This is but one example. Over the course of the last century there has been a close relationship between media and policy-makers. One can only wonder what might have happened had events such as the Dresden bombardment of 1945 been screened live with the type of media available today, such as instant television; or, what the effect would have been on public opinion or on the political fate of President Truman had a CNN crew televised the Hiroshima nuclear bombing. The comparison is a difficult one because at that time the media and its outlets were altogether different. Likewise, the comparison some people in the United States have drawn between the September 11 attack and the disaster in Pearl Harbour is also unfair in so far as their respective impact on policy-making is concerned. Pearl Harbour caused the United States to enter World War Two, but the Americans I have talked to seem to have derived their experience and their recollections about Pearl Harbour from movies recently released by Hollywood. If one talks to people today about the impact on them of what happened sixty years ago, their memories are vague, blurred, and definitely not focused.

Moving directly to what we have been witnessing in Israel, people who are concerned with Israel's image say that Israel does not have *Hasbara* (a term that can be translated as "information" or "propaganda"). In my view, the issue is not whether we have a machinery of *Hasbara* or not; the main problem is the set-up in the world, who is the under-dog and who

the top dog; how Israel is portrayed. The foreign media in Israel actually sees Israel as fertile ground for making a living, both in terms of income and in terms of practical or professional upbringing. There are usually 300 to 400 journalists staying in the c o u n t r y

permanently. When there is a major event, the figure doubles or even trebles. When President Sadat came to Israel in 1977, about 3,200 jour- nalists came in during a period of 48 hours. When President Carter came in 1979, almost the same number of journalists arrived.

Israel has become a hub for press activities and also for production - it is an area that produces news. Today there is an abundance of news, but in the past when the news was dull one occasionally witnessed the production of fake news by some of the international media. I remember receiving complaints, when I was in charge of the Prime Minister's Press Office, that foreign correspondents were catering events. For example, a European TV network arranged for a group of young Arab school-girls with white blouses and red skirts to be at a certain time, in one group, on the outskirts of Ramallah, so that European TV viewers could see how they clashed with Israeli soldiers at the cross-roads. This kind of thing happened many times. One illustrative incident occurred when one of the major American networks had a dull time in news reporting during the first *Intifada*. A famous correspondent



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sent one crew to Nablus to the market-place; sending in a camera, routinely draws the stones, the cursing, and the killing. He took a second crew and went to a road block near Nablus, where a contingent of Israeli soldiers was positioned. The correspondent started to argue with the soldiers who refused to allow him to pass. He told his crew: "Film everything that I do and say". That same evening, on one of the American networks, a famous anchorman did not show anything of what had happened in the market-place in Nablus, but only the argument between the correspondent and the soldiers on the road block. The latter was more newsworthy. The summing up was: "This is where Israeli democracy ends".

There are two questions to be asked today:

First, how can one combat public opinion with the given media tools, mainly the electronic media? Second, can Israel gain some kind of understanding from the public, when Israel is being portrayed as top dog? Israel ceased to be an under-dog in 1967, to our joy in terms of the situation on the ground. It does get some understanding or sympathy when unfortunately a bus has been blown up, and the media recycles the pictures all over the screens. But, of course, if on the following morning a tank is seen rolling into Ramallah, the under-dog ceases to exist and the image of the top dog comes across.

I would like to consider three examples of media involvement:

The Gulf War. It wasn't a Gulf War. It was the hot pursuit of massive American might after the Iraqis. The media performed there as captive audience; everything was restricted. Nobody had free movement in Saudi Arabia; everybody had to adhere to rules actually pre-dictated and pre-signed by the producers and editors of the major media outlets. The result was that the entire Western media had to apply to the American Army centres of information in Riyadh and Dahran. The media actually started playing a role in Iraq only after the war was over, when the Iraqis drove the Kurds into the mountains and the media started to show the plight and misery of the Kurds. At that time President George Bush Snr. came under pressure, with the result that he sent Secretary of State Jim Baker from Washington to an air base in Turkey and from there to the Kurds in the mountains, where he was seen for a few minutes for a photo-opportunity, before flying back. All this was just to relieve the pressure of public opinion, and remove the impression that the White House, *i.e.*, the United States, was abandoning the Kurdish fight upon the war ending without decisive results.

This is one picture. The second picture concerns Bosnia and Kosovo. The US was engaged in massive air combat; planes missed their targets and many civilians were hit. The American media was relatively very tolerant of the American military

performances, but there was some criticism. The criticism, however, ceased the moment Mr. Milosevic was portrayed as the personification of evil on earth. Everything turned into the question of the under-dog and the top dog, the bad guy - the good guy.

The third example relates to the current situation between the United States and Afghanistan. Many people watching the performance of the American media see that it has stopped being independent in normal times. It has become very partisan and very patriotic, which perhaps is not wrong at all. If the United States is to succeed in a national effort to crush terrorism, where the effort is tremendous, public support is almost absolute and the legislation is sweeping - then the media will have to perform alike.

In contrast, I remember reading in the high days of Vietnam, about a briefing session given by the late Secretary of State Dean Rusk to the top American diplomatic correspondents. The ABC correspondent, later, ambassador to the UN John Scully asked some questions. Dean Rusk asked him "on whose side are you on?" This question is not being repeated today in the American media.

In Israel people say the media should be totally independent and impartial. Independent - yes, but impartial? Is it right to bring the enemy onto the screens, where the enemy exploits the so-called impartiality of the national media? There is a sharp debate going on about whether this is right, as far as public morale is concerned, and also as far as policy-makers are concerned. I would like to add two more points in this regard: I believe that some of the troubles that Israelis encounter in the world arena are our own fault and not only the fault of the European media which is very hostile to us (see the case of the BBC). The problem is that we ignore the fact that the media organs try to be policy-makers themselves; they try to dictate, or engage in reporting in a way that is not only not impartial but definitely affects public opinion and consequently policy-makers here or elsewhere.

An example of this which everybody remembers is the terrible lynching of two Israelis by Palestinians in Ramallah. The behaviour of the international media was appalling. All the media were there; most were taping the whole scene. Only one courageous crew, from Italy, an independent television company, made the footage available to the Israelis and to others. The state television of Italy, and many others who were there, refused to screen it. In fact, most of the other TV outlets "volunteered" to give the tapes to the Palestinians because the Palestinians threatened them, and actually confiscated tapes from the hands of certain Western outlets. Was there word in the American outlets

that they had been placed under duress and that they had to give in to the pressure of the Palestinians? Never. Had it been admitted, it would probably have been registered as a terrible failure of the media to perform and produce the news as they should. When the tape of the Italians was released, it was perhaps one of the turning points in public opinion, even though the footage released was only partial. There were even worse scenes of the two poor victims not only being tortured and lynched but their bodies being dragged by cars into the main square of Ramallah. This part of the footage was not screened because we thought it was too much to show.

What was the explanation of the foreign outlets? None was given.

Today we live in a world in which you see and you hear what the camera shows you in 25 or 30 sq. inches. What is inside the frame is what matters. When CNN's Peter Arnett stood up in the Gulf War in front of a wall in Baghdad, we did not know where he was standing, who was on his left, who on his right, who were the Iraqis that guarded him. CNN went as far as that in succumbing to Iraqi pressure in 1991; it is what I call the irregularity of the relationship between media and governments. We have to face these realities and act accordingly.

Based on my experience on both sides of the aisle - in government and in the media - I believe that we are showing great tolerance towards the media. I think that Israel is not playing enough of the game of the carrot and the stick, a policy that could have been implemented more vigorously without in any way impeding the freedom of the press. The foreign press exceeds sometimes the limits of freedom of movement and freedom of expression. I recall the first *Intifada*, from 1987 onwards, when every correspondent could come into Israel, land at Ben-Gurion Airport, be met by his local people and go freely everywhere in the West Bank and Gaza. It should be noticed that for foreign correspondents, the working conditions in Israel are a paradise compared to conditions in any other country in the Middle East or elsewhere, when combat is taking place.

But the issue is not one of self-criticism. The question in my view is how to make use of one's own national and professional resources in the given situation of electronic media and instant news, and how to reach the target audience elsewhere at the right time with the right content. If the government speaks in more than one voice then information cannot be effective, likewise if information is contradictory the result is damaging. But basically - and this has been my view for a long time - one cannot compromise national security just for PR. Rather, it is necessary to protect the national interest while at the same time reach

some kind of co-existence with the media, with the use of more initiative. This is what is missing in terms of the current crisis when Israel is very anxious to get its words across.

When we discuss the situation in the Middle East I believe that the media should be under more criticism from viewers, from readers and from advertisers. Another example: an American news network recently sent another producer to Israel, looking for human interest stories. What it produced from here were one-sided war stories showing the misery of the Palestinians but without giving equal time to the misery on the other side. Pressure on the network has borne some fruit and now it is trying to rectify the situation. In Israel, I believe that we are in a good position to demand that equal time or free time be given to our viewpoint or at least to the picture in Israel.

I recall that during the Gulf War, one of the networks broadcast live the fall of the Scuds in the vicinity of Tel Aviv. This meant that someone sitting in Baghdad, knowing exactly when the missile was launched, could watch CNN or ABC or other outlets and see, in real time, exactly where the missile fell, and change the trajectory accordingly. Israel had to act immediately and tell the media outlet not to continue this kind of live broadcast.

Finally, one should speak of media and national security in the environment of the legal profession and the law. Admittedly, the media is not a tribunal of justice and the media is probably a reflection of public behaviour. But the media must always adjust itself to public opinion, demands, pressure and criticism. In this respect, today, no country, including the US, will venture into any political, diplomatic or military operation without first checking whether the media is with the government. No operation can be launched without preparing the media. One cannot go ahead in any kind of situation, especially when it is planned, whether in Afghanistan, or in relation to the next moves to be taken by the United States in the Middle East against terrorism, without the media factor being taken into consideration almost in a synchronized way with the policy-making and decision making of the government concerned. We are opting for this kind of situation in Israel. We hope that we will come to the situation where all decision-making of a crucial nature will take the foreign and local media into consideration.

The old Jeffersonian saying that it is very difficult to live with the media, but impossible without it, was true then and is true today.

The Preservation of Jewish and Holocaust Sites

Remember Warsaw was the third of a series of conferences commemorating Jewish lawyers and jurists who perished in the Holocaust and their contribution to the law in their respective countries. The Warsaw International Conference was held on May 9-13, 2001, by the IAJLJ, under the auspices of the Secretary General of the Council of Europe. Co-Sponsors were The Polish National Council of Legal Advisors; The Polish National Bar Association; The Polish Judges Association; and European Judges and Prosecutors for Democracy and Freedom. *JUSTICE* concludes its presentations from the Warsaw Conference.

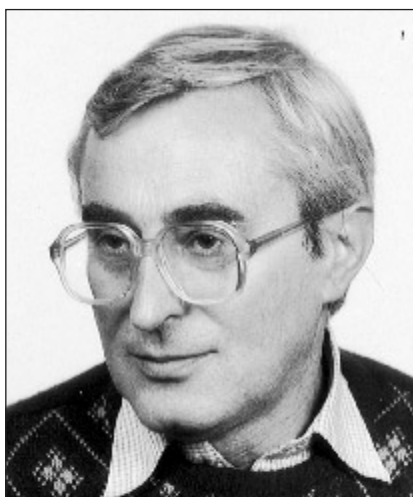
Jan Jagielski

What is a Jewish historical and cultural artifact? In 1929, the eminent Jewish historian Majer Balaban wrote:

“What is considered Jewish art? According to generally accepted standards it is a Jewish art artifact if it was made by a Jew and also bears the marks of the distinctive Jewish spirit. It includes religious objects of synagogal use crafted by a Jew, sepulchral monuments, as long as not blindly imitating contemporaneous trends of art, illuminated manuscripts, and synagogues or their components”.

Mgr. Jan Jagielski, is the head of the Department of Documentation in the Jewish Historical Institute in Warsaw. He serves as the President of the Citizens Committee for the Protectory of Jewish Cemeteries and Monuments of Jewish Culture in Poland.

These are highlights from his presentation at the Remember Warsaw Conference, on the panel on “Jews and Jewish Issues in Today’s Poland”.



Polish law provides in relation to the protection of cultural heritage and museums that:

a cultural value, within the meaning of the law, is every object portable or immovable, ancient or contemporary, which is meaningful for the heritage and for cultural development because of its historical, scientific or artistic value.

After the Holocaust, the term “Jewish artifact” may reasonably be applied to anything that is able to illustrate a millennium of Jewish presence on Polish territory. This includes the story recorded by Ibrahim ibn Jakub, a Jewish merchant from Spain, dated 966, about the Polans country, as well as the Jewish mural inscriptions: *Hatter. Dawid Grinberg* in Kazimierz - Krakow’s quarter or Cafe on Goldhammer Street in Tarnow, written in Yiddish and sticking out from under the plaster. There are the 12th and 13th century coins from Great Poland with Hebrew inscriptions, *Bracha Mieszko* [blessing for Mieszko] and *Mazal tow*, together with the milk-can, where E. Ringelblum’s archive was hidden. There are Jewish images on the 12th century door of Gniezno Cathedral. In many small towns as well as in Warsaw there are still numerous traces of doorpost *mezzuzas*. One finds balconies and porches with raised roofs reminiscent of *Sukkot* sheds. There are two rooms in Szydlowiec and Tyczyn, where paintings relating to the *Sukkot* celebration survive and then

there are the remaining photographs from pre-War family meetings.

Today, nobody notices that the origin of such words as: *bachor*, *dintojra*, *fanaberie*, *lapersdak*, *machlojki*, *melina*, *pod chajrem*, *rejwach*, *sitwa*, *szafer*, *szwindel* - is Yiddish.

The earliest mention of a Jewish factoria from Przemyśl is in 1018. Larger concentrations of Jewish people settled in the 12th century in the Duke's capitals of Krakow, Poznań, Kalisz, Płock and Wrocław.

In 1264, the Jews of Great Poland received the privilege known as the "Kalisz statute", from Duke Bolesław Pobożny. The document guaranteed their religious freedom, authorized the organization of religious communities and freedom of commercial activity. The Jews were subject only to the Duke's authority.

Para. 13 stated:

"If the Jews, following their tradition, move their deceased from one town to another or from one province to another or from one country to another, we resolve that our customs officials will not force them to pay anything...

Para. 14 provided:

"Should a Christian demolish or invade their cemetery in any way, we declare that he shall be severely punished according to our custom and the law of our homeland, and all his possessions, of any kind, shall be seized to our treasury."

The Catholic Church reacted to these privileges with a resolution by the Gniezno Archdiocese synod in 1267, in Wrocław.

Para. 12 of the resolution stated:

"Furthermore, because the Polish country in a Christian body is like a young offspring, so, to prevent Christian minds from easily being infected with

the superstitions and bad habits of the neighbouring Jews, and to help the easier and quicker growth of the Christian religion in the hearts of its believers here, we strictly order that Jews residing in the Gniezno province do not live together with Christians, but be isolated in some part of the town or village, having their houses built side by side or joined in such a way as to keep Jews separated by a fence, wall or ditch from living closely to Christians."

The privileges granted to the Jews of Great Poland were spread over the entire Kingdom by King Kasimir the Great during the years 1364-67 and confirmed by the next ruler. After 1539 Jews living in private towns and villages in the Kingdom of Poland were legally subordinate to the village owners and received their privileges from them.

What has been preserved and what can we see when traveling around Poland?

Looking for a Jewish cemetery in a town, one asks for a *kirkut*, *kierkow*, because this is still the term used for a Jewish cemetery in the Polish language, even though it is a German word for the terrain surrounding a church, where the dead are buried [*kirche hof* - church courtyard]. The Jews used to call their cemeteries: *bejt ojłum* - house of world, *bejt chaim* - house of life or *bejt kwarot* - house of graves.

The oldest notice of a land purchase to establish a Jewish cemetery may be found in Kalisz and dates from 1283. However in 1917 a gravestone was found in Wrocław Cathedral, belonging to David, son of Sar Szalom, who had died in 1203. The gravestone had survived the war and is now placed on the external Jewish cemetery wall on Słeczna Street alongside four XIV century gravestones from the first Wrocław cemetery, demolished in 1345 by King Jan Luksemburski. The latter permitted those who wished to:

"take, dig out, misplace and use for the wall construction all the stones from the Jewish cemetery, found on the ground or underneath it".

In a cemetery in Lublin [Kalinowszczyzna Street] one finds the oldest gravestone from 1541 in its original place. It belonged to **Jakub Kopelman**. Apart from his, other interesting burials were carried out there, including of **Rabbi Szalom Szachna** (died in 1558), Rector of Lublin Yeshiva, **Rabbi Szlomo Luria** called "**Maharszal**" (died in 1573) and **Zaddik Jackow Icchak Hurwica** called "**the Seeing**" (died in 1815).

In the Remu'h cemetery [on Szeroka Street] in the Krakow Kazimierz, established in 1551, one may see the graves of **Mosses Isserles** called "**Remu'h**" (died in 1572), **Isaak Jakubowicz** (died in 1653), the founder of the Ajzyk Synagogue, **Natan Spira** (died in 1633), rabbi and Kabbalist, **Eliezer Aszkenazy** (died in 1585), rabbi in Cairo, physician and scholar, **Jomotow Lipman Heller** (died in 1654), rabbi in Prague, Vienna and rector of a *Yeshiva*.

In Poland, it was the practice to have separate burial areas for men and women. Nevertheless, from the middle of the 19th century, assimilation led to family tombs appearing. Apart from traditional monuments, the gravestones were sculpted in the form of columns and sarcophagi with inscriptions in Hebrew, Polish, German or Russian, depending on the annexed territory of partitioned Poland. The widest spectrum of such graves is still visible in the large surviving cemeteries in Warsaw [Okopowa Street 49/51] from 1806; **Wrocław** [Słeczna Street] from 1856; **Krakow** [Miodowa Street 55] from 1880; and **Łódź** [Bracka Street 40] from 1892. Unfortunately, the old cemeteries from **Lwow** and **Vilna** no longer exist. In **Lwow** all the graves had already been destroyed by the time war broke out. In **Vilna** a

sports palace was established on the site of the cemetery; the ashes of the **Gaon of Vilna** and few others were moved to a cemetery on Antokole.

During the Nazi occupation many cemeteries were destroyed. In particular, in the small towns, the gravestones were used to pave roads and streets. Many of them still remain misplaced in this way. After the war, graveyards provided building materials to restore cities. The authorities did not interfere, but actively encouraged this vandalism.

On 18, July 1991 the law concerning cemeteries and the burial of the dead was amended, ensuring graveyard inviolability for all religious communities.

Today, there are about **1100** cemeteries within the present Polish borders. Approximately **200** graveyards have been destroyed past reclaim. New offices (in **Mielec, Kaluszyn**), schools (in **Kalisz**), and pools (in **Leszno, Brzesc Kujawski**), have been built on them. Fields, bus stations, parks and forests have also sprung up in these areas.

After the War, approximately **500** cemeteries were depleted of their tombstones, leaving only vast spaces overgrown by bushes. After 1980 searches for misplaced gravestones were initiated in many towns. Mainly young, local volunteers acted in order to preserve the memory of the Jews in the history of their towns. They removed the gravestones from backyards and streets and put them back in the destroyed cemeteries, turning the gravestones into monuments. Contact was made with Compatriot Associations from Israel and the United States; in 1981, the Public Committee for Cemetery and Jewish Heritage Protection in Poland was founded. Due to its effort in the last 20 years many gravestones were returned to the cemeteries, for example in **Kazimierz on the Vistula River, Przasnysz, Makow Mazowiecki, Gabin, Opatow, Ostroleka and Wegrow**. Eventually, the United

States Commission for the Preservation of America's Heritage Abroad and the World Monuments Fund also joined in these efforts (restoration of the **Wyszkow** cemetery and the reconstruction of Berg Sonnenberg's gravestone (died in 1821) in Warsaw cemetery). Unfortunately, gravestones have not been rescued in many other places such as **Baligrod, Losice, Sobienie - Jeziory**.

During the Jewish Culture Festival in Krakow in 1998 and 1999, thirty Polish protectors of cemeteries, were honored with the Occasional Israel Diplomas.

Another noble act was performed by Hassidic groups from Israel and America. Thanks to them virtually empty cemeteries in 40 towns gained restored *ohels* on the graves of *Zaddikim*, for example in **Rymanow** (Menachem Mendel, died in 1815), **Przysucha** (Symche Bunem, died in 1827), **Lelow** (Dawid Biederman, died in 1814), **Kozienice** (Izrael Hepstain called Magid, died in 1814), Kock (Menachem Mendel, died in 1859), **Gora Kalwaria** (Izaak Alter, died in 1866), **Sochaczew** (Abraham Bornstein, died in 1910).

In the remaining **400** cemeteries tombstones are still to be found, but only **150** hold more than a hundred tombstones. About **150** graveyards are at present formally under conservation protection, and are registered in a List of National Monuments. This, however, does not mean that they are in good condition.

Listed below are several cemeteries, which I consider to be the most interesting and which I recommend visiting.

Apart from the already mentioned cemeteries in **Krakow** (with the grave of painter Maurycy Gottlib), **Lublin** and **Warsaw** (Szymon Askenazy - historian, Majer Balaban - historian, Henryk Ettinger - advocate, E.R.Kaminska - actress, Aleksander Lesser - painter, Ber Meisels - rabbi, I.L.Perec - writer, Ch. Shmeruk - Jerusalem University professor, Judaist, H.Wawelberg - banker, Ludwik Zamenhof

- Esperanto creator); **Lodz** (I.K.Poznanski - factory owner, parents of J.Tuwim - poet, parents of A.Rubinstein - pianist, Sterling - physician, Maurycy Trebacz - painter); **Wroclaw** (H.Graetz - historian, Ferdynand Lassalle - socialistic movement activist, parents of Edyta Stein), there are the following graveyards: **Checiny, Krynki, Krzepice Lesko, Lubaczow, Lutowiska, Lowicz, Mszczonow, Potrkow Trybunalski, Przytyk, Sieniawa, Szczepieszyn, Tarnow and Wisnicz**.

Before 1939, every town held, apart from the main city synagogues, numerous Hassidic houses of prayer called *boznice*, as well as small offices of different professions and guilds. Rooms of prayer were established in private houses (in Warsaw alone there were about 400). Attached to the synagogues were houses of religious studies (*bejt midrashes*). These are estimated to number a few thousand.

After World War Two, approximately **500** ruined synagogues remained within the contemporary Polish borders.

In 1996, the Jewish Historical Institute (JHI) published "*The catalogue of remaining synagogues and houses of prayer in Poland*". The catalogue is the result of long-term research by Eleonora Bergman and Jan Jagielski. It includes **321** buildings from 240 places. It should be appreciated that the selection of buildings does not fully represent the remaining synagogues in Poland (for example, the beauty of the wooden synagogues, which have not been preserved in their entirety, can now only be admired in a magnificent album by Maria and Kazimierz Piechotek, unfortunately edited so far only in Polish).

Only temples in **Warsaw** (Nozyk's Synagogue), **Lodz** (Reichers Synagogue), **Krakow** (Remu'h and Temple Synagogues) and **Wroclaw** (Synagogue under a White Stark) are still used for religious worship.

A few other synagogues now house Judaist museums, they are in: **Tykocin, Leczna, Włodawa, Lancut, Krakow** (Old, Ajzyks) and **Pinczow**.

Some other synagogues are presently occupied by cultural institutions of various kinds (libraries, houses of culture, archives, museums or galleries). However, the visitor is not always aware of the building's original purpose. Therefore a valuable initiative by a governmental Eternal Memory Fund was to place information boards concerning the previous function of the site.

Political changes in Poland, after 1991, caused synagogues to be further abandoned, increasing the number of neglected, ruined buildings. The buildings are constructions of major artistic and historical value (for example **Orla, Nowy Korczyn, Rymanow, Dukla, Chmielnik, Bychawa, Krasnik, Dabrowa Tarnowska and Kepno**).

Approximately 50 synagogues contain preserved fragments of paintings.

Some of the most beautiful and interesting of the remaining synagogues worth visiting, are in: **Bobowa** (1756), **Bychawa** (1810), **Checiny** (1638), **Dabrowa Tarnowska** (1868), **Inowłodz** (19th century), **Kazimierz Dolny** (18th century), **Krakow** (Old 1495, Remu'h 1553, Heap 1647, Tall 1563, Ajzyks 1644, Tempel 1862), **Lesko** (17th century), **Lancut** (1761), **Leczna** (1648), **Oswiecim** (19th century), **Pinczow** (1600), **Przysucha** (1720), **Rymanow** (17th century), **Szczebrzeszyn** (17th century), **Tykocin** (1642), **Włodawa** (1764) and **Zamosc** (1610).

The Polish government has financed the rebuilding and maintenance of synagogue buildings. However, this will shortly change (in many cases not for the best), following the entry into force of a law from 20 February 1997, concerning the restitution of the properties of Jewish communities.

Property which will be the subject of restitution includes land previously used for religious worship and centers of welfare activity, such as synagogues, other communal buildings and cemeteries. If restitution is impossible, the Jewish community will be given other land or compensation. However, this will not apply to cemeteries, because the Jewish religion forbids making a profit from them.

The compensation which the Jewish Communities will receive instead of real estate will be directed to the protection of cemeteries, mainly fencing. The cost of putting up 1 m of fence now reaches almost \$100, so it is already quite clear, that there will not be enough money to even cover the costs of enclosing the cemeteries. It is absolutely essential to receive help from government and local authorities in order to preserve the cemeteries and synagogues which are the Polish Jews' heritage.

The words written by Majer Balaban in 1926, seem to be his last will as well as an order (Balaban died in the Warsaw ghetto in December 1942):

"It is still not too late to preserve our monuments, but if we do not react now, if we do not start this work today, everything that our fathers have worked for through ten centuries on this land, everything that our mothers offered in temples, literally everything sacred and precious to our ancestors will perish totally".

The only optimistic example until now is the case of the Lomdej Misznajot Society synagogue in Oswiecim. Although the building survived World War Two, it served as a place of storage afterwards. According to the law of restitution of Jewish Communities property, the synagogue was returned to the Bielsk Jewish Community on 10 November 1998. In the presence of numerous guests from Poland, Israel and United States, Rabbi

Chaskiel Besser placed the *mezzuza* back on the door. Thanks to the Auschwitz Jewish Center, founded by Fred Schwartz, the Museum of Oswiecim Jews History and the House of Prayers will be established there. It will conduct services, as it was originally meant to do. The names of 7,000 Oswiecim Jews (approximately 40% inhabitants), victims of the Holocaust, will be inscribed on the synagogue walls. F. Schwartz said:

"If we do not show the human features of the murdered, we will not be able to understand the whole macabre [nature] of Auschwitz".

In order to give the young people of Poland and Israel a proper education about the Holocaust, it is necessary to preserve the places of martyrs' death. On the monument standing at the border of the Lublin ghetto one can read an incised quotation from "The song about the murdered Jewish nation" by Icchak Kacenelson: *In every handful of ash I seek my relatives*. In the sites of previous concentration camps **Auschwitz - Birkenau, Belzec, Chelmo on the Ner, Sobibor and Treblinka** there are museums and places of memory, run by the state and therefore properly protected.

But what can one say about the approximately 500 monuments raised in the places of extermination in small towns, Jewish cemeteries and on the edges of forests? Many were built right after the War by those who survived extermination; others were built in the 60s by the state authorities, dedicated "to victims" instead of "to Jews", and finally some were established in the 80s by the Compatriots Organizations from Israel and USA.

Who is supposed to take care of them and verify their inscriptions? I put a question mark here and I look for both an answer and for help.

Status of Jewish Lawyers in the Late Thirties as Reflected in Polish Legislation

Szymon Rudnicki

Article 96 of the 1921 Constitution guaranteed equal rights to all citizens. However, its provisions were violated many times right from the start. After Poland regained its independence all Jewish rail workers in Galicia were laid off, a total of 3,000 persons. Many Jewish officers, who had made a substantial contribution to the fight for independence, were discharged from the army, without having their ranks recognized in the reserve, and treated as foreigners. This was done by interpreting the resolution of the Sejm of 17 June 1919 as allowing only Polish nationals to become army officers. The situation did not change even after the upheaval of May 1926. In 1937 soldiers who were non-Polish nationals could not even become squad leaders not to mention marksmen or officers. Ten years earlier in 1927 there were only 87 Jewish officers out of the total number of 17,629 army officers.

Professor Szymon Rudnicki, University of Warsaw. These are highlights from his presentation at the Remember Warsaw Conference, on the panel on "Discrimination".

Despite the new Constitution, restrictions against Jews which had been introduced by legislation enacted by the partitioning powers remained in force. This was particularly true in the case of the Russian partition, although these restrictions were more rigid in the eastern territories than in Congress Poland. The only restriction imposed in the Austrian partition was the ban on using the Hebrew language in judiciary and public life. The restrictions were gradually lifted by new Polish legislation. As late as on 13 March 1931 the Sejm finally adopted the relevant act lifting all restrictions imposed on Jews, which had their roots in the legislation of the partition period.¹

Thus, formal equality of rights became an accomplished fact. As Icchak Gruenbaum wrote: *"The ideal we had been fighting for, for over a century, has finally been attained."* However, at the same time, he emphasized that formal equality of rights did not necessarily mean factual equality. Jews called attention to economic discrimination, restrictions on access to employment and higher education and the issue of compulsory Sunday rest.

The act did not close the issue of legal

equality of rights. It was adopted at a time when Jews had to undertake a struggle against the first bills of the National Party (*Stronnictwo Narodowe*) aimed at limitation of these rights. In March the Sejm Committee considered the act on the so-called "Jewish corpses". This time Jewish deputies fought not so much for equal rights as for the safety of Jewish people.

Following Pilsudski's death many slogans of the nationalist fraction were adopted by the ruling *Sanacja* regime. Beginning in 1936, the Sejm considered several bills aimed at ousting Jews from various areas of economic activity. The first and best known was the bill on ritual

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1. Its fundamental provision read: "Restrictions of rights contained in provisions issued before Poland regained its statehood as well as privileges of citizens ascribed to them on the basis of their social background, nationality, language, race or religion, contrary to the legal state resulting from the regained Polish statehood, or in contravention of the provisions of the Constitution on the equality of citizens before law, have no binding force, even if such special regulations have not been expressly revoked by a provision of the act." DURP 1931, No 31, item 214.

slaughter lodged by Janina Prystorowa. On the pretence of humanitarianism, the act disallowed ritual slaughter and thus consumption of beef by Jews. The discussion in the Sejm unequivocally showed that the humanitarian objective was just an excuse for eliminating Jews from the meat market.

On 20 January 1937, the Sejm considered a bill lodged by Rev. Stefan Downar on the manufacture and trade in devotional articles. Article 1 of the bill read: "Only natural and legal persons, belonging to the religion to which these products refer" may be involved in the manufacture and trade thereof. An act on the production, sale and taxation of vine beverages was another such act. It had a direct impact on Jews in the case of raisin wine used for religious purposes.

Another anti-Jewish action undertaken by some municipal governments was to move markets outside the city limits or shift market days to Saturdays. The Ministry of Industry and Trade requirement of 19 April 1937, to place the full names of shop owners on signs alongside the names of companies went in the same direction. Given the spreading calls for boycotts this impacted only on Jews.

Since the early 1930s the young members of the national faction had called for the segregation of Jews from Polish society and as the next phase their emigration. The older generation of activists of this faction, even its liberal wing, recognized this as a priority issue requiring a fast solution in all its aspects, including political, economic and cultural. This was perceived as a remedy for almost all of Poland's social problems.

Now in turn the *Sanacja* regime began to speak of the "Jewish question" which

had to be resolved not by "irresponsible squabblers", but by "authoritative State bodies and exclusively within the framework and based on the Constitution" *Sanacja* politicians began to propagate anti-Jewish and emigration slogans as may be seen in the speech of the Prime Minister Felicjan Skladkowski and the program of the government party - the Camp of National Unity. The act depriving those who had lost contact with the Polish state of their citizenship was clearly directed against Jews. In a Sejm discussion over this act it was clearly emphasized that it did not have Poles in mind. Pursuant to this act the Minister of Internal Affairs issued an order on 8 October requiring Polish foreign passports to be submitted for one-time control. This gave the Nazis an excuse to expel Polish Jews to Poland as they feared the loss of citizenship. Many more bills aimed at resolving the "Jewish question" were lodged by the *Sanacja* deputies. In general, they followed the trend of the Nuremberg acts in Germany.

According to the Jewish senator, Mojzesz Schorr, the basic difference between the national faction and the *Sanacja* regime was the method of solving the Jewish question. Referring to the continuing discussion in the Sejm on ritual slaughter, he said:

"The first [group] want to do away with us quickly and in a violent manner - one could say, by mechanical slaughter, the second group wants to do it slowly, in stages, and above all in a so to speak 'cultivated manner', we could refer to this as humanitarian slaughter. I must admit that I do not attach much importance to these subtle differences, to this delicate line between violent and cultivated extermination. The latter seems more dangerous as it is done in cold blood, in a planned and organized, and even refined, manner and therefore

is the more culpable and repugnant as it uses the concept of cultivation for this purpose. At the end of the day, there is no difference between the system of ferocious starving out and slower systematic underfeeding, at least not from the point of view of the future victim".

The difference was clearly visible, however. The national faction resorted more and more frequently to physical violence. The ruling faction wanted to solve problems by legislation, fighting violence against Jews.

A resolution by the Main Board of OZN in May 1938 provided for the reduced participation of Jews in some professions, "by introducing general legal regulations which provided for the possibility of selection based on the interest of the State." It also professed to keep culture free from Jewish influence. Here to some extent it trod the path which had been cleared by the nationalistic youth, which since 1922 had demanded the introduction of the *numerus clausus* policy in all universities. Soon it became evident that the *numerus clausus* slogan was being implemented in practice and the young people of the nationalist faction took the next step demanding the introduction of a *numerus nullus* policy, which meant that no Jews would be admitted to Polish universities. Initially, they fought for the so-called "bench ghetto", i.e., specially designated separate sitting places for Jewish students. The Boards of the Engineering and Mechanics Faculties of the Lwow Politechnic were the first to give in to their demands and on 8 December 1935 adopted appropriate resolutions. They soon found ready followers. Making concessions to the demands of the national faction, supported by strikes which paralyzed university life

and anti-Jewish demonstrations, on 2 July 1937 the Sejm amended the act on schools of higher education giving more authority to their rectors and placing stringent disciplinary strictures upon students.

Systematic anti-Jewish actions resulted in the decline of Jewish students attending universities in Poland from 20.4% in the academic year 1928/29 to 7.5% in 1937/38.² Not being able to study in Poland, Jewish youths either refrained from taking up higher studies or were forced to study abroad. As certification of diplomas was necessary they had no chance of finding employment in Poland.

Having finished their studies Polish students joined various professional organizations taking with them the slogans they had advanced at the universities. On 16 December 1930, the Union of Engineering Students in Lwow adopted a resolution that only a Christian or Islamic student could become a member, thus excluding all Jews. Aryan clauses were incorporated into the statutes of more and more organizations.

This created a sense of rejection and alienation among even the most assimilated people, who so far had had no reason to accuse their colleagues of anti-Semitism. At the same time, their fear grew and they avoided certain streets for fear of being assaulted by militant students. Accounts show that the bench ghetto and the organizational and social boycotts left a permanent impression on the psyche of many Jews, creating the stereotype of the anti-Semitic Pole.

The above phenomenon may clearly be observed in the community of advocates; only a few Jewish judges sat in the whole country. Professional periodicals are the best source for studying these phenomena - individual Chambers of Advocates and

other associations of advocates had their own publications, which provided an in depth view of relations within this professional group.

In as early as 1921 the Main Board of Advocates [NRA] opted to place limitations on the number of Jews in this profession. In particular the National Federation of Advocates [NZA] gathered advocates whose views complied with the program of the National Party [SN]. Its leadership comprised such well-known activists of the National Party as Marian Borzecki, Janusz Rabski and, from the National Radical Camp [ONR], Jan Jodzewicz. In mid 1934, after the National Federation of Advocates' appeal to limit the number of Jews in the bar, the Board of Advocates in Warsaw regarded it as imperative to consider this issue in a disciplinary manner.³ The appeal met with objections from the Circle of Advocates of the Polish Republic, the Association of Advocates and the Federation of Socialist Lawyers. However, from that time on attempts to introduce various restrictions on Jews were stepped up.

The Krakow Chamber of Advocates is a good example of relations within the Chamber of Advocates. From the beginning Jews constituted a majority, but as has been emphasized "they never used it against their Christian colleagues, but from time immemorial they adopted the policy of equal mandates/votes in the self-government bodies of advocates". The chamber was an example of the "friendly coexistence of its members". This harmony lasted until a general meeting of members in November 1935 when a group of advocates from Kielce lodged a motion to include a column for religion and nationality in the registration list of advocates. The motion was rejected

and cooperation continued on the earlier terms. On 20 February 1936, the Executive Department of the Main Board of Advocates [NRA] adopted a resolution that "advocates are obliged to avoid in mutual relations any manifestations and propagation of antagonisms relating to profession, colleagues, nationality and religion and that in the event of any such manifestations they shall be held liable for an offence against the reputation and the dignity of the profession." This, however, did not stop the General Meeting of NZA from adopting a resolution during a debate held on 21 June 1936 "to call on colleagues to break off relations with those Polish advocates who have Jewish trainees". The Board of Advocates in Warsaw dismissed this motion as contrary to the resolution of the NRA.

Before the annual general meeting, Krakow's Jewish advocates agreed to far-reaching concessions offering two out of three mandates to the NRA and eleven out of the nineteen seats in the Board and the position of the Dean. This proposal was rejected. In line with NZA's position and contrary to the NRA resolution, at the next general meeting in November 1936 a group of 169 advocates, out of the 1291 present including approximately 500 Christians, lodged a letter of protest against being outnumbered by their Jewish colleagues and called on Christians not to accept mandates in the self-government bodies. Several advocates complied with this appeal. The same Main Board of

2. From the statistical data of MWRiOP, "Oewiata i Wychowanie", June 1936. In 1936 out of 1,672 academic professors only 36 (i.e. 2.2%) were Jewish. Most had achieved their position before Galicia regained independence.

3. Appeal of the National Federation of Advocates on the issue of Jewish advocates, "Palestra" June-July 1934 No. 6-7 p. 443.

Advocates which had adopted the resolution in February 1936, gave in this time and on 20 March 1937 gave orders for arbitration proceedings to be held between the parties in Krakow and Lwow where the situation was similar. Of the 1400 advocates - members of the Krakow Chamber - the majority was clearly against the resolution.

"But at the end of the day, the nationals won and we have no idea how this could have happened" - recollected a member of the new board affiliated with the conservative movement who stressed that not everyone liked these national slogans, however, *"they all understood the need for joint action"* and *directorships went to "Poles and Christians omitting Jews"*.⁴

On 16 May 1936, Witold Grabski became the Minister of Justice. He was a deputy public prosecutor of the Court of Appeals in Warsaw, who had become famous for his speeches during the Brzesz trial. Additionally, he was known for his rightist views. The shift of the *Sanacja* regime to the right and adoption of nationalist slogans encouraged nationalist activists to escalate their demands. The Union of Polish Advocates [ZAP] which aimed to "preserve the Polish face of the legal profession" gained increasing influence. Apart from the ideological aspect, the desire to suppress competition also played a role. It was not easy to solicit a client in times of crisis. According to Wilhelm Gotblatt, out of the several thousand advocates' offices, only some 10% had steady work. The others led a wretched existence or slowly came to a standstill. Another author wrote that

"it is a public secret that at least 60% of advocates in Poland not only fail to earn so much as a modest living, but

do not earn enough even to buy bread and modest clothes".⁵

This phenomenon was particularly evident in Warsaw, which had a large community of advocates.

Jews constituted a significant proportion of advocates as it was the only profession in which Jewish lawyers could find employment. As noted, they constituted a majority in the Krakow and Lwow Chambers. The register mentioning religion allows a calculation of how many Jews were in the Warsaw Chamber. The sample of the first 20 pages of the list containing 402 names shows that there were 184 Jewish advocates, *i.e.*, a little over 45%. The nationalist faction persisted in its demand to close the list of advocates and trainees to Jews throughout the whole country. Thus, during the General Meeting of the Warsaw Chamber of Advocates held on 28 November, 1936, a motion was submitted, signed by 169 advocates, to close the list of advocates and trainees to Jews in the whole country, until their number corresponded to the percentage of Jews in the population of Poland. The ground for the motion was that in Warsaw every other advocate was a Jew, while in the Krakow and Lwow Chambers, Poles constitute a small minority. The formal motion put forth by Berenson, that this motion was contrary to the constitution and could therefore not be considered was passed by only one vote. After that, one of the members of NZA, Jerzy Czarkowski, called on Poles to leave the meeting and some complied. Among them was the chairman of the meeting, a well-known advocate, Stanislaw Szurlej who often defended SN members. The number of those who left this meeting is unknown. We can only make presumptions on the

basis of voting results. If at the beginning of the meeting there were 1,456 persons voting then at its end there were only 1,055. It is possible that some left the meeting for other reasons.

Advocates gathered in the pro-*Sanacja* Circle of Advocates of the Republic of Poland [KARP] took an attitude similar to that of Czarkowski and his colleagues. It was they who, at a meeting on 13 February 1937, adopted a resolution that:

"all necessary efforts must be taken to make the bar - as an important element of the administration of justice - Polish, not only in name but also in spirit [...]. This objective cannot be achieved without barring access to the bar to the alien element totally disassociated with the Polish culture."

It was they who, at the congress of delegates held on 22 January 1938, adopted a resolution which stated that:

"not waiting for the solution of the issue of minorities, especially the Jewish minority, on a wider and general national level, KARP considers it already now necessary to immediately put forth via the legislative venue regulations which would ensure the Polish character of the bar and its corporate governing bodies and guarantee the decision-making powers to the Polish bar on all corporate issues."

The annual meeting of advocates of the Warsaw Chamber is a good illustration of the prevalent atmosphere and tensions within the community of advocates in 1938. According to voting results 1,608 persons attended the meeting. Edward

4. S. Grzybowski: *Wspomnienia* [Memoirs], *Zakamycze* 1999 p. 370.

5. W. Goldblatt: *Katastrofa w adwokaturze* [A Catastrophe in the Bar], *Głos Adwokatów*, February 1935 No. 2 p. 4-9.

Muszalski, a member of the ONR and NZA, submitted a motion signed by 380 persons in which they asked the meeting to introduce a *numerus clausus* policy in Advocates Chambers and ensure that the structure and organization of the bar would guarantee to Poles a majority in its governing bodies. Apolinary Hartglas, a deputy and Zionist activist of many years, submitted a counter motion to reject the motion as unconstitutional and contrary to the previously mentioned NRA resolution. Boleslaw Bielawski, for his part, explained that there was no sense in referring to the Constitution when the discussion concerned corporate affairs rather than state affairs. During a recess, things took a peculiar turn as Zygmunt Nagorski, a democrat elected that day to the NRA, provoked by Henryk Suchodolski, hit him in the face. Those in favour of the *numerus clausus* policy demanded nominal voting on Hartglas' motion. They probably thought that some of the voters would be afraid to vote against the "national" opinion and be labeled as Jewish servants. 684 voted in favour and 505 against Hartglas' motion. After the vote, Janusz Rabski declared that the Polish motion was rejected by Jewish votes and therefore

"it will not be possible to find common ground between the Polish and the Jewish sides in this room. This is war. And in this war there may only be allies or enemies. Whoever is not on the Polish side is on the Jewish side. He will not be helped by any 'democratic' or 'progressive' names or titles".

Because, in his opinion, Jews did not want to acknowledge that Poles are the hosts of this land, the

"Polish bar, joint and unified, is putting forward a slogan to be carried out by the

Polish Nation: we are giving notices to Jews terminating the lease contracts for their offices in Our Country".

However, the majority adopted a resolution that "any designs to restrict access to the profession of an advocate and advocate's trainee to Jews who, pursuant to Art.1 of the law on the organization and structure of the legal profession, are members of the bar - are flagrantly in breach of the principle of respect for acquired rights".

On 7 October 1932, the act on the organization and structure of the bar came into force. It replaced the three district organizations with one organizational structure. Without doubt, the act guaranteed far reaching self-government. After several years, however, its regulations came under strong criticism. Voices were raised against overcrowding in the bar and against simplification of access to the profession by admitting young judges and other lawyers, who were administrative officers. In the opinion of the critics this caused the "inflation" of advocates, while freedom to choose any given Advocates Chambers became a fiction in practice, as the Chambers barred access by instituting prohibitive entrance fees. Further, high court fees discouraged taking cases to court thus lessening the need for the assistance of advocates. Moreover, due to the advocates' poverty, it was claimed there were instances of negligence, resulting from slackened professional ethics and no possibility of further education. Limiting the flow of new people was seen as the main remedy. The resolution of the Board of Advocates in Krakow started with this and continued with other similar arguments against the act. The demands focused on longer training periods, closing

access to notaries, judges and prosecutors. At the same time the Board, *inter alia*, protested against any attempts to limit the independence of the bar or requirement that candidates prove their loyalty to the State. In the end, it was resolved that mere amendment of the law on the structure and organization of the bar would not be sufficient to tackle the collapse of the bar.

On 12 January 1937, Minister Grabowski at the meeting of the Budget Committee declared that the Ministry intended to amend the act on the structure and organization of the bar by including the requirement of court training which was to be a prerequisite for bar training. He explained this by the

"excessive flow of candidates to the bar training, as such inflow creates an excessive number of advocates [...] and as a result these advocates cannot make an honest living."

Neither the bill, nor any of the previously discussed acts mentioned Jews. However, everyone knew against whom these restrictions were directed. No one doubted that implementation of these new regulations would close the way to bar training for Jewish students as the latter had no chance to participate in court training. On 19 February 1937, the Council of Ministers approved the bill on the structure and organization of the bar. It incorporated provisions on double training and the Minister's right, at his discretion, to close registration lists of advocates and trainees for a limited time. The Sejm Legal Committee went even further than the government and proposed that one-third of NRA members be appointed by the President and corporate governing bodies be appointed by the Minister of Justice. The NRA protested against the decisions of the committee.

The government project gained the support of the Congress of the Union of Polish Advocates (ZAP). Members of the Congress went even further as apart from a demand to introduce the *numerus clausus* policy in the bar they demanded the same policy in the case of universities and advocates' self-governments. Moreover, they adopted a resolution pursuant to which a member of the Union was

"prohibited from undertaking the responsibilities of a patron towards trainees of Jewish nationality".

The Warsaw Board of Advocates was in favour of limiting the number of advocates. It argued that if in 1919 there were 389 advocates and 14 trainees in Warsaw then in 1936 their numbers had grown to 2,040 and 751 respectively. The Board proposed to limit the number of trainees to 40-50 persons per year. Democrats and Jewish advocates were against limiting the number of young people, arguing that first, the number of advocates was far less than the number of doctors, second, there was a clear contradiction between the introduction of a quota and the concept of a free profession, and third, that the training would not necessarily be given to the best qualified candidates.

The bill gave rise to a lively discussion in the press and in the community of advocates. It came under attack primarily for presumably abolishing the self-government of advocates. Familiarizing itself with the new changes in the structure and organization of the bar, the Krakow Chamber in its resolution of 1 February 1938 maintained that the resolutions of the Sejm's legal sub-committee were

"in conflict with the essence of the independent bar [...] and specifically abolish the foundation of the advocates' self-government by introducing the policy of appointing corporate governing bodies, making them dependent on state administration bodies and delegating all important issues to the Main Board of Advocates comprising 50% appointees."

As Teodor Ringelheim put it

"only academics, 'obedient and loyal' to whatever government might be in office would be able to become court trainees and advocates".

It was emphasized that although the proposed changes were meant to secure a majority for Poles in the governing bodies of the bar, it was nonetheless difficult to consider this a good excuse for the President's right to appoint 12 members of the Main Board of Advocates and approve corporate authorities. It was generally admitted that the proposed changes did away with the advocates' autonomy and subordinated the bar to the administrative authorities. The Boards of Advocates and associations of advocates protested against the latter. The Federation of Socialist Lawyers described the bill as paying tribute to the principles of totalitarianism. On the other hand, for the Union of Polish Advocates, the bill, although it contained several necessary or desirable changes

"did not resolve the pressing issue which was highly abnormal and harmful to the interests of the State and the Polish Nation, namely, the national composition of the bar."

On 15 March 1938, the Sejm discussed the bill on the structure and organization of the bar. Sioda presented the report of the Legal Committee. He pointed to the reservations concerning the court training

revoked in 1932, which he claimed he had brought to the attention of the Minister of Justice in 1935. The idea underlying the changes, in his opinion, was to raise the moral and professional level of the bar. The changes had been introduced after consultations with the NRA and the Union of Polish Advocates. He admitted that not everyone would find a place in the courts to pursue court training, and therefore the Minister of Justice would have the right to exempt a person from this obligation.

The next speaker, a Ukrainian deputy called Witwicki had no doubt that the "*underlying idea of the bill was to limit the independence of the profession*", while police would decide about the "crystal clear character" of future advocates. Moreover, he emphasized that the requirement for court training, which he did not think had any value to an advocate, would close the bar to Ukrainians. Several other Ukrainian deputies spoke in the same spirit.

Emil Sommerstein said that the Act had to be considered as

"nationalization of the Bar, which means elimination to a great extent of Jews and Ukrainians from the Bar."

Debating with Sioda he said that in Warsaw, 5 out of the 19 members of the Board of Advocates were Jews. As 5 Poles had resigned there were only 10 left. In Lwow 5 out of the 8 members were Polish. He also attacked the transition period for the bar authorities envisaged in the bill. The authorities were to be appointed for that period by the Minister of Justice. He also called attention to other restrictions introduced by the act, concerning the self-government of advocates. He concluded his speech with the following words:

“We declare ourselves against this Act not only for political reasons, which have been imposed on us, not because of the threat of extermination, removal from the bar, but for reasons of a higher aspect, the aspect of eternal law and an independent, free and entirely self-governing bar to be its servant and agent.”

All 24 motions made by opponents of the Act were rejected, including those stipulating electability of all the NRA members, resignation from court training and examinations for judges. On 12 May 1938, the Act was announced in the *Dziennik Ustaw* (Official Journal of Laws).

Pursuant to the act, training in a general or military court ending with a written exam, followed by advocate's training ending with a bar exam, was a prerequisite for being entered on the list of advocates. The Minister of Justice, upon hearing the opinion of NRA, could order that the list of advocates or the list of trainees or both be closed for a specified period of time in the individual circuits or locality. Having ordered the list closed, he could allow a limited number of advocates or trainees to be entered on it at certain times and in designated localities. The relevant list was to be presented by the Circuit Board of Advocates of the NRA accompanied by its opinion concerning the order. NRA was to choose candidates on the basis of their professional qualifications, merits, age, financial and family situation as well as the candidate's ties to the given area. The act barred access to the advocate's profession to practically all minorities and primarily to Jews, depriving them of successive places of employment. The only profession open to Jewish lawyers was advocacy as they were barred from other positions requiring an education in law.

Less than a month after it came into

force pursuant to the regulation of Witold Grabowski issued on 4 June 1938, lists of advocates and trainees were closed in all circuits until 31 December 1945. Until that time the Minister was to set the annual quotas for new trainees and advocates. Not even one Jew was entered on the first list containing 63 names.

On 5 July 1938, the Board of Advocates in Warsaw, established under the transitional provisions, held its first meeting. It was the first Board not to be elected by the advocates themselves. Leon Nowodworski was elected as its dean by an almost unanimous vote. One blank ballot was cast probably by Boleslaw Rozensztadt. Nowodworski was a well known activist of the Nationalist Party and acted as defence attorney for its members in many trials.

Pursuant to the new provisions, the NRA set the quotas for new entries until 31 December 1938. This involved 54 advocates and 31 trainees. However, the Board of Advocates in Warsaw presented its own list where

“because of the present national composition of the Chamber - it decided that the quota should only cover Poles - determine only the order of the Polish candidates, omitting Jewish candidates.”

In 1938, the final NRA list did not include even one Jewish name. This was emphasized by Nowodworski:

“today at last - for the first time after so many years - the ranks of advocates of the Warsaw Chamber shall be strengthened exclusively by young Polish nationals, bone from the bone and blood from the blood of our Nation”.

Stefan Niebudek, Secretary of the National Party and one of the new advocates echoed this sentiment.

The harassment did not stop at this. Training seminars were divided according to the criteria of religion. Motions by the Federation of Socialist Lawyers to divide the seminars by alphabetical order and of the Management Board of the Association of Court Trainees in Warsaw to “allow Jewish trainees to participate in seminars without any injury to their honour and dignity” as well as protests by the Management Board of the Association of Advocates in Warsaw against the division of seminars according to religion, were rejected or unacknowledged. When Jews boycotted classes in the designated group the Board demanded explanations. Then in a resolution dated 6 December 1938, the Board called upon members of the Chamber to use their names as given at birth or as appearing in marriage certificates in their letters and applications. The first name had to be given in full without translation or abbreviations. Those in violation of this resolution would be subject to disciplinary action.

No one knows how far the individually nominated Boards of Advocates would have gone. Their further development in the direction discussed above was stayed by the War.

“And Moshe sat to Judge the People... from Morning till Evening”

Yaakov Weinroth

The weekly *Torah* portion, *Yitro*, is named after Moshe's father-in-law, and the name Yitro is itself a reflection of part of this portion's content. According to the *midrash*, the name Yitro was not that originally given to Moshe's father-in-law:

He was called by seven names: Yeter, Yitro, Hovav, Re'uel, Hever, Putiel, Keni. Yeter: in that he added (*yitter*) a passage to the *Torah*. Yitro: in that he was plentiful in good deeds. Hovav: because he was beloved (*haviv*) before God. Re'uel: in that he was like a neighbor (*re'a*) to God. Hever: in that he became like a friend (*haver*) to God. Putiel: in that he abandoned idol-worship. Keni: in that he was zealous (*kineh*) for God, and acquired (*kana*) *Torah* knowledge.¹

Yitro - Who Added a Passage to the Torah

This *midrash* tells us that the *Torah* chooses to focus on the significance of various events in Yitro's life, those events that are symbolized by the various names given to him in the *Torah*. Yitro the individual is hidden from us; even his original name is not revealed.

One of the significant milestones in Yitro's life is when he “added a passage to the *Torah*.” That is, Yitro merited having a passage in the *Torah* named for him, a passage in which his noteworthy deeds would be spelled out. Yet, if one looks at that passage, it is hard to pick out the great act that he carried out, or the outstanding innovation that he introduced. What we are told is this: when Yitro saw Moshe sitting alone in judgment, yet unable to handle all the cases brought before him, all he did was offer

him a little practical advice regarding administrative and legal procedure. This is how the *Torah* describes it:

“The thing you are doing is not right; you will surely wear yourself out, and these people as well. For the task is too heavy for you; you cannot do it alone. Now listen to me. I will give you counsel, and God be with you! You represent the people before God: you bring the disputes before God, and enjoin upon them the laws and the teachings, and make known to them the way they are to go and the practices they are to follow. You shall also seek out from among all the people capable men who fear God, trustworthy men who spurn ill-gotten gain. Set these over them as chiefs of thousands, hundreds, fifties, and tens, and let them judge the people at all times. Have them bring every major dispute to you, but let them decide every minor dispute themselves. Make it easier for yourself by letting them share the burden with you. If you do this - and God so commands you - you will be able to bear up; and all these people too will go home unwearied.”²

The *Torah* is not a history book, nor does it deal with literature. It tells us nothing of the fascinating relationship that must have existed between Moshe and his gentile wife, Zipporah, who was willing to go with him wherever he went. It tells us nothing of other areas of interaction between Yitro, the High Priest of Midian, and the stranger who saved his daughters, married one of them, and went on to become the leader of a new nation and the prophet of monotheism and revolutionary religious ideas. Even in the realm of *Halacha*, mountains of laws hang, as it were, from a slender thread of interpretation, based on hints hidden in the text, or derived by hermeneutical rules. But here, a conversation that

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1. Mekhiltah de'Rabbi Yishmael, Yitro, *Massechta d'Amalek*, 1, *Vayishma Yitro*.
2. *Exodus*, 18:17-23.

appears, on the surface, to be rather inconsequential, is, in fact, allotted a great deal of space, and brings about a change of name for Yitro, reflecting a new dimension in his life. This puzzle, in turn, raises other questions: why did Moshe need Yitro's deeper understanding? It doesn't take a genius to realize that one man cannot serve on his own as judge for an enormous community. Would someone like Moshe, our great Teacher, not have understood the need to delegate authority? We must conclude that, indeed, the answer is not so simple.

Man, Principle and Instance

The answer to these questions is to be found hidden deep in the text: the passage is not, in fact, about legal procedure, but about the encounter between **man, principle and instance**. As we shall see, this encounter is far from simple, and, from the point of view of the law, is even tragic.

The modern jurist takes the authority of general rules for granted, since it is the spirit underlying the rule of law. Underlying the rule of law is the encounter between a particular instance and the general rule applicable to it, one that rejects the encounter between the instance and the individual who is supposed to give it normative meaning. However, like other things that we take for granted, the common perception ignores its own implicit difficulties. I would like to point out some of these difficulties, and the attempts to resolve them. Through this analysis, I will attempt to explain the significance of the dialogue between Moshe and Yitro.

In one of Plato's beautifully antinomian passages, he reveals the deficiencies of legal principles and laws:

Stranger: There can be no doubt that legislation is in a manner the business of a king, and yet the best thing of all is not that the law should rule, but that a man should rule, supposing him to have wisdom and royal power... [The] law does not perfectly comprehend what is noblest and most just for all and therefore cannot enforce what is best. The differences of men and actions, and the endless irregular movements of human things, do not admit of any universal and simple rule. And no art whatsoever can lay down a rule which will last for all time... But the law is always striving to make one - like an obstinate and ignorant tyrant, who will not allow anything to be done contrary to his appointment, or any question to be asked - not even in sudden changes of circumstances, when something happens to be better than what he commanded for some one... A perfectly simple principle can never be applied to a state of things which is the

reverse of simple... Then if the law is not the perfection of right, why are we compelled to make laws at all?³

Plato expresses here a serious dilemma: any human legislative framework is, by its very nature, limited. On the other hand, the world of instances and possibilities is infinite. Furthermore, it is not even static - it changes and takes on different meanings at different times. In other words, not only is it infinite, but, to a certain extent, it is chaotic as well. Is it not megalomania to attempt to encompass this enormous entirety within a system of legal principles?! Even in mathematics, Gödel, with two theorems, was able to show the limitations of mathematical principles, when he proved that there were mathematical statements that were undecidable within the Zermelo-Frankel set theory, such as the mathematical statement that this theory was self-consistent! And if this is true for mathematics, what about the law?! Mathematics is a system of *a priori* truths, the knowledge of which is independent of experience, and which can be discovered by deductive methods, while the law "is not logic, but experience." Since experience is infinite, while legal principles are essentially limited, how can the general principle be sufficient for all of experience?!

On the basis of this assertion, Plato rejected the authority of general rules, affirming instead the rule of the philosopher-king, who, like a ship's pilot:

... by watching continually over the interests of the ship and of the crew - not by laying down rules, but by making his art a law - preserves the lives of his fellow-sailors. In the self-same way, may there not be a true form of polity created by those who are able to govern in a similar spirit, and who show a strength of art which is superior to the law? Nor can wise rulers ever err while they, observing the one great rule of distributing justice to the citizens with intelligence and skill, are able to preserve them, and, as far as may be, to make them better from being worse.⁴

To answer Plato's dilemma, Aristotle, in his *Nicomachean Ethics*, develops the theory of "*epieikeia*":

When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by oversimplicity, to correct the omission - to say what the legislator himself would have said had he been present, and would have put into his law if he had known... And this is the nature of the equitable, a correction

3. Plato, *Statesman*; tr. Benjamin Jowett (Internet Classics Archive).

4. *Ibid.*

of law where it is defective owing to its universality. In fact this is the reason why all things are not determined by law, that about some things it is impossible to lay down a law, so that a decree is needed.⁵

In contrast to Plato, Aristotle supports the authority of law, and leaves the judge only to deal with the gap between the law, which is limited, and reality, which is infinite. When the judge reaches the point that the legislator, due to his own limitations, did not reach, he must correct the omission. In doing so, he needs to be guided by the following question: What would the legislator have done, were he to have been faced with this particular situation? Thus the judge becomes a partner in the legislator's creative act. Aristotle called this augmentation theory "*epieikeia*." This is normally referred to in Hebrew as "*hayashar vehatov*" (what is just and good), but this is not an accurate translation of "*epieikeia*," and I prefer to refer to it as "refinement of that which is just."

"*Epieikeia*" in Jewish Sources

Does the *Halacha* recognize *epieikeia*? Does it recognize the act of refining that which is already just as a necessary act? Might one not say that the whole issue arises as a result of the finite nature of man and human legislation, while this theory has no place in the framework of a God-given *Torah*, which is infinite? However, this is not the answer. What is the *Halacha*, if not a contraction of the infinite into the finite, casting the Divine truth within a system of legal principles handed down to mankind? The Divine truth needs no refinement, but from the moment that it was handed down to finite, imperfect, man as a system of laws and principles, it became subject to the need for completion. Rabbi Yitzhak Arama, in his *Akedat Yitzhak*, discusses this issue. In Section 34 of the second part of this work, he refers us directly to Aristotle (because of the importance of the passage, I will quote from it at length, interspersing my own comments):

This is a marvelous statement. You will understand it when I remind you what the philosopher [Aristotle] wrote in chapter 13 in the above-mentioned essay of the *Book of Ethics*, where he distinguishes between the equitable person and the just person. He poses the following query: Since the just and the equitable are both species of that genus of virtue called justice, the question inevitably arises: If the just man is the best in that category, then the equitable man cannot be thought good, because he goes to excess, which is the opposite of his praiseworthy reputation among all men. If, on the other hand, the equitable man is the best in that category, then the just man cannot be thought good, for he

falls short, which is contrary to what is explicated and affirmed in that entire essay.⁶

The doubt that arises is this: Which is the more desirable trait: being just or being equitable? Both of these traits are associated with justice, and so, one ought to be preferable to the other: if being just and adhering to the letter of the law is more appropriate, then being equitable and going beyond the letter of the law is on a lower level; on the other hand, if being equitable is superior, then being just is inferior.

He [Aristotle] resolves this quandary by stating that the just man excels with respect to the prevailing laws, *i.e.*, the general principles that are for the most part just, for he obeys them and is careful not to stray from them to the right or the left. But the equitable man is the one who perfects and refines the prevailing laws by making exceptions to these general rules, to the extent necessary, when, for whatever reason, the legislator, if then present, would not have applied the prevailing laws himself... Thus, we see that the just person is good with respect to conventional law, which is generally just, but the fair and equitable person is superior, in that he perfects and refines the law in situations in which the prevailing law does not succeed in achieving justice. The law cannot encompass the endless number of atypical cases. A result fair in one case may not be fair in another.

Resolving the choice between justice and equity depends on placing each of them in their proper context. Justice is expressed in terms of law and principles, yet these are appropriate only in the majority of cases. They cannot encompass every possible instance or relate to all possible cases. The role of equity is superior, in that it makes up for the deficiencies in that which is already just, where the legislator had omitted some point from the general law.

This is the very notion the Psalmist had in mind in the expression, "He is equitable (*hasid*) in all his works" (Ps. 145:17). This means that, although He is just in promulgating rules of law, which are generally just and are to be followed in all matters where the application is appropriate, "He is equitable (*hasid*) in all his

5. Aristotle, *Nicomachean Ethics*, V, 10; tr. W. D. Ross (Internet Classics Archive).

6. The translation of the passages from *Akedat Yitzhak* is taken from: Menachem Elon, *Jewish Law: History, Sources, Principles*, tr. Bernard Auerbach and Melvin J. Sykes (Jewish Publication Society, Philadelphia, 1994).

works,” since in actual practice He does not desire these general rules to be always followed. Instead, each judgment should fit the unique situation whenever it is realized that the general rule is inconsistent with true justice. In such cases, it is not the general law but peace and equity that should govern.

This is the meaning of the term “*hasid*” when applied to God. He is called so because, alongside the system of laws that He gave us in His *Torah*, he requires us to make up for what is missing in that system of laws.

This very notion is expressed by the words of the chief of the prophets [Moses]: “He (God) is just (*zaddik*) and equitable (*yashar*)” (Deut. 32, 4). For the immediately preceding statement, “All His ways are just, a faithful God never false” (*ibid.*), becomes questionable when it is realized that even His judgments will result in confusion and perplexity when the general rules do not fit particular cases... The judge is then faced with a dilemma: either he must decide according to the truth of the particular case, thus doing violence to the general rule, or he must apply the general rule, and do violence to the truth of the particular case... The solution to this difficulty is: “He (God) is just (*zaddik*) and equitable (*yashar*),” *i.e.*, He is the Just One who promulgates the law, and He is also the Equitable One who refines and perfects it when necessary, so that He may be truly called “a faithful God” in Whom there is no unfairness whatsoever.

Here we see that Rabbi Yitzhak Arama has adopted the Aristotelian theory of refinement, as a superstructure for the Divine Law that has come down into this world. Later in the same passage, he deals with the institutional application of this refining process. Here he rules that it is only the High Court that is empowered to apply *epieikeia*. The lower courts, however, whenever they find a disparity between the general law and reality, must bring the matter to the High Court for a ruling. Arama indicates the legal tools that the *Halacha* makes available to the courts:

This is the source of authority for the courts in every generation to judge and to inflict a punishment that will be both “according to the law and not according to the law.” “According to the law” means according to the requirements of the particular case; “not according to the law” means not applying the general rules. As the Sages said (*Yevamot* 99b), “Not that this is the law, but the times demand it,” *i.e.*, that this is not the general law, but that the specific case, as put to them, requires it...

The mechanisms for refining the law are well known: the power of the court to declare property ownerless, or to allow a law

of the *Torah* to be “uprooted” through inaction, or even through positive action, should this be necessary. According to Arama, these mechanisms are intrinsically necessary in the light of the limitations of the general rules.

He concludes his explanation with these remarkable words:

This notion is what the Sages had in mind in saying (*Shabbat* 10a), “All who give judgments that are completely and truly correct [lit., ‘true to their very truth’ (*din emet le-amito*)] become partners with God in the creation of heaven and earth,” because all mankind will thereby be maintained in the nature and manner in which they were created, in accordance with their very essence. Because of this partnership, judges are called *elohim* throughout Scripture.

The judge is, indeed, God’s partner in creating legal norms. The judge is referred to as *elohim*, because, in the absence of man’s process of refinement of the laws and rules, the system would be deficient.

Indeed, judges who always decide only according to the general rules, although they give a true judgment, [do not give a judgment “true to its very truth” and in fact they] destroy the world, as it was said (*Baba Metzia* 30b), “Jerusalem was destroyed because they gave true judgments,” *i.e.*, their judgments were based on general truth, which they did not adjust even when necessary; but they said, “Let the law cut through the mountain” [*i.e.*, “Let the law be applied no matter how unjust the result”]... This group is the most dangerous of all the types of harmful judges mentioned earlier.

I don’t want to get involved here in the general question of whether or not the general rules are correct only in the majority of instances. I also don’t want to discuss whether the obligation to refine the law applies to all areas of *Halacha*, or whether that power still exists today. One thing is clear: when it came to monetary dealings, matters between man and his fellow, the *Halacha* accepted the view expressed in the *Akedat Yitzhak*. This view was codified in the *Tur* and *Shulchan Arukh*, *Hoshen Mishpat*, 2. In this regard, the comments of Rabbi Yehoshua Falk Katz, in his *Drisha* commentary on the *Tur*, are most instructive:

It appears to me that their intention, in using the term “true to its very truth,” (*din emet le-amito*) is that they should judge according to the specific parameters of the case before them, in order to bring down a true judgment, as opposed to always deciding according to the strict *Torah* law, since sometimes the judge needs to rule beyond the letter of the law, depending on the specific instance before them. And, where the judge does not do so, even though he makes a true judgment, this is not “true to its very truth”. As the Sages stated, “Jerusalem was destroyed because they gave true

judgments, and not beyond the letter of the law.” And on this it was also stated: “Do not turn aside from what they tell you, either to the right or to the left”, which the Sages explained: “Even if they say of ‘right’ that it is ‘left’, or of ‘left’ that it is ‘right’.” The *Akedat Yitzhak* explains this as follows: that they sometimes say that the law leans toward a particular opinion, and yet rule the opposite way. And this is their ‘right’ based on the specific case.⁷

The dilemma posed by Plato, the antinomian, and the resolutions offered for this dilemma have far-reaching implications for all areas of law. For example, the issue of limits on judicial activism, and the significance of limitations on the legal system itself, derive from this dilemma. Each and every jurist needs to keep this dilemma in mind at all times, especially judges, who, on the basis of what is, after all, a very poor ‘scientific’ discipline, decide the fate of those before them. This dilemma underlies the fundamentals of criminal law, and is essential to the limitations that must be imposed on the judicial power. Perhaps the most important conclusion that can be drawn from this discussion is that a society can be “just”, and, at the same time, be like Sodom and Gomorrah. Indeed, these communities are not portrayed in Jewish sources as anarchic societies. Rather, they are communities grounded in the rule of law, in which none other than Lot, Abraham’s nephew, is appointed as judge.

Afterword

Moshe is the quintessential “Man of God.” Maimonides has already pointed out that, more than any other individual, Moshe was able to achieve a level of understanding of the Divine, far beyond that of most human beings: he is close to the Infinite, and experiences it within his own existence. As a result, he is unable to accept the concept of delegating authority, and cannot accept a rule on the basis of general laws if this is allocated to a multitude of judges. Yet, he knows the limitations of general principles, and is well aware of how each instance is part of that awesome infinity that cannot be encompassed by general laws. He knows that every case carries with it the possibility of injustice, by virtue of the law’s generality and democratization. In order to limit this injustice - since he must accept that the general laws apply - he sits alone and judges the people from morning till evening. How can this giant rely on others to refine and perfect that which is already just, in response to the cry of the specific case, one that is, in some unique way, unlike any other that has ever been or that ever will be.

It is Yitro, whose roots are in the imperfect human world, who

convinces Moshe of the need for rule by general laws and a multitude of judges, in spite of their limitations and shortcomings. The question of whether to appoint judges or to judge alone is not a question of legal procedure: it goes to the heart of what I have called the encounter between man, principle and instance. Even after receiving the *Torah* from God, Moshe remains on the mountain, encompassed in a perfection that refuses to compromise with anything that falls short of it. Yitro, on the other hand, is immersed in the pragmatic, purposeful, human finiteness. It is only he who can tell Moshe, after the awesome event on the mountain, that the law has now been given, handed down, and now the *Torah* dwells, in its contracted state, within Man’s modest, relativistic world. In this dialogue between Yitro and Moshe, it is Yitro’s position that ultimately becomes the accepted norm.

Yitro added a passage to the *Torah*, and, according to the *Sefat Emet*, it was only through Yitro that this passage could have been given. The portion of Yitro brings Divine perfection into encounter with human constraints. These same issues are repeated in the case of the Achnai oven, and in the comments of the Sages regarding the respective roles of the Heavenly Academy versus the Earthly Academy. They concern Man’s position with respect to his world and its laws, the tragic encounter between man’s smallness on the one hand, and the need for him to rise to the task of becoming God’s partner in creation, on the other.

7. *Drisha* on the *Tur*, *Hoshen Mishpat*, 1:2

“Ethnic Affiliation and Religion” Under the Population Registry Law

H.C. 5070/95; 2901/97; Civil Appeal 392/99

Na’amat, the Traditional Movement in Israel, et al v. Minister of the Interior et al

Before President Aharon Barak, Deputy President Shlomo Levin, Justices Theodor Or, Eliezer Matza, Mishael Cheshin, Tova Strasberg-Cohen, Dalia Dorner, Itzhak Tirkel, Dorit Bainish, Itzhak England, Eliezer Rivlin

Judgment given on 20th February 2002

Precis

This joint petition concerned adults and minors, residents of the State of Israel, who had undergone Reform or Conservative conversion procedures. Some had undergone the process in Israel, others in Jewish communities abroad. The question to be answered by the Supreme Court sitting as a High Court of Justice was whether the Registration Officer, acting under the Population Registry Law, was required to comply with their wish to be entered as “Jewish” in the “ethnic affiliation and religion” rubric of the Population Registry. The Civil Appeal was instituted by the Minister of the Interior against the declaratory judgment of the District Court of Jerusalem, Judge Zeiler, permitting the Applicants who had undergone a non-Orthodox conversion to be registered as “Jewish” on the grounds that the registration in the Population Registry was principally “statistical” and did not determine the personal status of the Applicants. Judge Zeiler had held that he was bound by the judgment in HC 264/87 *The “Shas” Movement v. Director of the Population Registry in the Ministry of the Interior* 43(2) P.D. 723 (hereinafter: “the Shas case”). In that case it was held that a person who had undergone conversion by a Jewish community whether in Israel or abroad had to be registered as Jewish. If the conversion was carried out in Israel it was not necessary to obtain the authorization of the Chief Rabbinate. Delivering the majority judgment of the Supreme Court, President Barak held that the Registration Officer had no discretion in this case, he was obliged to make the desired entries in the Population

Registry, but that these entries were not evidence or even *prima facie* evidence of their content.

President Aharon Barak Judgment

President Barak referred to the history of the proceedings and the various efforts that had been made both on the general level (for example, the Ne’eman Committee, the establishment of the Institute for Jewish Studies and the Drukman Committee) and on the individual level - to find out-of-court solutions. As part of these efforts several of the petitions had been withdrawn, however, the problem before the Court had not been solved and there was therefore no choice but to reach a judicial determination.

The Parties’ Contentions

The state had argued that the *Shas case* had set out the law in relation to Reform or Conservative conversions carried out in Jewish communities abroad in respect of persons who wished to join those communities. The case was not to be applied to Israeli residents who traveled abroad and underwent conversion abroad without any intention of joining the particular Jewish community in the framework of which they had converted. Likewise, the case should not be applied to Israeli residents who underwent Reform or Conservative conversions in Israel without this conversion being certified by the Chief Rabbinate. The reason was that conversion caused the convert to join the Jewish community, headed by the Chief Rabbinate, and the latter’s certification was therefore necessary to recognize the convert’s affiliation to the community. Further, the state contended that it was not proper to allow, by way of judicial interpretation, divisions regarding issues of status within the Jewish community. The state contended that the High Court’s judgments reduced the significance of the Population Registry and ignored its real importance in daily life both to the authorities in terms of relying on its contents and to the public. Finally, the state contended that the term “Jew” (in relation to the ethnic affiliation and religion rubric) had to satisfy the definition of “Jew” in the Law of Return, and under that definition

a conversion would not be recognized unless it was certified by the Chief Rabbinate.

The Petitioners, for their part, sought to rely on the decision in the *Shas* case, so that a Reform or Conservative conversion undertaken by an Israeli resident abroad had to be recognized, even if the convert did not wish to join the particular Jewish community abroad. Likewise, they contended that a Reform or Conservative conversion conducted in Israel had to be recognized even if not certified by the Chief Rabbinate. In this context it was also argued that the Jewish “community” had ceased to exist after the period of the Mandate, and it was not within the power of the Chief Rabbinate to authorize conversions carried out in Israel. Requiring such authorization violated principles of equality and freedom of religion and conscience. Finally, they argued that the “term” Jewish” in the Population Registry Law - 1965 did not require an exclusively Orthodox conversion.

Statutory Framework

President Barak explained that the Population Registry Law - 1965 regulates the operation of the Registry. Section 1(a) defines who is a “resident” and Section 2 provides for the particulars to be entered in the Population Registry. Sections 5-18 provide for a duty to notify the Registration Officer of particulars of registration including the particulars of a child adopted abroad by a resident. Regarding the effect of registration, Section 3 provides as follows:

“The entry in the Registry and any copy thereof or extract thereof, and any certificate issued under this Law, shall be *prima facie* evidence of the correctness of the particulars of registration referred to in paragraphs (1) to (4) and (9) to (13) of Section 2.”

Paragraphs 5 to 8 were expressly excluded from the “*prima facie* rule”: (Paragraph 5 - ethnic group; Paragraph 6 - religion; Paragraph 7 - personal status (single, married, divorced, widowed); and Paragraph 8 - name of spouse).

In 1970 the Population Registry Law was amended by the Law of Return (Amendment No. 2) - 1970, which *inter alia* defined “Jew” for the purposes of the Law of Return as:

“a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.”

The 1970 amendments followed the judgment of the Supreme Court in HC 58/68 *Shalit v. Minister of the Interior*, 23(2) 477 (hereinafter: “the *Shalit* case”).

Moreover, a new Section 3A was inserted in the Population Registry Law:

“3A (a) A person shall not be registered as a Jew by ethnic affiliation or religion if a notification under this Law or another entry in the Registry or a public document indicates that he is not a Jew, so long as the said notification, entry or document has not been controverted to the satisfaction of the Chief Registration Officer or so long as declaratory judgment of a competent court or tribunal has not otherwise determined.

(b) For the purposes of this Law and of any registration or document thereunder, “Jew” has the same meaning as in Section 4B of the Law of Return - 1950.”

With regard to the powers of the Registration Officer, Section 19 of the Population Registry Law authorizes the officer to demand that the person making notification furnish him with any information or documents in his possession concerning the particulars of the registration and even to make a written or oral declaration of the correctness of any document or information. The Law distinguishes between a first registration and registration of changes, Section 19C providing that “a change in a particular of registration of a resident shall be entered on the basis of a document delivered under Section 15 or 16 or on the basis of a notification under Section 17 and the simultaneous production of a public document attesting to the change...”.

The Normative Status of the Register and the Discretion of the Registration Officer

President Barak noted that the normative status of the Register and discretion of the Registration Officer had been considered in a number of judgments of the Supreme Court. The first and central case in which these issues were raised was in HC 143/62 *Funk Shlesinger v. Minister of the Interior*, 17 P.D. 226. That case concerned a Christian woman who was resident in Israel who engaged in a civil marriage with a Jewish national of Israel. The marriage was conducted in Cyprus, and Mrs. Funk Shlesinger applied to the Registration Officer to register her as married in the Inhabitants Registry on the basis of the Cypriot marriage certificate. The Minister of the Interior refused on the ground that according to the personal law of the parties the parties were not married. The couple petitioned the High Court of Justice which by a majority judgment ordered the registration. Justice Sussman, analyzing the Registration of Inhabitants Ordinance - 1949, held:

“The function of the Registration Officer, under the said Ordinance,

is only to gather statistical information for the purpose of managing the Inhabitants Registry, he has not been granted any judicial powers”.

Writing about the significance of the Registry under the Ordinance, Justice Sussman noted that the Ordinance did not grant the Registry the force of evidence. The purpose of the Ordinance was to collect statistical information which could be either true or false; no one guaranteed its accuracy.

“In entering the personal status of the resident, it is not the function of the Registration Officer to give his opinion about the validity of the marriage. It must be presumed that the legislature did not impose a duty upon a public authority which it cannot fulfill. It is sufficient for the Registration Officer, for the purpose of fulfilling his function and entering the personal status, to be brought evidence that the resident performed a wedding ceremony. The question of the effect which must be given to the ceremony has on occasion different facets and examining their validity exceeds the scope of the Inhabitants Registry.”

Accordingly, the Registration Officer had to be satisfied with *prima facie* evidence. Only where the particular was manifestly wrong could the officer refuse to enter it, for example, where an adult wished to be registered as a five-year-old. Where the officer merely had doubts as to the truth of the particular it was not for him to judge its correctness and he had to make the entry.

In 1965 the Population Registry Law replaced the Registration of Inhabitants Ordinance. As to the question whether the *Funk Shlesinger case* was still applicable, the Supreme Court held in the *Shalit case* that the legislature had been aware of the earlier judgment and given it statutory effect. The Registration Officer was not given judicial powers. Citizens giving notice of particulars were presumed to be telling the truth and the entry was not dependent on the officer being persuaded of the truth of the particulars. The only exception was where the particular was manifestly wrong.

The *Shalit case* had concerned a Jewish resident of Israel who had married a non-Jewish woman abroad. Shalit wished to enter his two children as Jewish in the Population Registry and was refused. The Supreme Court held by a majority that the registration would be made, Justice Sussman stating that the question was not whether the children were or were not Jewish. Rather, the question was whether the Registration Officer had reasonable grounds for believing that Shalit’s notification regarding the ethnic affiliation of his children was incorrect. The answer was negative in view of the judge’s approach that a

person’s ethnic and religious affiliation ensued from the subjective feelings of the person concerned.

Following the judgment in the *Shalit case*, the Law of Return and the Population Registry Law were amended. As noted above, a definition of the term “Jew” was added to the Law of Return and provision was made for this definition also to apply to the Population Registry Law. Additionally, Section 3A (a) provided for situations in which a person would not be registered as a Jew by ethnic affiliation or religion. Justice Barak posed the question whether these amendments changed the legal position established by the *Funk Shlesinger case*.

Justice Barak divided the answer to this question into three sub-categories. **First**, the general principle which had been established in the *Funk Shlesinger case* regarding the “statistical” function of the Population Registry and in regard to the discretion of the Registration Officer had not been modified in any way whatsoever. This had been established in a number of later cases, for example, *Shtederman v. Minister of the Interior*, 24(1) P.D. 766 at 769 and in the *Shas case* itself. The issue had been raised for fresh consideration in the case of *Goldstein v. Minister of the Interior*, 50(5) P.D. 89, where a “consular marriage” had been conducted. The woman was a non-Jewish foreign citizen and the man a Jew - holding both Israeli and foreign nationality. In a petition against the Registration Officer’s refusal to register them as married, the High Court of Justice held that in accordance with the decision in the *Funk Shlesinger case*, the officer was required to register them as married. It was held that the powers of consuls to conduct marriages in Israel raised difficult problems of interpretation and there were doubts as to the validity of the regulations under which the consuls exercised their powers. The Registration Officer was under a duty to register on the basis of the certificate presented to him. The validity of the registration was separate from the issue of the validity of the marriage. In addition to the consular marriage, Mrs. Pessaro Goldstein underwent a Reform conversion in Israel. She applied to the Ministry of the Interior, first to enter her as a Jew in the Register and second, on the basis of that status, to grant her Israeli nationality under the Law of Return. Upon being refused, Mrs. Goldstein again petitioned the High Court of Justice. In its judgment in that case - H.C. 1031/91 *Pessaro (Goldstein) v. Minister of the Interior* 49(4) 661 (the “*Pessaro case*”) - the Court reiterated that the rule in the *Funk Shlesinger case* continued to apply to the issue of the discretion of the Registration Officer. The Court then examined the primary issue before it, namely, whether the registration should be

prevented in the light of the provisions of the Jewish Community (Conversion) Ordinance. The Court answered this question in the negative but emphasized that the decision did not purport to have an effect on the validity of the Reform conversion.

President Barak noted that the principle laid down in the *Funk Shlesinger case* continued to be followed in later cases. It was derived from the principle of the separation of powers, whereby a dispute arising under an application to the executive branch should not be decided by that branch but by the judicial authority. Thus, the Court had held that an entry in the Population Registry had no impact on the validity of the activity registered.

The **second** part of the answer to the question whether the *Funk Shlesinger* principle had been modified by virtue of the amendment to the Law of Return enacted in consequence of the *Shalit case*, was that the substantive test considered by the Registration Officer in relation to the registration of nationality and ethnic affiliation had been changed, but the powers of the officer had remained the same. The *Shalit case* had indeed led to the test set out in the amendment to the Law of Return. With the change in the test there was also a change in relation to the situations in which the officer was obliged to enter particulars in the Population Registry in accordance with the declaration of the applicant, as well as in relation to the situations in which he had to refrain from making entries by virtue of the manifest falsity of the declaration. However, the powers of the Registration Officer within the framework of the new test had not changed and he continued to exercise his powers in accordance with the principles laid down in the *Funk Shlesinger case*. President Barak looked at the example of a person wishing to register himself as a Jew as a matter of nationality or ethnic affiliation, where that person gave notice that his mother was not Jewish and that he himself had not converted but that subjectively he considered himself to be a Jew. Under the old test, the Registration Officer had to register him as a Jew (unless it became apparent that he continued to attend church and worship there). Under the new test, it was manifestly obvious that the person was not a Jew and the Registration Officer was under no duty to register him as such. President Barak then considered the example of a person giving notice that he had been born to a Jewish mother and that he belonged to a particular cult, but where there was doubt as to whether affiliation with that cult met the test of “not being a member of another religion”. In such a case the Registration Officer had to make the entry and was not transformed into a tribunal deciding an issue which might on occasion be a difficult and complex one.

The **third** part of the answer concerned the forms of proof before the Registration Officer and examination process. Here a number of changes had occurred since the *Funk Shlesinger case*, without affecting the principle laid down in that case. President Barak mentioned two of the changes:

- (a) The Registration of Inhabitants Ordinance had not distinguished, in relation to the manner of proof, between a first entry and a changed entry. Likewise, the Population Registration Law - which replaced the Ordinance - did not make that distinction. In 1967, the Law had been amended so that a first entry would be made on the basis of a notification or public certificate. In that case, the Registration Officer had discretion to refuse to make an entry in accordance with the provisions of Section 19B(b), *i.e.*, “where he has reasonable grounds for believing that the notification is not correct”. With regard to changes to an entry already made, Section 19C provided that the entry should be made “on the basis of a document delivered under Section 15 or 16 or on the basis of a notification under Section 17 and the simultaneous production of a public document attesting to the change.” In such a case notification alone was insufficient; a public document was required within the meaning of Section 29 of the Evidence Ordinance [New Version] - 1971. President Barak noted that it followed from the above that a certificate of conversion, issued by a Reform or Conservative *beth din*, in Israel or abroad was not a “public certificate”. Such a certificate might be sufficient to evidence a first registration but not a change in registration.
- (b) The Population Registry Law had been indirectly amended by the Law of Return (Amendment 2) - 1970, quoted above. In that context the Court had held that if a person gave notice that he was a Jew in accordance with the definition in the Law, and no other notification had been given under the Law, and there was no other entry in the Registry or public certificate showing that he was not a Jew, he had to be registered as provided in Section 19B.

Having noted that the principle laid down in the *Funk Shlesinger case* continued to apply, President Barak rejected the state’s contention that it was time to deviate from it in view of the fact that the principle disregarded the importance of the Population Registry in the daily life of the state and might lead to the splintering of Jewish society in Israel. President Barak held that the principle had become deeply rooted in Israeli case law and

there had to be weighty considerations for changing it. Such considerations had not been brought before the Court. The Court had repeatedly emphasized that the entries regarding religion, ethnic affiliation and personal status were not evidence of their truth or indeed even *prima facie* evidence. The state authorities had to be aware of the limited and special nature of the Population Registry and the manner in which discretion had to be exercised when managing the Registry. The Registry was intended for statistical purposes and did not grant the persons registered there any special rights. It was “neutral” in the struggles which had taken place since the establishment of the state in connection with nationality, religion and marriage, and it was right that it should remain so.

Registration as a “Jew” Following Reform or Conservative Conversion

President Barak then considered the particular cases before the Court. In relation to the term “converted” within the definition of “Jewish” in the Law of Return, President Barak noted that the term created a difficult problem of interpretation which had not yet been decided by the Court. In the *Pessaro case* the Court had held that the Conversion Ordinance did not apply to the matter of recognition of conversions for the purpose of the Law of Return, by way of a negative holding. The Court had not held affirmatively that every Reform conversion would be recognized for the purpose of the Law of Return and Population Registry Law. The matter was one to be decided by the *Knesset*, but until the *Knesset* expressed its will there was no legal vacuum. The Law of Return defined who was a “Jew”. Nonetheless, President Barak held that in the instant case, as in the *Pessaro case*, the Court was not dealing with the Law of Return but with the Population Registry Law and there was no need to consider the issue of “who is a Jew”. The Court had only to hold that the term “converted”, whether the conversion was one carried out in Israel or abroad, was not free of doubt - there were some who argued that it was confined to Orthodox conversions and other who believed that it included conversions carried out by other Jewish communities. The Court would not decide the substantive issue.

President Barak analyzed the documents which had to be supplied by the Petitioners in the instant case with regard to first entries and noted with approval President Shamgar’s statement in the *Pessaro case* that “a certificate of conversion issued by a non-Orthodox community is not, *per se*, an incorrect notification.” With regard to the changed entries, the Registration Officer had

to be presented with more than mere notification of conversion (Reform, Conservative or Orthodox) - the applicant had to supply him with a public certificate. A document testifying to the conversion was not a public document but a Court decision was. *Prima facie*, following the decision of the District Court in the instant case, the change should have been effected in the Registry.

Application of the Principles in the *Shas Case*

President Barak proceeded with an examination of the state’s contention that the principles in the *Shas case* applied only to persons converting within the framework of a Jewish community abroad or to persons wishing to join such a community. President Barak rejected the argument that the judgment in that case drew from rules of private international law relating to recognition of status legally obtained in a foreign country, and held that the case merely reiterated the rule that a person had to undergo a conversion process in a Jewish community abroad. There was no relevance to the question whether the convert wished to join that community, was a resident of that foreign country in which the Jewish community operated, or was a passing stranger there. The only issue that mattered was whether he had undergone a conversion procedure which was accepted by that Jewish community. Underlying this rule was the principle that the people of Israel were one people, part of whom lived in Israel and part of whom lived abroad.

With regard to the state’s second contention that conversions carried out in Israel had to be certified by the Chief Rabbinate as the head of the Jewish community since the period of the Mandate, President Barak held that the term “Jewish community” in Israel was relevant to the legislation enacted in the Mandatory - colonial years but it had no relevance beyond that. It was certainly not possible to learn from it that the Jews in Israel formed one Jewish community headed, in the religious sphere, by the Chief Rabbinate. The term had no place in the State of Israel. The State of Israel was not the state of the Jewish community but the state of the Jewish people. Judaism had a variety of streams operating within the country and outside it. Each stream acted in accordance with its own outlook. Every Jew in Israel - like every other person in the country - enjoyed the right to freedom of religion, conscience and organization. Every individual had freedom to choose with which stream to be affiliated. The Court in the *Pessaro case* had already rejected the approach that the Chief

Rabbinate had to certify all conversions carried out in Israel and what had been rejected in that case would not be accepted here.

President Barak concluded by noting that he accepted that conversion in Israel was not merely a private act; it had public ramifications. In consequence of it a person joined the people of Israel and could also obtain Israeli nationality. There was therefore justification for regulating the public aspects of conversion beyond the provisions of the Population Registry Law. This regulation had to be performed by the *Knesset*.

In view of all the above, President Barak held that the petitioners had to be registered as Jews in their religion and ethnic affiliation.

Deputy President Shlomo Levin, and Justices Theodor Or, Eliezer Matza, Tova Strasberg-Cohen, Dalia Dorner, Dorit Bainish and Eliezer Rivlin concurred with President Barak.

Justice Itzhak Englard dissented. He noted the ideological difficulties surrounding the issue of “who is a Jew” and its huge symbolic importance, which was also reflected in the issue of registering a person as a Jew in the Population Registry. The public at large had not accepted the Court’s approach in the *Shalit case*, there had been a public outcry and this had led to the swift amendment of the law which nullified the judgment just delivered. If the issue was merely one of statistics why the numerous struggles over registration? Justice Englard held that in this case the symbol was the substance and moreover the amendment to the Law of Return, and in consequence the Population Registry Law, negated the approach to the effect that the registration was merely a “statistical matter” and that the Registration Officer was not in a position to decide on the application of the tests of “who is a Jew”. The question here was one of the nature of the conversion and this was a substantive test. Doubts as to the nature of the conversion were largely the product of the Court’s own decisions which by according the term such a variety of meanings had deprived it of substantive meaning. The *Pessaro case* too had taken conversions carried out in Israel out of the existing institutional framework, with the result that the term conversion had been transformed from a term having normative, single-value meaning to a completely amorphous matter. By this, the Court had taken upon itself the task of deciding independently the substance and institutional framework of manifestly religious acts. In Justice Englard’s view not only was this an impossible task but *ab initio* an improper one for the judicial institutions of the state.

Accordingly, Justice Englard would have dismissed the petitions on the ground that conversion as a matter of law had a single meaning, namely, conversion in accordance with the *Halacha*

as formulated over the generations. There was no difficulty understanding the substance of the conversion and the Registration Officer would have no difficulty applying the *Halachic* test set out in the law.

Justice Mishael Cheshin delivered a separate opinion concurring with President Barak and dealing with the sharp criticisms raised by Justice Engelard, in particular he noted that however learned the Registration Officer, he did not have the tools to determine whether a person had converted in accordance with “*Halachic* principles formulated over the generations.”

Justice Itzhak Tirkel too dissented with the judgment delivered by President Barak although he agreed with the operative result. The main reason for his dissent was his opinion that the principles laid down in the *Funk Shlesinger case* should no longer be applied. Justice Tirkel also disagreed with the dissenting judgment of Justice Engelard primarily, because in his opinion the legislature had to establish a clear and express definition of the term “converted” in Section 4B of the Law of Return. Justice Tirkel noted that the real purpose of the Petitioners here was not to be registered as Jews in the Registry but to obtain the **status** of Jews. In the public’s eye the registration had an impact which was much more than merely statistical. The public did not distinguish between such niceties as registration for the purpose of the Registry Law and registration for the purpose of the Law of Return. Likewise persons registered as Jews might believe that the registration vested them with the status of Jews. All these distinctions were unacceptable. Ideological and sensitive issues of conversion had to be resolved in the public arena following debate and study of the wide variety of views; it was not for the Court to resolve. Court intervention had the potential of deepening the dispute. Not every dispute had a legal solution, and not every legal solution was the real answer to every dispute. The solution to an on-going dispute lay in compromise and here the issue was one for the *Knesset* to decide.

In the instant case, rejecting the *Funk Shlesinger* principle would leave a “legislative vacuum” in the Population Registry Law which the *Knesset* would have to fill with a new definition of the term “converted” or with specific instructions to the Registration Officer as to how he should act. Without such legislation the term “converted” in Section 4B of the Law of Return had no meaning and was as if it did not exist. Notifications would have no effect and the Registration Officer would not be entitled to make any entry at all under the headings “religion and ethnic affiliation”.

Abstract by **Dr. Rahel Rimón**, Adv. ■

Avraham Tory

1909-2002

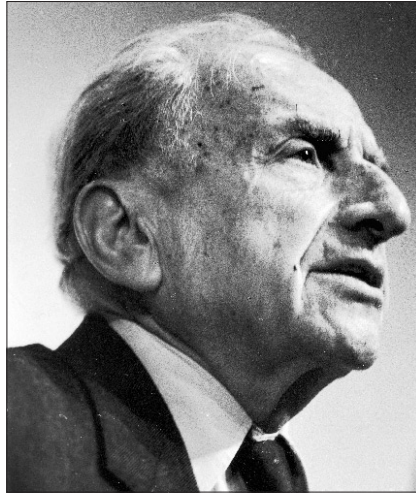
Avraham Tory was born in 1909 in Lazdijai, Lithuania, to Zorach Golub, a Rabbi and Leah, the daughter of a Jewish farming family.

Avraham studied in a religious elementary school and then continued his studies in what later turned out to be the first Hebrew high school in Lithuania. It was there that his Jewish-Zionist identity took shape. As a youth he was involved with the Maccabi Sports Club and the Zionist youth movement. Tory attended law school in Kovno, but after a year left Lithuania to study law in Pittsburgh University, USA. Later he returned to Kovno to complete his studies.

In April 1932 Tory traveled to Palestine at the head of the Lithuanian Maccabi sports team at the first Maccabiah world games, which took place at Tel Aviv.

In 1933 he obtained his Master's degree enabling him to practice law. Until the Russian occupation in 1940, Avraham was active as a member of the Maccabi Center in Lithuania and as its General Secretary. He also filled in for the National Counselor of the "Zionist Youth Movement" and was a member of the "Zionist Center" in Lithuania. Tory served as a delegate to the 21st Jewish Congress held in Geneva in 1939, at the time when the German army invaded Poland. In spite of this fact he returned to Lithuania, along with many other Polish refugees who started streaming into the country, and became active in the "Refugees Committee" on behalf of the General Zionists in Lithuania.

When the Germans ordered the Jews to move into the Kovno Ghetto, Tory became involved in administering the move. Later he served as one of the secretaries of the newly formed *Altestenrat*, also known as the Jewish Council. The Jewish Council had asked Dr. Chaim Nachman Shapiro to keep a secret archive of its records. After Shapiro was killed, Tory took responsibility for the archive. Tory recorded events in his diary at the request of Elkhanan Elkes (head of the Jewish Council) who reported on meetings with Nazi officials, and also collected documents from various offices of the Jewish Council, often taking the copies and putting them between the pages of his diary.



Tory also collected maps and drawings from the archive. He compiled a chronology of the German decrees as a record of the cruelty of their demands. Fearing that he would not survive, he hid the collection of materials underground in crates with his last testament. In his testament Tory left instructions with a Lithuanian priest that in the event that no Jews survived the War, the documents should be unearthed and forwarded to the World Zionist Organization.

Tory managed to escape the ghetto in the spring of 1944 and hid with a Christian family in the countryside. After liberation by the Soviet army, he returned to Kovno, where he recovered three of the five crates

of hidden materials. Tory's diary, along with other recovered documents, served as key testimony in the successful prosecution of German and Lithuanian war criminals. Today the documents are located in *Yad Vashem*.

Tory made "*aliyah*" in 1947. He was offered many positions in public service but chose to practice law and at the same time continue with his public activities on a voluntary basis. Over a period of 20 years he served as honorary secretary of World Maccabi, was one of the founders of the Maccabia Village and took part in organizing the Maccabiah games. He served as a member of the Presidium of the World General Zionist Union and in the management of the Friends of the Diaspora Museum. He was honored on many occasions for his activities.

Avraham Tory was one of the founders of the International Association of Jewish Lawyers and Jurists and a member of the Presidency serving as Honorary Vice President.

He was a warm and generous person, always willing to help. He devoted much of his time to helping new immigrants adjust to life in Israel and more than once volunteered his professional services without charge. He was one of the first people who succeeded in helping Jews escape from the Soviet Union and Siberia.

This Association and the friends and family of Avraham Tory will miss him sorely.



This particular compendium of texts for *Passover*, including the *Haggadah*, is one of the most elaborately decorated Iraqi Manuscripts known. Every page has decoration in many colours and designs and there are several very sophisticated carpet pages with frames of text. Tradition has it that this manuscript was done for the *Sassoon Family* by a teacher and scribe who was in their employ. Most of the Hebrew texts are accompanied by a translation into Judaeo-Arabic. The scribe has signed his name in no less than 21 places in the manuscript, but the name in almost all cases has been blacked out. The script is particularly elegant. There is illustrated as well the special form of the 67th psalm in the form of a *Menorah*. The scribe uses in the finest and most delicate of ways all the elements which go into the making of such manuscripts in Iraq in the late 19th century: Exquisite calligraphy, hollow letters, delicate colours and pleasing page designs. The red leather binding is also typical of this place and time.

Courtesy of Gross Family Collection, Tel Aviv.