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## PRESIDENT'S MESSAGE



For years we have persistently advocated anti-hate legislation and the prosecution of offenders. The twentieth century taught us that words are dangerous weapons. Every act of mass violence or genocide is preceded by well-planned hate propaganda which seeks to vilify groups and minorities and set them up as future victims.

Advocates of free speech maintain that we should confront hate speech with words. They would place lies and disguised incitement under a protective umbrella and argue the need to promote the free flow of opinions. They are wrong, as the *Cohen Commission* in Canada so eloquently explained:

“In a democratic society, freedom of speech does not mean the right to vilify ... However small the actors may be in number, the individuals and groups promoting hate in Canada constitute ‘a clear and present danger’ to the functioning of a democratic society. For in times of social stress such ‘hate’ could mushroom into a real and monstrous threat to our way of life.”

It is precisely in this spirit that the Saskatchewan Attorney-General in Canada decided to charge David Ahenakew with the crime of willfully promoting hatred. Mr. Ahenakew is a native leader, a member of the Order of Canada and a native human rights advocate. Speaking to a group of other native and human rights leaders, he complained that Hitler did not finish the job. We have learned from bitter experience that such words advocate genocide against Jews.

We urge other countries to follow the Canadian example.

For some years following the Holocaust we thought that anti-Semitism had ended. In that period, baiting and vilifying Jews was considered to be politically incorrect. But we were not vigilant enough; we ignored the evolving tactic of diverting “traditional” anti-Semitism into new versions of “anti-Zionism”. It is now the Jewish State that is being delegitimized, and as all Jews are automatically considered to be supporters of the Jewish State, it is suddenly possible to revert to old practices of burning down synagogues, desecrating Jewish cemeteries and generally attacking individual Jews as well as Jewish institutions and schools.

Unfortunately, human rights organizations and activists in many countries have supported this tactic, whether by providing their active aid or by maintaining a thundering silence. Arab and Moslem propaganda against Israel and against Jews has wormed its way into public discourse in the media, academia and human right organizations, and even worse, is now a prominent feature on the agenda of UN bodies which seem always prepared to delegitimize Israel while remaining silent about the far worse abuses committed by other countries. These bodies turn a persistent blind eye to ongoing incitement in the Arab language media, as illustrated in the following examples:

In a candid interview on Palestinian Authority (PA) TV on 4 May, 2003, the Director of the Palestinian *Children’s Aid Association*, Ms. Firial Hillis, justified teaching Palestinian children to aspire to death for the sake of Allah (*shahada*). Asked whether the Palestinian child understands the concept of *shahada*, she replied:

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“The concept of *shahada* for him [the child] means belonging to the homeland, from a religious point of view. Sacrifice for his homeland; achieving *shahada* in order to reach Paradise and to meet his God. This is the best. We also teach our children to protect the homeland... and to reach *shahada*.” (*Palestinian Media Watch Multi-Media Bulletin*, 6 May, 2003).

The April 2003 monthly children’s publication of the *Hamas*, published on its Internet site, called upon the children of Iraq to execute *jihad* on the American and coalition forces and pray for the extermination of Jews (<http://www.al-fateh.net>).

Similar examples abound. Our Association will not tire of addressing this issue, which, in our view, constitutes a blemish on human rights activities in many countries as well as on international bodies.

Another matter in which our Association is now involved, is the long ignored issue of the plight of Jewish refugees from Arab and Moslem countries and the loss not only of their rights but also of their assets.

It is incumbent on all those who address the issue of the Palestinian refugees to concurrently study and address the issue of the Jews who lived for centuries in Arab and Moslem countries, were eventually brutally torn from their homes, deprived of everything they held dear and sometimes subjected to torture and death at the hands of their former neighbours - solely because they were Jews.

We shall closely follow the response of the international community to the facts which we, together with other Jewish organizations, have now made public. This chapter in the history of the twentieth century has been disregarded long enough.

These are a few of the varied topics addressed in the present issue of *JUSTICE*.

We are also publishing the program of our forthcoming international Paris Conference due to be held in mid-October 2003. We are confident that our members will make every effort to be with us on this important occasion and we thank our French Chapter in advance for their tireless efforts in organizing this conference.

As we go to press we are shocked by the tragic loss of Mr. Sergio Viera de Mello, the UN High Commissioner of Human Rights. He, together with 17 of his colleagues, was assassinated in a savage attack on the United Nations headquarters in Baghdad. This has brought home with full force the terrible threat of terrorism in the Middle East and its international ramifications for the civilized world.

We take this opportunity to send our best wishes for Rosh Hashana to all the members of our Association.

*Hadassa Ben - Yeh*

# Abuse of Position at the Sub-Commission on the Promotion and Protection of Human Rights

The following statement was submitted by Mr. **Daniel Lack** in the name of the IAJLJ to Mrs. **Halima Embarek Warzazi** (of Morocco), Chairperson of the 55th Session of the U.N.'s Sub-Commission on the Promotion and Protection of Human Rights. During the Opening Session of the Sub-Commission, which took place on 28 July, 2003, Mrs. Warzazi had delivered a one-sided declaration concerning "human rights abuses in Palestine" where, according to her, "massive attacks against the right to life, to self-determination, to freedom, to security, to the liberty of movement victimized innocent Palestinians" and the war in Iraq where the Iraqi people "had been offered freedom by a supper-equipped armada, launching missiles and fragmentation bombs day after day and night after night..." and where "the famous 'daisy cutters' had killed or mutilated the innocent, including children, had destroyed without discernment, and the tanks bearing the standard of democracy had not been able to stop the vandalism, the looting..."

At an early stage in the proceedings, **Daniel Lack**, the Association's representative to the U.N. (Geneva), asked for the floor after Mrs. **Warzazi**, *inter alia*, enjoined the NGO's present to show moderation and balance in their statements. Daniel Lack pointed out the irony of her remarks to NGO's in this context, since according to the UN Press report recording her opening remarks as newly elected Chairman of the Sub-Commission, her statement was neither moderate nor balanced. Before making his statement Daniel Lack first showed Mrs. Warzazi the UN Press resume which she recognized as fairly representing what she had stated concerning the Iraqi hostilities and the situation in the disputed territories on the West Bank. Daniel Lack then delivered his statement pointing out the distorted nature of Mrs Warzazi's statement and the damage it inflicted on the image and reputation of the Sub-Commission. Her remarks had conveyed the impression that these observations represented the views of the Sub-Commission as a whole. Mrs. Warzazi then stated that as an expert she was free to express any views she wished. Daniel Lack rejoined that her expertise in one particular sector did not give her a licence to present her own personal views or possibly those of her country as necessarily being those of the Sub-Commission. She had clearly abused her position as a Chairman. .

Madam,

The World Jewish Congress and the International Association of Jewish Lawyers and Jurists which I represent, wish to state that they consider the remarks attributed to you in the official UN Press release at the opening of the meeting yesterday, which you have made in your capacity as the Chairperson of the UN Sub-Commission on the Promotion and Protection of Human Rights, to be unacceptable and an abuse of your authority as the Chairperson of the Sub-Commission.

We consider it to be a unilateral, extremist and utterly unacceptable misrepresentation of the two situations you referred

to and that it is gravely prejudicial to the cause of human rights. It is redolent of the kind of extremism, bias and intolerance that has brought the UN Commission on Human Rights and now this Sub-Commission, into serious disrepute both within and without the UN.

I quote from the *American Journal of International Law*, April 2003 issue (vol. 97).

In the conclusion to a report on the 2002 Annual Session of the UN Commission on Human Rights, its author states (at pp. 385-386) as follows:

“Today, more than ever, given the massive scale of human rights abuses in some parts of the world, there is a need for constructive and effective international diplomacy in support of the implementation of international human rights standards. Within the United Nations, this function necessarily falls primarily to the Commission on Human Rights and ECOSOC. Unfortunately, many UN Member States, where human rights are not properly accepted and implemented, have realized that the best way to protect oneself from scrutiny is to be elected to the Commission and divert attention from implementation to the ever greater elaboration of new rights and principles. Largely through their efforts, the fifty-eighth session of the Commission saw an unprecedented erosion of its prestige and credibility and a regression of human rights norms.”

This conclusion applies with even greater emphasis to the Commission’s 2003 session, where the erosion of its prestige and credibility increased even further.

Hopefully, this erosion will not extend to the current session of the Sub-Commission.

### **UN Press Report of 28 July 2003 recording the newly elected Chairperson’s statement at the inaugural, meeting of the 55th Session of the UN Sub-Commission on the Promotion and Protection of Human Rights**

HALIMA EMBAREK WARZAZI, Chairperson of the Fifty-fifth Session of the Sub-Commission, said the meeting was being held today under dark clouds which seriously threatened the human rights for which the Sub-Commission had worked so hard, with such commitment and devotion. Today, as a defender of human rights, the Sub-Commission was in a particularly worrying situation, ever since April 2003, when all had been witness to a terrible drama played out on the television screens which showed the apocalypse that had fallen on an entire people. This was a people which, after having been crushed beneath the boot of a tyrant, and then under an embargo of which they were the only victims, had been offered freedom by a super-equipped armada, launching missiles and fragmentation bombs day after day and night after night. The famous “daisy cutters” had killed or mutilated the innocent, including children, had destroyed without discernment, and the tanks bearing the standard of democracy had not been able to stop the vandalism, the looting of universities, hospitals, cultural sites, nor the destruction of the treasures and the

living testimony of a millennial culture in a country that was the cradle of one of the most ancient civilisations of the world.

The conscience of all participants, she said, was put to the test in the face of the massive attacks against the right to life, to self-determination, to freedom, to security, to the liberty of movement which victimised innocent Palestinians, whilst in other countries the political institutions interfered in the right not to be discriminated against on the grounds of origin, nationality and religion, the right to just and equitable treatment by the judicial authorities, and finally the right not to be the subject of arbitrary arrests, expulsions and inhuman treatment. Thus, in the face of situations which could not be ignored, the participants had seen, day after day, women, men, and even children falling under the fire of those who, under the banner of the fight against terrorism, sowed death, massive destruction, terror, despair, and perpetuated persecution and torture. The members of the Sub-Commission had condemned terrorism and all those who had killed the innocent, but had never preached a policy of fighting terrorism by means that were incompatible with human rights. State terrorism could not escape being unequivocally condemned, since it was a form of terrorism that had only one goal, the eradication of the greatest number of innocents and the creation of an atmosphere of fear in civilian populations.

To this was added, she said, the terrible dramas of Africa where populations continued to be the victim of gross violations of human rights, of oppression, of ethnic cleansing, and even of genocides provoked and caused by economic interests or by geopolitical designs. The world today needed to react in the face of the impending collapse of human rights under the battering ram of hegemony, the will to dominate, to assimilate, to render uniform all cultures, in the disdain of individuality, culture and civilisation. The Sub-Commission faced a heavy responsibility, and needed to uphold its role as defender of human rights. Fortunately, it was not alone in this tumultuous ocean; millions of people of all nationalities and from all cultures had gone down into the street, in all countries of the world, thus exploding completely the theory of the shock of civilisations. This was an enormous encouragement for the work of the Sub-Commission, which, more than ever, needed to invest itself in what was an imperative duty: the defence of human rights and the denunciation of their violation in whatever country.

# Rights of Refugees to Compensation and/or Restitution of Property

**The following is a joint statement made by the International Association of Jewish Lawyers and Jurists and the World Jewish Congress, during the 55th session of the Sub-Commission on Promotion and Protection of Human Rights, held in Geneva on 8th August 2003. The statement concerned Item No. 4 of the agenda on economic, social and cultural rights**

**T**he International Association of Jewish Lawyers and Jurists and the World Jewish Congress welcome the Sub-Commission's decision to study certain rights of refugees, including the return of refugees' or displaced persons' property.

We note with interest the study of past refugee movements mentioned in the preliminary report submitted by the Special Rapporteur, Mr. Paulo Sergio Pinheiro.

The relevance of finding appropriate solutions to these problems on an equitable basis to the wider issues of peace-building and post-conflict resolution is patently obvious.

We wish, however, to bring before the Sub-Commission the long neglected case of another group of refugees, whose situation falls under the terms of reference of this study. It concerns nearly one million Jewish refugees from Arab lands and the unknown story, at any rate in UN circles, of how they were grossly ill treated and denied their basic human rights, stripping them of their long standing citizenship including the spoliation of their homes and all their property, prior to their summary expulsion.

We would like to clarify that this statement is **not** intended to deny the suffering and the plight of Arab refugees from Palestine now generally referred to as "Palestinian refugees". We wish to present the case of Jewish refugees, which unlike that of the Arab refugees has received virtually no attention, still less recognition, by the international community.

We bring this case to your attention, not only because of the just claims of such Jewish refugees under international human rights law and refugee law, but also because understanding the underlying facts which brought about the departure of these

refugees from the Middle East is a precondition to an honest discussion aimed at creating a lasting and durable peace between Jews and Arabs.

Jews have in fact lived in what are now Arab lands since the destruction of the First Jewish Temple, in 586 B.C.E. During the late 1940s, 50s, and 60s, hundreds of thousands of Jews were driven from their homes in these countries, usually with little more than the clothes on their backs. All their property, in some cases considerable holdings, was sequestered and confiscated.

In 1945 there were approximately 900,000 Jews living in communities throughout the Arab world. Today, there are less than 8,000. Some Arab states, such as Libya, are completely *judenrein*; or as it is more politically correct to state today "ethnically cleansed". In others there is only a handful of surviving elderly Jews. Of the 900,000, at least 600,000 were absorbed by Israel where they and their descendents today compose roughly 50% of Israel's Jewish population.

The history of the Jews under Arab and Muslim rule is a long and varied one. Jews (and Christians) were considered *dhimmi*, a "protected" group of second-class citizens. The Jews' sojourn in Muslim lands included some relatively more favourable interludes. Often, however, the Jews were subjected to punitive taxation, forced to live in cramped ghetto-like quarters and relegated to the lower-levels of the economic and social strata. They were compelled to identify themselves by wearing the Star of David, a doubtful distinction of a more sinister nature subsequently to be used in Hitler's gas chambers. However, it was not until the 1940s that Jews in Arab lands began to fear for their very lives.



In 1941, during the festival of *Shavuot*, 180 Jews were murdered in a pogrom in Baghdad. 700 persons were reported as suffering injury and damage to Jewish property amounted to \$3 million. That murderous rampage sent shockwaves through the Jewish community, but it was not until after 1948 that conditions became truly intolerable. Jews experienced severe economic persecution, leading to grinding poverty among all sectors of the Jewish community. In 1950, the Iraqi government revoked the Jews' citizenship and permitted them to leave but beforehand, the Iraqi government froze all Jewish assets, prevented Jews from accessing their bank accounts, and closed Jewish warehouses and factories. The various racially motivated legislation and decrees are fully documented in the official Iraqi Gazette of that time.

Most Iraqi Jews found refuge in Israel in the early 1950s. The remaining few thousand experienced economic deprivation, arrest, and harassment and many tried to escape in the 1960s and 1970s. Today, this ancient Jewish community, which in 1948 numbered 90,000, has only a score left, mostly elderly.

Iraq is just one case of many. But its story is similar to many other Jewish communities in Arab lands. In Egypt the message was just as clear. Between November 1956 and June 1957, more than 22,200 Jews left Egypt, and more than 13,500 Egyptian Jews arrived in Israel by October 1957. Persecution of the Jews continued in Egypt, so that from a community of 80,000 only 200 are left today. It is estimated that those who fled left behind property and assets worth up to \$2.5 billion as a minimal assessment.

Today, there are no Jews in Algeria, where in 1948 there were 130,000. In Morocco - a country that protected its Jews during the Holocaust - only 5,800 Jews remain of the 286,000 who were there in 1948. In all of these cases, as in the cases of Syria, Libya and Yemen, the government embarked on a policy of expulsion or at the other extreme, holding the surviving Jewish community as hostages in virtual captivity. Property was confiscated, assets seized, livelihoods destroyed. Physical attacks on Jews went unpunished, and at times were carried out by the police forces themselves. During their concerted effort to force the Jews to flee, the Arab states uprooted and totally destroyed 2000 years of Jewish life in the region.

Thus, the status of Jewish communities as victims of systematic human rights violations on racial grounds is clearly established and well documented in various studies, as for example that of Professor Carole Basri, *The Jewish Refugees From Arab Countries: an Examination of Legal Rights- a Case Study of the*

*Human Rights Violations of Iraqi Jews*, published in *Fordham International Law Journal*, volume 26 (March 2003), 656.

A further comprehensive account of the deliberate and systematised violation of the human rights of Egyptian Jews prior to the spoliation of their assets and homes prior to the removal of their nationality rights and expulsion is comprehensively described in the Michael M. Laskier analysis *The Jews of Egypt. [The Jews of Egypt: 1920-1970 (New York 1991)]*.

These facts are confirmed by reports submitted to UNHCR at the time containing detailed citation of the relevant Egyptian military decrees and other legislation confirming their flagrantly discriminatory racial character.

Jewish refugees displaced from Arab countries in these circumstances have been recognised under the UNHCR's mandate, as was specifically declared by the UNHCR. Thus, on January 29, 1957, in a statement to the UNREF Executive Committee, Dr. Auguste Lindt, then High Commissioner for



Aerial view of the site of Israel's Supreme Court in Jerusalem  
(Courtesy of the Israel Government Press Office)

Refugees, declared that Jews fleeing from Egypt were refugees under the protection of his office<sup>1</sup>.

On July 6, 1967, senior UNHCR Legal Division official Dr. E. Jahn wrote a letter to the American Joint Distribution Committee's Legal Adviser, stating:

"I refer to our recent discussion concerning Jews from Middle Eastern and North African countries who have left or are unable or unwilling to return to these countries in consequence of recent events. I am now able to inform you that such persons may be considered *prima facie* within the mandate of this office".

The High Commissioner used his powers under Paragraph 8 (e) of the Statute of his Office to obtain from the competent authorities transfer of their assets, particularly those required for the resettlement of refugees coming under his mandate. Regrettably, despite energetic efforts to obtain the cooperation of Egyptian and later other national authorities to this end, these requests were denied.

The Jewish refugees turned to Israel, then a nascent state, which unhesitatingly accepted these refugees without any international assistance.

In contrast, following the 1948 unsuccessful invasion of Israel, approximately 650,000 Arabs fled during the ensuing hostilities. Instead of making every effort to absorb the refugees, as did Israel for a large percentage of the Jews who fled Arab countries, the Arab leadership decided to put the refugees in refugee camps that are still in existence more than 50 years later with all prospects for absorption including granting of nationality, proper housing and social security rights denied them, with the single exception of Jordan, most of whose nationals are in fact former Arab refugees from Palestine. The body directly saddled with the central responsibility for caring for the welfare of these refugees has been and continues to be UNWRA. Unfortunately, any realistic attempt to resettle these refugees in third countries has been resisted by the political organizations and Arab states concerned purporting to represent these refugees' interests in highly controversial circumstances which have characterized the Arab-Israel conflict to-date.

The problem of the Arab refugees and that of the Jewish refugees are two interrelated but distinctly different problems, both legally and as regards the facts which gave rise to their origin. Both require redress on purely humanitarian grounds, irrespective of but without prejudice to the validity or otherwise of the legal issues involved. On equitable grounds, both sets of problems

should have an appropriate solution. A compensation fund to resettle Arab refugees in the countries where they are located, in other Arab states and possibly in European states wishing to provide their assistance on the lines of the UN Compensation Fund for Iraq, deserves serious consideration.

Clearly, a new peaceful Palestinian state which might hopefully emerge from the current peace negotiations should be the principal recipient of Arab refugees still located in refugee camps.

A recent constructive solution has been proposed in the Recommendation of the Parliamentary Assembly of the Council of Europe ["Recommendation 1612 (2003)" of 25 June]. It calls for compensation and financial assistance for Palestinian refugees who prefer to remain in the countries of the Middle East where they are currently located, but also in third countries, including the Gulf countries and member states of the Council of Europe. This recommendation urges the creation by the UN of a new fund to finance the resettlement costs of Palestinian refugees.

Even though one third of the Jewish refugees from Arab countries have achieved successful reintegration as residents and citizens of countries other than Israel, they still await legitimate redress in the form of compensation for denial of their human rights and spoliation of their property, as do refugees from Arab countries integrated in Israel. This problem too should be tackled by the creation of a parallel UN fund for granting just recognition of the claims of Jewish refugees from Arab countries.

As a very minimum, and without prejudice to the fair examination of both situations and any entitlements deriving therefrom, a Truth Commission as was established in South Africa should record the suffering and relentless persecution to which Jewish refugees from Arab countries were exposed as a contribution to durable post-conflict resolution.

Truth is the link to justice and peace. There will be no lasting and cohesive peace in the Middle East without also addressing the gross and systematic violation of the human rights of the Jewish communities of Arab lands from which they fled for well founded fear of the persecution they experienced and which hitherto the international community has seen fit to ignore.

1. The exact words of Dr. Auguste Lindt were: "*Another emergency problem is now arising: that of refugees from Egypt. There is no doubt in my mind that those refugees from Egypt who are not able or not willing to avail themselves of the protection of the government of their nationality fall under the Mandate of my office*". See United Nations High Commissioner for Refugees, Report of the UNREF Executive Committee, Fourth Session - Geneva 29 January to 4 February, 1957.



# Jewish Property in Iraq, Egypt and Syria: Can it be Retrieved in Court?

Itamar Levin

**T**he Jewish community in Iraq was founded shortly after the destruction of the First Temple (586 AD). Its prosperity reached a peak during the British rule over Iraq (1917-1932) at which time many Jews were appointed to prominent positions, including ministerial posts and increasing numbers of Jews engaged in foreign trade as well as in the free professions.

The first signs of alarm were observed in June 1941 (the day of *Shavuot*), when pro-Nazi officers and Iraqi soldiers murdered 180 Jews, injured another 700 Jews, desecrated synagogues and *Torah* scrolls and, according to unofficial sources, inflicted considerable damage equal to some 3 million dollars. In the following years the Jewish community managed to recover, the Iraqi Jews deluding themselves that they could fit into a society having a Moslem majority.

What was the value of the Jewish property in Iraq on the eve of the establishment of the State of Israel? No official assessment has been conducted. There are several varying estimates. However, the most accurate calculation has relied upon the appeals of about 2,150 Jewish immigrants from Iraq who registered their claims for lost property during November 1949 and August 1952. These claimants reported property worth \$35,814,576.

It is difficult to learn from these claims the total value of the Jewish property left behind in Iraq, since those who presented claims for registered property constituted only 6% of the total number of Jews who had to leave Iraq. The precise economic situation of both the claimants and the other Iraqi Jews is unknown. Nonetheless, if the declared property is used as a basis for calculation, one may conclude that total Jewish property had a value of about 560

million dollars at 1950 rates, equal to over 4 billion dollars at today's rates.

By the time the State of Israel was established in 1948, the situation of the Iraqi Jewish community had greatly deteriorated. According to reliable Jewish

sources, in May 1948 the Iraqi police conducted brutal and widespread searches day and night in thousands of Jewish homes. During these searches, walls were destroyed, household property damaged and jewelry and other items of value were stolen or taken openly. The Jews were given no opportunity to protest and in many instances, Jewish residents were taken to police stations for further investigation and for additional money extortion.

According to detailed reports of the *Mossad Le'Aliya* (the central Jewish organ for helping Jews from distressed countries in Europe and the Middle East to immigrate to Israel) one of the main components of the oppressive policy against Iraqi Jews was to squeeze them financially through court fines and the imposition of heavy taxes and demands for bribes. These actions had a dual purpose: on one hand, to divert Jewish money to the state treasury; on the other, to deprive the Jews of their income and livelihood. Such a policy was implemented, *inter alia*, by imposing inflated income tax, prohibiting the sale of real estate, firing employees and banning international business transactions.

In order to prevent the consequent flight of large numbers of



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Itamar Levin is the Chief News Editor of *Globes* economic daily, Tel Aviv, and the author of *Locked Doors: The Seizure of Jewish Property in the Arab Countries* (Praeger, 2001).

Iraqi Jews, aided by the local Jewish underground and emissaries from Israel, on 3 March, 1950 the Iraqi government issued an edict permitting Jews to leave the country subject to relinquishing their Iraqi citizenship and abandoning their property.

The Iraqi government agreed to let every emigrating Jew aged ten and under to take with him 20 dinar; those aged between 10-20 were allowed to leave with 30 dinar; and those aged 20 and above were allowed to go with 50 dinar each (about 200 dollars). It should be noted that the monthly salary of a senior state employee in those days amounted to 50 dinar. The authorities allowed each Jewish emigrant to take away with him three summer suits, three winter suits, a pair of shoes, one blanket, six pairs of pants and socks, as well as one wedding ring, a wrist-watch and a thin bracelet. The departing Jews were compelled to sell all other property for a meaningless price, often at only 10% of its real value. Areas in front of Jewish homes and Jewish coffee houses turned into random markets where the properties were sold out almost for nothing. Surprisingly, the results were different from what the authorities had expected: the emigration of Jews to Israel gained momentum.

The most severe blow was imposed on the Jews of Iraq a year later, when on 10 March, 1951, the Iraqi parliament ratified a law freezing Jewish property. The Minister of the Treasury ordered the immediate closure of the banks in order to prevent the Jews from performing transactions. Jewish stores and shops were locked up. Merchandise outside the stores fell into the hands of lawless porters. Fearful and despairing Jews rushed to sell their property for whatever price they were offered. Upon government orders, the banks and trading companies fired their Jewish employees who were stripped of their citizenship. Consequently, 120,000 Jews who left Iraq were compelled to leave behind their entire property.

## Egypt

Egypt played a major role in the Arab struggle against the establishment of the State of Israel, particularly in invading the new-born state. On the whole, the Egyptian police treated the Jewish community in a fairly reasonable manner, although some acts of persecution, of a mainly economic nature, were recorded. In 1948, the authorities confiscated the property of many Jews, but some documents indicate that much of this property was subsequently returned to its owners.

The situation gradually changed for the worse after the early 1950's, when young officers, led by Gamal Abdul Nasser,

revolted against the monarchy and deposed King Farouk. The new military regime pursued an anti-Israeli policy and collaborated closely with the Soviet Union. Many Jewish businessmen, among them the wealthiest, began selling their private properties, including some estates in Cairo (nowadays used by government institutions and foreign diplomatic representatives) and liquidating their businesses in order to leave Egypt. On the face of it, these were routine transactions, but actually in most cases the properties were sold much below their real value, due to heavy pressures exerted on the Jewish sellers.

The end of the Jewish community in Egypt occurred towards the end of 1956. On 1 November, while the battles between Egypt, Israel, Britain and France were raging in Port Said, the Suez and Sinai, President Nasser ordered the expropriation of all the properties belonging to British and French nationals in Egypt. On 3 November, 1956, Nasser's expropriation orders were broadened to include all Egyptian Jews who were not citizens of Britain and France.

An investigation conducted by American experts reveals that of the 485 entities whose property was expropriated in the first weeks following Nasser's edict, 95% were Jews, or companies owned by Jews. According to reliable estimates 500 Jewish-owned companies were expropriated and the properties of an additional 800 companies were frozen by the Egyptian authorities between November 1956 and March 1957.

All the Jewish employees were fired immediately after the enactment of the state expropriation law. Many Jewish businessmen were unable to trade since the government prevented them from attaining the proper permits. Doctors, attorneys and engineers were removed from their respective associations, and became unable to pursue their work. Jewish shops started to suffer from an unseen boycott, though the government refrained from imposing one officially. Many Jewish employees lost their jobs. Officers knocked at the doors of Jewish homes at late hours of the night carrying the same message: the sooner you give up your property and leave the country the better, thus saving yourselves from severe measures, or even violence, at the hands of the authorities. Over 22,000 Jews left Egypt between 22 November, 1956, and 30 June, 1957.

The departing Jews were severely restricted in terms of what property they could take with them. Officially, every departing Jew was permitted to take with him 200 Egyptian Lira, but actually he was allowed only 112.5 EL (about 100 British Pounds); the child allowance was limited to half this amount. Married women

were allowed to take personal jewelry having a total value of 50 EL, and non-married women jewelry having a total value of 20 EL. In reality, these figures were arbitrary, and depended upon appropriate bribes being given to the customs officers at ports and airports. The bulk of the property was left behind.

In March 1957 the government of Israel established a special commission to register the claims of immigrants from Egypt. Within a year and a half of commencing work it recorded over 3,500 claims. The commission's work resulted, to the best of my knowledge, in an interim report, dated November 1957, according to which 640 claims were registered worth the total sum of 5,531,755,370 Egyptian Lira (pounds), relating primarily to real estate, bank accounts and insurance policies. Experts, who are familiar with the figures, are of the opinion that the total volume of the registered claims amounted then to 300-500 million dollars, equal to 1.5-2.5 billion dollars at current rates.

What emerges from the relevant documents is that a significant proportion of the wealthy Jews who were deported from Egypt, refrained from registering their claims for their respective properties either because they had preferred to emigrate to countries other than Israel, or because of other reasons. If one takes this phenomenon into consideration, and adds it to the Jewish property which was sold before the war for only part of its real value, one inevitably comes to the reasonable conclusion that the real value of the lost Jewish private property in Egypt was in the range of 3-4 billion dollars.

In addition to the private property, in subsequent years the claims commission assembled information relating to the community property. According to a conservative evaluation, in September 1963, the value of the community property equalled 92,924,900 dollars, of which 74,530,000 dollars worth of property was located in Alexandria and 13,390,000 dollars worth of property in Cairo and the rest in other cities. The real value of this property today is 500 million dollars.

The Egyptian-Israeli Peace Treaty, signed in March 1979, stated that the two sides agreed to form a claims committee in order to settle all financial claims. Actually, this committee was never set up. The Egyptians never pressed for it and the Israelis also were in no hurry to do so. The Egyptians were afraid that the Israeli claims might put them under a heavy financial burden, while the Israelis were concerned about mega-claims by the Egyptians, primarily related to payments for major quantities of oil pumped by the Israelis from the Abu-Rodeis oil fields on the western shore of Sinai during 1967-1975.

It seems that there is no clear-cut solution to the issue of the Jewish private property, although it should be noted that Egypt is the only Arab country where a special law has been enacted dealing with nationalized property. This law was initiated by the late President Anwar Sadat in the early 1980's, and relates to all properties which were nationalized throughout the years for ideological and/or political reasons. But this law does not oblige the government to return the nationalized property to its former owners, only to pay limited compensation, such as: up to 30,000 Egyptian Lira (about 7,000 dollars) per individual, and 100,000 Egyptian Lira (about 25,000 dollars) per family. The compensation is limited to the property's value at the time of its nationalization. In addition, it is extremely difficult to find Egyptian lawyers who would agree to pursue such claims. It should be recalled that the Egyptian Lawyers Association is at the forefront in Egypt in opposing the Peace Treaty between Egypt and Israel and the normalization of relations between the two countries. Its members do not make a distinction between Jews and Israelis. Both are disqualified, according to the Egyptian Lawyers Association.

### Syria

In as early as 1943 a national population census showed that 11,000 Jews lived in Damascus, 17,000 in Aleppo, and 1,500-2,000 in Kamishli, on the Syrian-Turkish border. At that time, only 5% of the Damascus Jews were regarded as wealthy; 15% of them belonged to the middle class, and the rest belonged to the lower socio-economic strata, some in need of support. Most of the Jews made their living from traditional trades, such as bakeries, butcheries, small trading and artisan works, mainly in copper.

The situation of the Jewish communities in Syria worsened drastically towards the time of Israel's establishment. Immediately after the decision by the U.N. General Assembly, on 29 November, 1947 to partition Palestine into a Jewish and Arab state, a bloody pogrom took place in Aleppo. On 1 December, 1947, Jews were attacked, Jewish property looted and synagogues set on fire.

That same month, when the persecution of the Jews took on a state nature, many Jews were fired from the government and public service. On 22 December, 1947, the Syrian Government proclaimed that Jews were not allowed to sell their property, whether real estate or otherwise. It became clear: whoever would try to leave Syria, would lose all his property. Even Jews who would have agreed to leave without their property were refused permission to leave.

The Six-Day War, in June 1967, caused the life of the Jewish

community in Syria to deteriorate even further. At that time, the extreme wing of the ruling Ba'ath party, headed by General Saleh Al-Jadid and Hafez Al-Assad (who took over control in November 1970), was in command. According to information leaking out of Syria, many Jews in Aleppo and Damascus were arrested during the Six-Day War, and many members of the community lived in fear and distress. Jews in Aleppo and Kamishli lost all sources of livelihood.

According to information reaching Israel, the economic situation of the Jews in Syria kept worsening. No wealthy Jews remained. Most of those who did remain were shopkeepers, or small traders, artisan craftsmen and some lawyers and doctors. Jews were no longer allowed admittance to the public/government service, they were barred from preferred professions and experienced repeated acts of boycott.

After General Assad took control of the regime in 1970, an incremental improvement in the Jewish situation was observed. In the early 1970s a few Jews were allowed to leave for limited periods of time for business and medical purposes. As from 1977, young Jewish girls were permitted to travel to the U.S. to marry members of the Jewish Syrian community there. Since 1992 all Syrian Jews have been allowed to leave the country, provided that they do not travel directly to Israel.

Concerning the fate of the Jewish property in Syria, the last chief Rabbi in Syria, Rabbi Avraham Hamara (who today heads the Jewish Syrian community in Israel) has said as follows: Jews who fled from Syria illegally have had their property frozen by the authorities and administration of their property handed over to a Palestinian-Syrian committee. The committee is authorized to manage the Jewish property and charge rental fees for it, but is not authorized to sell it. We refer to an abundance of Jewish properties,

including almost the entire Jewish quarter in Damascus, where Jews used to live in beautiful homes in central locations, as well as private property in Aleppo and Kamashli.

### What next?

The downfall of Saddam Hussein's regime in Iraq has revived hopes that the new regime will compensate Iraqi Jews for their lost property, although it seems that these hopes will not be realized any time soon. It will take several years for the new regime to stabilize and Jewish claims do not top the priorities of the new Iraq. The U.S. Supreme Court has already ruled that sovereign states cannot be sued in ordinary state courts.

Hence, it seems that partial compensation for Jews from Arab countries can only be achieved within the framework of a comprehensive agreement in the Middle East. President Bill Clinton already suggested in the Camp David summit of summer 2000 the establishment of an international fund which would pay compensation to both Arab and Jewish refugee claimants. The U.S., the European Community, Israel, the Arab countries, Japan and other countries would be expected to contribute to the fund. Great significance is attached to the establishment of such a fund. It would render historic and personal justice; it could serve as a very reasonable substitute for the Palestinian claim to the right of return, an issue at the core of the current Arab-Israel conflict. Upon its establishment, Israel would have to act firmly to forcefully present the injustice done to the Jewish communities in the Arab countries and to insist that without justice being accorded to the Jewish citizens of the Arab countries no final settlement can be concluded between Israel and the Arab states.



Aerial view of the site of Israel's Knesset in Jerusalem (Courtesy of the Israel Government Press Office)

# Understanding Suicidal Terror through Humanistic and Existential Psychology

Nira Kfir

**T**he psychology of suicide terrorism may be examined within the context of humanistic psychology and the modern theories of chaos developed towards the end of the twentieth century. Despite its dire nature today, the latter theories give us cause to hope that ultimately the phenomenon of Islamic *shahids* will lose steam and fade away on its own. My thesis is built on three pillars: humanistic psychology, theories of heroism and theories of chaos. I shall briefly consider each of these elements.



has a single person - an individual - been the center of the world. Indeed, Jefferson's Third Amendment speaks of the right of a person to the pursuit of happiness; but this was never a dominant concept. Society or God were the center of our focus - not the individual. Today, the prevailing ethos is self-actualization. As we look at our young children - our immediate thought is what can we do with them, what is their potential?

Accompanying this ethos is enthusiasm, or what has been called the search for peak experiences. Abraham Maslow, one of the greatest humanist thinkers, described this

## Humanistic psychology

Humanistic psychology or existential psychology differs from Freud's depth psychology in that it is not concerned with our past or the qualities or characteristics we carry with us from the beginning of our lives but rather with our aspirations, our strivings. This is the reason why self-actualization is at the core of humanistic psychology, and became the focus of attention during the final decades of the twentieth century. Never before in history

search in his book *Religions, Values and Peak Experiences*. There, Maslow explained that a person must undergo peak experiences from time to time. He must bring himself to a much higher than normal level, to the level of exhilaration. Maslow has also developed what he terms the hierarchy of needs. We are all aware of our basic needs, but one can also discern at a higher level, the need to influence, the need to be altruistic and the need to sacrifice. Everyone needs and experiences altruism. Most people do so for the sake of their families or for a very small circle of people. At a higher level we are ready to be altruistic for the benefit of wider ideals, whether it be the rain forest, humanity or the world. Altruism is a need felt by every person and it leads some of us to perform acts of heroism.

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This is the revised version of a lecture delivered by Dr Nira Kfir to the Society for Medicine and Law in Israel and is based on a chapter which was written by her and which appears in *The Psychology of Terrorism*, ed. by Chris Stout. Praeger Publishing (2002).

## Heroism

Heroism has always been played on the stage of history and we all admire and salute it.

Yet, there are two types of heroism - defensive heroism and destructive heroism.

Defensive heroism refers to the situation where a person

defends himself or another against death. Examples include a person running into a burning building in order to save someone who is trapped, or when a soldier falls upon a grenade which is about to explode - as was the case with Nathan Elbaz in Israel some years ago. These people act to save the lives of others. They perform spontaneous acts of heroism but do not consider themselves heroes. They do not analyze their actions in advance nor do they have any intention of becoming heroes, rather they are transformed into heroes in an instant. In popular terminology their acts are described as brave or courageous but courage as such does not exist. Courage, in fact, is the product of a very high level of resourcefulness and problem solving. The soldier who sees the grenade falling and throws himself on it, knows what has to be done at that moment and believes himself the person to do it. He does not want to die. Later we might call his act a deed of courage, but while it is happening it is not bravery. It is the result of a quality which perhaps we possess as a potential but which will only materialize if the opportunity arises.

Destructive heroism, on the other hand, is concerned with destroying oneself and perhaps others as well, for a cause. This sort of heroism is not meant to save life but to destroy it.

There is a broad consensus that without these combined high goals of humanistic psychology - self-realization, altruism, influence and heroism - life has no flavor or meaning. Probably, each century believes that it has achieved the most progress, but I think it safe to say that in the twentieth century the Western world broke every norm, whether in terms of technology, science, communication, mobility, freedom or happiness of the individual.

**These events have circumvented a billion people in the Islamic world.** The only connection the Arab world has had to all this progress is as clients or consumers. The Arab world consumes modern medicine, as it does every other Western product. Yet, Islam, like Judaism, is a culture of moral superiority. Not all the cultures in the world claim to be the best, indeed most are satisfied with simply living their lives. The monotheistic religions, however, loudly proclaim their superiority. Concurrently, the Arab people continue to live in poverty and under dictatorships. Stringent restrictions are imposed on women and children. The concept of individual self-actualization is not as acceptable as in the West. Islamic culture possesses a hierarchy, but the hierarchy is decided in terms of religion. One is a good Moslem if one prays and is obedient to the Ayatollah. The individual is not at the center of Islamic life.

Looking at Western culture, Islam began to develop a very deep sense of inferiority. The world was by-passing them. This

perception sparked a new type of progress in the Islamic world - fundamentalism and a return to the Koran and the *burqa*. Starting apparently with the Iranian Revolution led by Ayatollah Khomeini, who overthrew the Shah of Iran's Western style regime - Islam entered into a new age. The more the West would become outrageous and free the more Islam would become religious and fundamental. The fundamentalism of Islam was a reaction to being by-passed by the West and Western progress.

Western progress posed and continues to pose a significant threat to Islamic society. Influences penetrate no matter how closed Islamic society. Larger and larger communities are being established in Europe and the United States. Television and communications also play a part. As these elements threaten to shatter the basic hierarchy of Islamic society, so that society closes its ranks even further and becomes even more fundamental. Relevant in this context are the theories of a revolutionary thinker and psychologist - Paul Watzlawick - who published a very important book entitled *Change*. There he claimed that most people when they want to create change, not only fail to change but also tend to do more of the same and experience that process as change. The Islamic world has done exactly this. Their answer to progress, to the threat of freedom for women and children, freedom from religion, freedom to be richer, to actualize oneself, to travel and to mingle, is to do more of the same as Watzlawick claimed - more fundamentalism, more religion, more Islam. This was the progress which occurred towards the end of the 20th century. And this, in a way, provided the Arab countries with a sense of meaning.

## Heroism and Death

Alongside that sense of inferiority - Islam remained aware that in one characteristic everyone is equal. We are all born and die in the same way. Damon Runyon describing the English criminal world talked of the big bully facing the small weaker man, who, however, holds the gun and this is the "equalizer". Since we all die the same way, the Islamic world found its "equalizer", through the suicide of the *shahid*.

In the beginning it was easy to call the Nazis crazy or psychopaths, eventually the world realized a terrible fact - the Nazis were not psychopaths. This was very difficult to accept. These mass murderers were normal people who loved their wives, their music and their pets. Initially, we repeated this mistake with the *shahids*. We thought these young men had been drugged or hypnotized but then we started to find out that they were educated young people. Not all came from the squalor of Bethlehem; some



were the sons of middle class families from Europe or America; they had jobs, families and children. These suicide bombers were not psychopaths or persons who had been hypnotized.

Returning to humanistic psychology we can understand that the actions of these *shahids* represent a form of self-actualization or altruism. These people believe that the end justifies the means, that by their actions they are preserving their culture, the sanctity of their Holy Places, the superiority of Islam. In the minds of the Arab world these people are undoubtedly heroes. One good example of this phenomenon was presented by a man intercepted in Netanya on his way to carry out a suicide attack. Later he was interviewed on TV. He was asked whether he was glad to be alive. Almost crying he said no. His message: "I missed the biggest event in my life, the peak experience in my life, my chance to sacrifice myself". The interviewer asked him about his wife, his children, the things that he could still do with his life - all Western concepts. The reply was the same, this man felt that he had missed out; everything else in life had no relevance compared to this loss. For him life was temporary anyway.

Ernest Becker in his Pulitzer Prize winning book *The Denial of Death* (1973), said that the greatest anxiety is the anxiety of death. We do not deny that we will die; we deny the anxiety because it is impossible to live with it. Many people, who commit suicide, other than for a cause, are people who are controllers and who are not willing to wait for death but wish to take control of it. A lot of control is gained by overcoming the anxiety of death: not only is the person unafraid of death but he himself will bring it about. The *Encyclopaedia of Psychology* sets out several definitions of suicide. The one relevant here is that "suicide is the murder of the wrong person"; it results from a great deal of anger. This concept too may be applied to the *shahid*, although at the same time as killing himself he kills others.

## Inferiority and Meaninglessness

Research shows that when a soldier runs into fire he does so for his commander or for his platoon, not for the nation or an ideal. He runs because his friends surround him. He wishes to excel in their eyes. The *shahid* wishes to excel in the eyes of his Ayatollah, his group, friends, fellow worshipers in the mosque or some other very small in-group. It is the in-group which counts in our lives. We want to make a very good impression on a handful of people that count in our lives, and all our lives we mingle with the same handful of people. Dying, *per se*, is not the most terrible event. It is being meaningless that is unbearable.

Consequently, humanistic psychology talks about influence or

the conferral of meaning. In his work *Man's Search for Meaning*, Victor Frankl wrote that men need the basic commodities of life but what they need most is to feel meaningful. If this feeling is taken away there is no life. According to Frankl, there are a variety of ways which allow one to feel meaningful, one is by making a contribution. If a person does not contribute he does not belong and is therefore not meaningful.

Bearing this in mind - one can explain recent processes in Islam. We are looking at the rebellion of Islam. Here it is interesting to note the remarks of two Islamic teachers. One, who is well-known in America, is Professor Fouad Ajami of Princeton University. Professor Ajami wrote a book entitled *The Arab Predicament*, in which he asked a number of penetrating questions: What does this Islamic renaissance really represent? To what extent is this revival of fundamentalism an honest craving? And to what extent is it an ideological cover for a sense of inferiority toward the West, on which Arabs find themselves totally dependent? Another Arab academic offering a complementary view is the Dean of the Faculty of Shariah Law and Islamic Studies at the University of Qatar, Abdel Hamid El-Ansari. In a talk at a symposium on American-Arab relations in Qatar, Professor El-Ansari boldly called on Arabs to wake up. He told them that the time of the Arab hero or Bedouin with the sword is over. He called upon Arabs to join the rest of the world. Naif Hawatme, the head of the Front for the Liberation of Palestine has also voiced a complementary view. In a 1977 speech he noted that the Arab world had power, money and the people ready to fight Israel, but what was its agenda? He admitted that what he was waging was a war without a cause. Unlike those behind the French Revolution, the Russian Revolution, and even European revolutionary groups such as the Red Brigade, Islamic fundamentalists have no real desire to make the whole world Islamic.

The question arises therefore: what is the fundamentalists' agenda? It is not to destroy the West. Rather, it is to get even. It is the equalizer. Islam cannot compete but it can make the West suffer, feel fear, anxiety and helplessness. In countries which are dictatorships, revolutionary groups - and extreme Islam is a revolutionary group - despise and even hate their secular leaders but they cannot fight them. Professor Ajami describes the concentration camps in Egypt in the late 1960s. This is not a culture in which an opposition can achieve success. So the real agenda is to gain power in the outside world. If the whole world has to reckon with the fundamentalists, their own leaders will surely also start to fear. Today there is proof of this theory. Al-Qaida has exploded bombs in Indonesia, Morocco, and the

Jordanian embassy in Baghdad. Their real target is to take over their own countries; to remove the secular governments. But as they cannot gain power at home, they seek power outside where the whole world stands in awe of them and their sophistication, their dedication, their courage and their resourcefulness.

Indeed, Islamic fundamentalists have gained the world's attention. Years ago Solzhenitsyn wrote about the decay of the West. The West seeks happiness, self-realization, 2.5 children, the good life, leisure and luxury. Facing it is a new dedication, which in a way has done the West a favour. The fundamentalists have given the West a wake-up call. The West believed that it had reached a peak, that life was being lived as it should be - but it was proved wrong.

## Chaos

The third pillar of my thesis depends on the theory of chaos, which in its modern version is relatively new, although it may be identified in Greek mythology and in the Bible. According to this theory, the world is engaged in a cycle between chaos and order. One of the leading thinkers in this field is the physicist and 1977 Nobel Prize laureate, Ilya Prigogine. Like other Nobel Prize winners, after receiving this honour, he moved away from his own narrow field and adopted a more holistic approach. His conclusion was that the rules which apply to the universe also apply to every other system. This systemic theory applies to the family, to a company and to the state. Collaborating with a young French philosopher, Isabelle Stengers, he wrote a book entitled *Order out of Chaos*, in which he described the history of the theory of chaos. Apart from the Biblical flood which resulted in the whole world being destroyed, and despite a number of close calls the world has never been shattered. Peoples have been annihilated - in Hiroshima, in the Holocaust and in other places - but chaos has never wiped out the planet because - and this is the essence of the theory of chaos - every orderly system has a potential for chaos but then reverts to normal. The chaos ends because there is always an equalizing power.

There are several ways to stop chaos. One way is paradoxical, it involves creating more chaos. Recent events illustrate this. In my perception creating more chaos was the route President Bush took when he invaded Afghanistan, committing acts which were undoubtedly prohibited by the American Constitution, and then invaded Iraq. We could never have imagined that President Bush would invade Iraq, but he did so and this stopped the chaos, perhaps not in Israel but certainly in the rest of the world. President Bush showed that he was not afraid, that he could turn

Iraq upside down; failing to find weapons of mass destruction he did not see any reason to apologize.

The situation in Israel falls short of this form of stopping chaos by more chaos. The terrorists can bomb public places in Tel Aviv because they know that Israel cannot permit itself to retaliate by bombing the market in Gaza. Israel is a country of law and order and subject to the pressures of the rest of the world. The terrorists count on this. So a form of dialogue is created: I can be crazy if you are normal - if you are also crazy then what is the point? Yet, one might think that under the chaos theory bombing the Gaza market would end the bombing spree altogether.

A second way of stopping chaos depends on the unexpected - the system burns itself out. The system cures itself. In every regular system there is a potential for irregularity and then regularity takes over. The reason for this is a mystery and is the subject of research in modern physics, although history shows that there has always been a duality of powers. If one takes Greek mythology one sees Apollo on one extreme, and Dionysius on the other. Apollo is the god of law and order and harmony when everything falls into place. Dionysius is passion and chaos - he destroys, but he is also the god of drives and creativity. The way the Greeks see the history of civilization is as a cycle between Apollonian and Dionysian times. Likewise, in the Bible, we have an interesting phrase: "After all the wars: the land will be tranquil for 40 years". Much has been written about this concept. Why 40 years? The answer is because there is no such thing as permanent tranquility. The theories of chaos may be new in physics but our own lives reflect cycles, between longer or shorter periods of peace and periods of chaos.

The chaos of suicide follows a similar path. The terrorists may lose momentum, for example after they have gained the world's attention, or upon it becoming too dangerous for their leaders to carry out their activities, or following the death of too many members.

It seems to me that we should not panic, we will not see another thousand *shahids*. The theory of the cycles of chaos demands that this phenomenon will come to an end.

A *Talmudic* story relates to God's quandary when he created the world, when choosing whether justice or compassion should dominate the universe. Finally God decided to mix these traits in a kind of rotation. Looking at his creation, he blessed it with the words "*Halevai Sheyeamod*" - (*Talmud, Midrash Raba*), which means "Let it survive." Let us pray that our world will indeed survive.

# The BBC's Double Standards: Israel And the War on Iraq

Trevor Asserson and Lee Kern

**T**he recent Iraq War provided a unique opportunity to examine the BBC's ability to report news in an accurate and impartial manner.

The coalition forces in Iraq were widely accused of invading Iraq in breach of international law. They faced opposition from the local defending forces who frequently fought from or hid within densely populated urban areas. As part of their defence the Iraqi army employed suicide bombers.

The Israeli army faces some similar problems. It too is widely criticised for alleged breaches of international law. It faces an enemy which fights from densely populated urban areas and employs suicide bombers.

The coalition forces, although claiming to be defending the security of their own countries, singularly failed to convince popular opinion that Iraq posed a real threat. By contrast popular opinion clearly accepts that the Israeli army is defending its civilian population from a very real threat which does constantly claim Israeli lives. This difference between the two conflicts, if it affected an impartial news provider at all, would logically tend to



result in Israel receiving a more sympathetic coverage than did the coalition forces. The opposite is in fact the case.

The BBC has a legal obligation to report news in an accurate and impartial way. A comparison between the way in which coalition troops and Israeli troops are treated when dealing with such similar military problems provided a rare opportunity to compare like with like.

What emerges from this study is the marked contrast between the ways the BBC reports the two conflicts. Coalition troops are described in warm and glowing terms, with sympathy being evoked both for them as individuals and also for their military predicament. By contrast Israeli troops are painted as faceless ruthless and brutal killers with no or little understanding shown for their actions.

We are aware that, during the Iraq conflict, the BBC was heavily criticised in the UK for being too harsh in its treatment of coalition motives and tactics. This report does not seek to comment on that criticism. However the fact that the criticism was widely voiced only serves to emphasise the correctness of the argument at the

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centre of this report. Had the BBC responded to public pressure to report coalition actions more favourably than it did, then the contrast between its reporting of coalition and Israel's forces would have been even more stark than it actually was.

## Omission of Culpability

The US and UK military were responsible for many civilian deaths and injuries in Iraq. However, we find that the BBC operates a subtle omission of culpability when reporting on these civilian casualties. A good example of this technique is seen in the reporting of Ali Abbas, a twelve year old Iraqi boy who lost both his arms and his family as a result of the coalition bombing of Baghdad. The BBC's coverage of the Ali Abbas story lacks much of the punch that would normally accompany their coverage of an equivalent story arising in the disputed territories.

The BBC consistently omits any direct and explicit expression of coalition culpability for Ali's injuries saying merely, "...[the] Iraqi boy who had both arms blown off...when a missile hit his Baghdad home...". By failing explicitly to state that it was a US or UK bomb that maimed Ali and destroyed his family, the BBC glosses over coalition guilt and spares it negative publicity. This contrasts with the way in which the BBC will report of an "Israeli tank" or "an Israeli soldier", repeating the word Israel so consistently that it becomes inextricably intertwined with the scene of destruction that is being witnessed.

### Gulf war...

*"...he's had both his arms blown off...his whole family were killed...his mother was pregnant and they were killed by a bomb..."* [Today, 09/04/03]

### Israel...

*"...he lies in a coma with a bullet in his brain after being shot at by Israeli troops..."* [BBC1, 6pm, 14/04/03]

### Gulf War...

*"...At least nine civilians are reported to have died when a bomb hit a residential neighbourhood in central Baghdad..."* [Online, 08/04/03]

### Israel...

*"...At least five Palestinians have been killed in an Israeli air raid on Gaza City..."* [Online, 09/04/03]

## Mitigation

Where coalition culpability is conceded efforts are made to

excuse, explain and even justify the loss of civilian life. The BBC shows a persistent drive to convey deep empathy and understanding of the problems and fears faced by the British and American soldiers as they wage battle in Iraq.

The existence of fear is used by the BBC to explain away the killing of unarmed civilians. We even find that the BBC displaces responsibility onto the victims themselves.

The military engagements faced by the coalition army in Iraq are similar to those faced by the Israeli army in its battle against Palestinian terrorists who, like Iraqis, hide down alleyways in built up areas, set booby traps, place snipers and use civilians as shields. The principle distinction lies in the fact that the coalition faced a minimal amount of such tactics compared with the amount faced by Israeli troops.

Yet when an Israeli weapon causes civilian death the BBC is quick to criticise and slow to explain, excuse or indeed to show any significant level of understanding of the military difficulties Israel faces.

This section looks at the BBC's mitigation of Iraqi civilians killed in Mosul, Iraqi children killed at a US checkpoint, journalists killed at the Palestine Hotel and journalists killed in "friendly fire" incidents. It also looks at the BBC's mitigation of the coalition's use of cluster-bombs - a highly controversial and highly destructive weapon.

### (i) MOSUL KILLINGS

*"...Brigadier-General Vince Brooks said US marines and special forces soldiers fired at demonstrators on Tuesday after they came under attack from people shooting guns and throwing rocks..."* [Online, 16/04/03]

*"...A US spokesman said troops were returning fire from a nearby building and did not aim into the crowd..."* [Online, 16/04/03]

### (ii) TWO CHILDREN KILLED AT CHECKPOINT

*"...In southern Iraq US marines shot dead two children when they opened fire on two cars at a checkpoint. Soldiers had feared a suicide bomb attack..."* [BBC1, Ten Special, 11/04/03]

*"...a very unfortunate incident at one checkpoint this morning where two young children were shot when marines that were on duty at the checkpoint suspected that a suicide car-bomb attack was taking place..."* [BBC1, Ten Special, 11/04/03]

Contrast this intense mitigation of a coalition checkpoint error with the BBC's coverage of an incident at an Israeli checkpoint in November 2001:

*"...Today Israeli soldiers opened fire on a Palestinian car ...it was reported that the car had approached a checkpoint at speed and two Palestinians were killed in that attack..."* [World Service, Newshour, 29/11/01]

Note how the single reference to an Israeli mitigating factor is undermined by the prefix which declares, *"it was reported"*. This contrasts with how coalition mitigating circumstances are conveyed. The BBC has no hesitation in declaring in no uncertain terms that, *"Soldiers had feared a suicide bomb attack"*, and they do so repeatedly. They even go further and provide us with a helpful and authoritative account on what was actually going on 'inside the minds' of the soldiers that fired upon two Iraqi children: *"...It was only when they really felt under threat of a possible suicide attack that they opened fire..."*.

The most disconcerting aspect of the BBC's coverage can be found when cross-referencing their account of the Israeli checkpoint deaths with accounts taken from other news sources. The following is taken from *Ha'aretz*, a left-wing daily, quick to criticise Israel.

*"...Two Palestinians were shot and killed yesterday... According to military sources, a suspicious-looking Palestinian vehicle approached the IDF checkpoint, and was asked to stop. The driver was ordered to leave the car. Inspecting the vehicle, IDF soldiers spotted trademarks of a stolen car... The driver then re-entered the car, claiming he needed a cellphone; he sped away... The IDF sources said the soldiers first fired at the car's tires, and then at the vehicle itself. The shots killed the driver... The IDF shooting also unintentionally killed a Palestinian taxi driver, who was waiting near the checkpoint, and had no connection with the first driver. A car bomb exploded at the same IDF roadblock a few months ago, the military sources explained, and the soldiers there yesterday were 'on alert and tense' on account of intelligence warnings about possible attacks in the region."* [Ha'aretz Website, 30/11/01]

The BBC is seen to have omitted important facts that could mitigate Israeli actions. By doing so we are effectively presented with a distorted BBC version of reality.

### (iii) THE PALESTINE HOTEL

On the 7th April 2003 an American tank fired at the Palestine Hotel - a Baghdad hotel where Western journalists were staying. A number of journalists were killed in this incident. We often find that the BBC correspondents work hard to mitigate this coalition action which killed a number of innocent people.

*"...as I was saying, this is a microcosm for what has been happening and the kind of security challenges faced by the coalition forces in the centre of Baghdad..."* [Ten Special, 07/04/03]

*"...and cameras can be mistaken for rocket-propelled grenades...in this kind of situation it's difficult for a tank commander or any kind of infantry vehicle to distinguish between a camera and an RPG..."* [Ten Special, 07/04/03]

The above incident contrasts sharply with the BBC's treatment of a similar incident involving the death of an HBO cameraman on April 3rd 2003 - just a few days prior to the Palestine Hotel incident.

*"...an award-winning British journalist has been shot dead by Israeli soldiers as he filmed a documentary in a refugee area in Gaza... cameraman James Miller suffered fatal injuries after an Israeli armoured vehicle opened fire, wounding him in the neck, according to reports..."*

*...Mr Miller had been filming...in Palestinian areas while working on a documentary for the American HBO network..."* [Online, 03/04/03]

The strenuous effort to mitigate an accidental death, which is seen for coalition forces, is suddenly absent here. Gone is the mitigating insistence that *"cameras can be mistaken for rocket-propelled grenades"*. Also absent is the fact that James Miller was filming in a designated combat zone in the dark at night - a mitigating factor that contrasts with the Palestine Hotel incident which occurred during the daytime. Furthermore, no consideration is given to the fact that whereas the Palestine hotel was a known place of Western journalists, the IDF had no prior warning that a cameraman would be filming in that battle zone, at that time.

### Friendly Fire

"Friendly fire" relates to the incident of an army mistakenly attacking its own troops. During the Iraq conflict the term was also applied to instances where journalists were the inadvertent targets of coalition strikes. BBC presenter John Simpson was involved in one such incident on April 6, 2003. According to the BBC's own reports at least 15 people were killed and 45 injured in this attack. Here again, the BBC goes to great lengths to explain, absolve, excuse and mitigate such uncontrolled displays of lethal force. This contrasts starkly with the lack of sympathy approaching vilification that accompanies "collateral damage" arising out of Israeli actions.

*"...I think what probably happened was that there was a burned out Iraqi tank at the crossroads and I suspect that either the pilots got the navigational details wrong, which is possible, but I think it is probably more likely one of them saw the burned out Iraqi tank, assumed that was what was to be hit - and dropped the bomb..."* [Online, 07/04/03]

*"...these things happen if you are fighting a war. Mistakes happen..."* [Online, 07/04/03]

The tone of the reports suggests a BBC ready to forgive the occasional, or even frequent, accident. This stems from its understanding of the military difficulties which the coalition forces face and the need to fire under stressful circumstances, often with civilians in the vicinity. No such indulgence is given to Israeli errors.

#### (iv) CLUSTER BOMBS

The use of cluster bombs has been very controversial. There is little doubt that they significantly increase the risks to civilians and particularly to children. The BBC does enter this debate. But it also goes to considerable lengths to justify the use of cluster bombs by coalition troops. Explanations by military personnel are barely questioned and are often repeated. The use of cluster bombs is mitigated by the authoritative information that the weapons were used only against Republican Guards and Iraqi soldiers away from civilian centres. And where civilians are killed this is blamed on Iraqi soldiers for hiding in civilian areas, and in any event *"All war results in civilian casualties..."* [Today, 04.04.03]

*"...the British military have been very careful to point out that they are not being used in the city centre..."* [BBC Online, 04/04/03]

*"...Air Chief Marshall Sir Peter Squire told reporters that British pilots had dropped about fifty cluster bombs in Iraq during the conflict but only against Republican Guards..."* [R4, 04/04/03]

*"...let's deal with this, impossible in many ways, question of civilian casualties. All war results in civilian casualties..."* [Today, 04.04.03]

We are left in no doubt that the British military mean well, and any harm caused is the fault of the Iraqi troops. By contrast it is extremely rare for the BBC even to express, let alone to repeat, the military reasons given by Israelis for taking the steps they do to protect Israeli citizens. It is inconceivable that they would justify the means by reference to the end as they do for coalition forces. Equally inconceivable is the show of insouciant disregard for a few Palestinian deaths as an inevitable consequence of war.

#### (v) DISPLACEMENT OF BLAME

The most frequent technique employed in the mitigation of coalition culpability is the displacement of responsibility onto the Iraqis themselves. There is a suggestion that were it not for Iraqi tactics, their trickery, and their persistence in not letting the coalition kill them, risks to civilians would never occur. A pattern of cause and effect is established in which coalition actions are always seen as a response. Coalition forces are cast as trying to play a gentle role and being pulled reluctantly into confrontations. It is hard to extract from this narrative the reality of the largest concentration of sophisticated weaponry ever seen, being used to invade a country defended by a demoralised, poorly armed and even worse led rag tag militia.

*"...the main reason for these [friendly fire] incidents is the fact that air power is being used in an environment where Iraqi targets are mobile and operating close to mobile coalition forces..."* [Online, 07/04/03]

*"...The Iraqis are taking shelter in-between civilian houses and using those houses as places to fire from. This means civilians could be in the line of fire that comes back from the coalition forces..."* [BBC Online, 04/04/03]

*"...So no matter how well intended the British troops might be, the civilians are trapped in the fighting and they are under severe pressure..."* [BBC Online, 04/04/03]

BBC reporting of Israeli troops, far from seeking to displace blame, goes out of its way to ensure that blame is ascribed. Where genuine mitigating circumstances exist, the BBC hides or omits them when reporting on Israel.

#### 2. SUICIDE ATTACKS

The occurrence of suicide attacks in Iraq strikes instant parallels with the Palestinian suicide attacks against Israel. It is important to note that Palestinian suicide attacks are almost always directed against non-military targets. Iraqi suicide attacks were targeted against the US and UK military - an invading army of contested international legitimacy. Yet - a suicide attack against US marines in Iraq is described by the BBC as an act of terrorism. In Israel it is the work of a *"militant"*.

#### Gulf war...

*"...there have been reminders too of the dangers posed by Iraqis resorting to terrorism. Last night a car packed with explosives was driven into an American checkpoint and blown up, killing three soldiers..."* [R4, 6pm, 04/04/03]



### Israel...

*"...The BBC's Jeremy Cooke in Jerusalem says that the use of a moving car bomb against a bus is a new kind of attack for Palestinian **militants**..."* [Online, 5/6/02]

In fact the BBC has a practice of describing suicide attacks as terrorism in almost every situation in the world except where the victim is an Israeli.

### Gulf war...

*"...the Americans have their own worries. This was the scene in Baghdad tonight, marines taking up positions, wary that the **next Iraqi to greet them, could be a walking bomb**..."* [Newsnight, 10/04/03]

The essence of these quotations is to drip feed a message that suicide bombers create a constant fear which justifies an edgy and over cautious response to the slightest threat.

Suicide bombers are presented as the architects of fear and suspicion. *"Suicide bombers...changed the tone of the whole relationship"* in Iraq.

By contrast, the BBC presents Palestinian suicide attacks as a reaction and response to Israeli provocations. Responsibility for Palestinian suicide attacks is constantly displaced onto the Israelis.

### Israel...

*"...An Israeli woman has died of injuries sustained in a suicide bomb attack at a bus stop near Tel Aviv... The attack **follows** an Israeli army incursion into the Rafah refugee camp in the southern Gaza Strip..."* [Online, 10/10/02]

*"...A suicide bomb attack has killed 15 people in a crowded restaurant in the Israeli port city of Haifa. Up to 30 people were injured - several of them critically - in the explosion... **the blast coincided with an intensification of the Israeli siege of Palestinian leader Yasser Arafat**..."* [Online, 31/03/02]

*"...The latest suicide bombing **followed** the attempted killing of Hamas' political leader Abdel-Aziz al-Rantissi by Israel in Gaza on Tuesday..."* [Online, 18/06/03]

In pursuance of this narrative, we see a number of omissions which effectively rewrite history. In reporting the Israeli missile strike which targeted Abdel-Azis at Rantissi, Israel is seen as the original architect of violence. The fact that the Hamas charter is implacably opposed to peace talks is not mentioned. The fact that this attack on Rantissi occurred only after Hamas had attacked and killed five Israeli soldiers - after the Aqaba peace declaration - is also ignored by the BBC. The BBC seeks to present Israel as the

'first mover' in the oft quoted, 'cycle of violence', and therefore the prime opponent and obstacle to peace.

The BBC's unwillingness to engage in the reality of Hamas' agenda is a consistent feature of BBC coverage of suicide attacks in Israel. Indeed the BBC appears to consider Hamas suicide bombers as laudable. It refers to such people as martyrs, without putting the word in inverted commas.

*"...At the offices of the radical Palestinian group Hamas... in Damascus... the walls are covered with Palestinian flags and pictures of Palestinian **martyrs**, but the cause today is not Palestine - it is Iraq..."* [Online, 14/04/03]

### 3. Military Necessity of Checkpoints

As well as garnering approval for coalition checkpoints by energetically highlighting the fears and dangers faced by the coalition army, the BBC also explains the advisability of using checkpoints. They are presented as a logical and a reasonable response to the threat of suicide-bombers and unconventional attacks:

*"...Screening... all the major access points to Baghdad will be controlled... there will be checkpoints. Civilians who are just conducting their normal business will be allowed to move in and out. Others, young men of military age, will definitely be the subject of scrutiny by the American forces who will be on those checkpoints..."* [Online, 04/04/03]

These checkpoints are presented as the result of Iraqi actions. Their "guerrilla-style attacks" are concretely defined as the cause, the impetus and the logical progenitor of checkpoints.

Whereas the BBC seeks to garner support for checkpoints in Iraq by vividly highlighting the fears and dangers faced by the military, the BBC seeks to garner antipathy for Israeli checkpoints by stressing the inconvenience caused to civilians.

This imbalance is hard to understand. There were only two suicide attacks in Iraq during the Iraq war. Israel has suffered hundreds of suicide attacks and attempted attacks in the past two years. Those attacks have killed and maimed some 6,000 Israelis. Checkpoints have been instrumental in preventing many of the unsuccessful suicide missions:

*"...Israel has imposed **severe restrictions** on Palestinian movement in the West Bank... the vast majority of Palestinians just trying to go about their business see the **restrictions as a humiliating collective punishment** that fuels their frustration and anger... travel restrictions mean most Palestinian journeys have become increasingly complicated, time-consuming and costly, and*

often quite dangerous as well... *the journey times are extended by sometimes lengthy waits* to walk through checkpoints, as soldiers check everyone's papers,... *the checkpoints have posed a particular danger* to people with medical conditions or women in labour who are being rushed to hospital... *for most Palestinians, the blockade is just an intimidating and oppressive part of everyday life... the 45 minutes it once took to travel between Ramallah and Nablus has now increased to 3 or 4 hours...*" [Online, "Analysis: Palestinians' disrupted journeys", 06/0402]

#### 4. Targeted Strikes

Israel has often used targeted strikes pre-emptively to nullify Palestinian terrorists intent on planning or carrying out attacks on Israeli civilians. Israel is often criticised for her use of targeted strikes and is vilified for any collateral damage that arises.

The British and Americans used targeted strikes against supposed Iraqi leadership targets. These strikes are explained, justified and mitigated by the BBC although they cause damage only to civilians and property and consistently miss their targets. The danger posed to civilians is rarely mentioned. The attacks are reported in strong, confident language that justifies the action and casts no suspicions or questions over the event.

##### (i) STRIKE ON SADDAM HUSSEIN

On April 8, 2003 coalition forces attacked a restaurant where Saddam Hussein was believed to be hiding. We recorded **forty-two occasions** in which a reference to the attempted strike on Saddam Hussein was made. He was not killed in the bombing. Nine civilians were. Only **four times** was reference made to the nine civilians killed in the bombing.

In pursuit of this drive for a positive spin on coalition targeted strikes, we find that the instances in which civilians are killed are knocked aside by a greater emphasis placed by the BBC upon the alleged benefits of such strikes.

*"Eye witnesses say **two houses were flattened and nine Iraqis were killed...** There's no authoritative word on whether Saddam Hussein was injured, killed, or indeed in the building at the time. Even if he has lived on to fight another day the Americans will be hoping that the reporting of **this strike contributes to the mounting pressure**, both militarily and psychologically, that they are exerting **on his leadership**."* [Today, 08/04/03]

*"We do not yet know who was killed in that first strike on 19 March by US F-117 fighters on an Iraqi command bunker... **But it set the scene for the whole campaign. Iraqi command and control was knocked off balance** at the very start of the war and never recovered."* [Online, 14/04/03]

#### 5. Humanising the Coalition Army

The coalition military are presented in a reasonable, rational and sophisticated light, even when engaging in acts of extreme violence. They are presented as peacemakers; people trying to win hearts and minds; the caring military; the army with a human face. The BBC finds benign euphemisms to describe actions designed to kill and destroy human life, rendering those actions more palatable.

The BBC also broadcasts countless human interest stories designed to humanise the British army. We know them personally. We know their names and their families. We mourn for them when they die. During these moments the BBC's idiom takes on a more elevated tone, even slipping into poeticisms, eulogising individuals.

By contrast the Israeli Defence Forces are usually presented as an alien force without an ion of humanity. They are faceless automatons, robotic killers only characterised by the tanks and bulldozers that they drive. They lack the human face, and apparently gentle touch, of the coalition army.

##### (i) A DELICATE ARMY

*"...As the American military spokesman said, Baghdad is being squeezed..."* [R4, 6pm 08/04/03]

*"...now what we've seen in the last few days is **nibbling away** at some of these suburbs and fighting patrols further in..."* [Newsnight, 04/04/03]

*"...**business has** according to the British military commanders **been tied up now...**"* [Newsnight, 07/04/03]

The coalition use of tanks and military hardware is humanised. Military equipment is described in the appropriate dual context of human beings actually using them. We don't just have the faceless imagery of tanks and helicopters inexplicably wreaking havoc. We have the imagery of human beings inside them applying thought and reason in their application:

##### The Coalition

*"...They're hunkered in their armoured vehicles. Their tank guns swivel and scan. They're trying to pick out today's Iraqi mortar positions, knowing that overnight those positions will have changed. **It's the most dangerous time of day for these British soldiers** who in turn are the closest to Iraq's second city..."* [Today, 03/04/04]

The very human army of the coalition contrasts with the picture of the Israelis as robotic ruthless killing machines.

## Israel

*"...the army launched a raid with tanks, bulldozers and helicopters on the Rafah refugee camp in Gaza... About 30 Israeli tanks accompanied by armoured bulldozers and helicopter gunships exchanged fire with Palestinian gunmen after moving into the Rafah refugee camp in southern Gaza overnight... Troops backed by armour and helicopters swept into Tulkarm on Wednesday morning and imposed a curfew, ordering males aged between 14 and 30 to assemble in a school courtyard or face punishment..."* [Online, 04/04/03]

The Israeli military is completely faceless, as opposed to the intensely humanised tanks, weapons and soldiers of the British and American military. No mention is made of the reasoning or motivations behind these Israeli actions. Also note how the BBC adopts the perspective of the military when reporting on the coalition in Iraq. This is in stark contrast to a narrative perspective that is always ensconced firmly outside the military when reporting on Israeli actions.

## (ii) AN ARMY WITH A HUMAN FACE

*"...The US marines I have spent weeks with now are an extraordinary bunch of young men and I emphasise young. Some are still in their teens. They have never been through conflict before. After yesterday their commanding officer described them as heroes. It is an awesome ordeal for young men..."* [BBC Online 1/04/03]

*"...Out of the skies to the east, three specks are appearing at speed. Three tornado aircraft on a victory fly past before banking sharply to starboard and coming into land. And in the control tower behind them, the wives and children of the six crewmen waving. Together these tornadoes from 111 squadron have defended coalition bombers over Iraq, they've been shot at, and between them have notched up more than five hundred hostile flying hours since they first went to the gulf back in March. Now they're home. British soil bathed in spring sunshine has probably never looked so inviting..."* [BBC1, 6pm, 16/04/03]

It is inconceivable that the BBC would write in these gushing tones about Israeli troops. It would also be undesirable. We understand that the BBC, being a 'British' broadcasting corporation, will tend to empathise with 'British' troops. However, these British troops have returned from a very one-sided and politically controversial war, where the majority of coalition casualties were caused by "friendly fire," not by the enemy. These facts would produce a more critical coverage from the broadcasters of many other countries.

Whilst coverage of a British war emphasises this inherent contradiction in the clearest terms, we consider that the aim of impartiality is in fact equally unattainable in other conflicts around the world. The Middle East conflict, which tends to polarise views, is no exception. We remain convinced that the BBC consistently fails in its duty to report in a fair, accurate and impartial manner.

## 6. The BBC and Terrorism

The BBC frequently demonstrates partiality in its choice of language. Nowhere is this more stark than in the way in which it deploys the word 'terrorism.'

We approached Richard Sambrook, head of news at the BBC, on this specific subject. Quotations here are from his replies.

It emerges that *"the BBC seeks neutral precision in its language"* and indeed that *"The BBC values precision."* This is laudable. Terrorism has been defined both in dictionaries, by various international bodies and most importantly has recently been defined by Statute.

*"The use or threat of ...serious violence against a person... where the use or threat is designed to influence the Government or to intimidate the public... and is made for the purpose of advancing a political, religious or ideological cause"* [Terrorism Act 2000 S.1 (1) and (2)]

For example Hamas' motives are political, religious and ideological. It threatens and inflicts serious violence against Israelis in order to influence the Israeli government and to intimidate the Israeli public. Any doubt over whether Hamas is a terrorist organisation should be dispelled, as far as the BBC is concerned, by the fact that the Foreign Office has classified Hamas as a terrorist organisation. If the British Government department with responsibility for deciding on such issues, interpreting its own laws, can reach a conclusion on the subject, the BBC would need a good argument to differ.

Notwithstanding this, the BBC refused for example to refer to the bombing on 11 June 2003 of a Jerusalem bus killing 16 and injuring 100 as terrorist act, even though carried out by Hamas, a terrorist organisation, for terrorist motives.

Initially Sambrook tries to defend his position by stating that the BBC *"...does not believe that there is any agreed international definition of what constitutes a terrorist group."* This argument is nonsense. There is almost no word which enjoys an *'agreed international definition.'* Short of abandoning the use of language altogether, the BBC must select its terms of reference. Absent

other compelling argument, the correct reference point for the BBC must be the legal and linguistic environment which gives it birth and sustains it. Thus the BBC need look no further than definitions of words in the English language and as defined by English legislation.

Presented with this argument Sambrook makes a stunningly arrogant statement:

*"We have to decide on our own use of language according to our own principles. It would be wrong for us to allow the terminology we use to be determined by the legal definitions adopted by some states."*

This is an astonishing statement. The 'some states' to which he refers is the UK, whose citizens pay for the BBC and whose legislature grants it life and sets its rules.

Sambrook then goes on to state what are the BBC's 'own principles' by which it does in fact operate. Firstly there is a reluctance to use the word terrorism at all. "We are sparing in our use of the word (terrorist)" he explains. The BBC prefers to use "neutral language" which does not carry "emotional weight."

This is perhaps a worthy idea. However as a statement of BBC practice it is simply untrue.

When the Bali bombing occurred the BBC referred to it as a terrorist act before it had been established who did it or why. Without knowledge of who committed the attack or their motives, it is quite wrong to define it as being a terrorist attack. At most it can be described as "a suspected terrorist attack." The more recent bombing attack in Saudi Arabia was described as a terrorist attack, as were the almost simultaneous attacks on various targets in Morocco. The attacks on the World Trade Centre are habitually referred to as terrorist attacks and the BBC has no difficulty in describing UK foreign policy as a war against terror. An extreme case was the US marine who threw grenades at his fellow soldiers just as the Gulf War commenced, an act which the BBC was quick to adorn with the adjective "terrorist."

Israel, where the attackers and their motives are often abundantly clear, is the exception. The act of singling out a particular group for special disfavour is known as discrimination. But why is Israel discriminated against in this way. Sambrook provides an answer:

*"We prefer to use neutral language where the political legitimacy of particular actions is hotly contested"*

What Sambrook appears to suggest is that the blowing up of teenagers in a disco, of old age pensioners at a religious service, of school children on a school bus, or kids at a pizza bar - these

are actions which could have "political legitimacy." In other countries they are described as terrorist acts. In Israel, when perpetrated against Israelis, according to the BBC they could be politically legitimate, and are not described as terrorist acts. Why? Sambrook explains:

*"We do not believe there is [a] definition of ...terrorist group that gets round the pejorative charge the word carries which is what makes it so difficult a word for the BBC"*

It is true the word terrorist does carry a pejorative charge. That is why it is important to use it when it is the precise and accurate word to describe a particular event. To refrain from so doing is to abandon both precision and accuracy. By protecting a group from this pejorative charge because of its "political legitimacy" the BBC also abandons any claim to treating news in an impartial way.

## Conclusion

Our study demonstrates conclusively that the BBC is not impartial or indeed fair in its reporting of international news. More worrying, we are doubtful that the BBC, or any news provider, is even capable of providing impartial news. Every news provider has their own views, prejudices and opinions. These factors must affect the selection of which news stories to cover or ignore. Within each story covered, these prejudices will affect the selection of facts used. It is outmoded and naive to suggest that any news provider could eradicate these prejudices.

It is equally naive to consider that the BBC can effectively be regulated by itself on questions of fairness. It is deeply ironic that the BBC leads the campaign to give UK subjects in Guantanamo bay a fair trial, but denies even a shadow of that level of fairness to anyone complaining about the BBC.

If the BBC is an organ for propagating the prejudices of the individual editors and reporters who work for it, then there is no reason why it should continue to enjoy the privileged tax position which has kept it afloat to date. The licence fee is an anachronism which provides both an income and an official stamp of approval suggesting an impartiality which has long since ceased to exist.

# Questions about the Universality of Science

Colin Blakemore, Richard Dawkins, Denis Noble, Michael Yudkin



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Michael Yudkin

From time to time scientists seek to boycott scientists from other countries as part of a political protest against those scientists' governments.

Yet, discrimination against a group of scientists on the basis of their citizenship is explicitly barred by the Statutes of the International Council of Science (ICSU: formerly the International Council of Scientific Unions); an organization that counts amongst its members nearly 100 national academies of science and research councils and 26 international scientific unions.

Article 5 of the Statutes of ICSU states:

"In pursuing its objectives in respect of the rights and responsibilities of scientists, ICSU, as an international non-governmental body, shall observe and actively uphold the principle of the universality of science. This principle entails freedom of association and expression, access to data and information, and freedom of communication and movement in connection with international scientific activities without any discrimination on the basis of such factors as citizenship, religion, creed, political stance, ethnic origin, race, colour, language, age or sex. ICSU shall recognize and respect the independence of the internal science policies of its National Scientific Members. ICSU shall not permit any of its activities to be disturbed by statements or actions of a political nature".

The principle of **universality of science**, enshrined in this

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This is a revised version of an article published in *Nature* magazine.

Statute, expresses a noble ideal, although its precise wording is unsatisfactory in certain respects:

- 1) It implies that scientists have an obligation to share their data and ideas more widely than many would find reasonable.
- 2) It might be taken to mean that scientists must, on request, associate with and even collaborate with all other scientists.
- 3) It says nothing about how these principles should be implemented or indeed funded.
- 4) It includes ambiguous phrases, which leave open the boundaries between permissible and impermissible discrimination.

Another ICSU document, the *Statement on Freedom in the Conduct of Science*, states:

“Each of the International Scientific Unions, the National Scientific members, ICSU interdisciplinary bodies, and Scientific Associates - the organizations comprising the ICSU family - strictly adheres to the basic principles of the Council’s Statutes when involved in activities carried out within the scope of ICSU’s concern.

One of the basic principles in these Statutes is that of the universality of science (*see* Statute 5), which affirms the right and freedom of scientists to associate in international scientific activity without regard to such factors as citizenship, religion, creed, political stance, ethnic origin, race, colour, language, age or sex. Such rights are embodied in a variety of articles in the International Bill of Human Rights.

ICSU seeks to protect and promote awareness of the rights and fundamental freedoms of scientists in their scientific pursuits. ICSU has a well-established non-political tradition which is central to its character and operations, and it does not permit any of its activities to be disturbed by statements or actions of a political nature.

As the intrinsic nature of science is universal, its success depends on co-operation, interaction and exchange, often beyond national boundaries. Therefore, ICSU strongly supports the principle that scientists must have free access to each other and to scientific data and information. It is only through such access that international scientific co-operation flourishes and science thus progresses...”

This statement of principle, though also vague in certain respects, provides the basis for the following discussion on scientific discrimination. The phrase “scientific data and information” (last paragraph quoted) is assumed for the purposes of this discussion to have been intended to refer only to information in the public domain.

Religion, creed, political stance, ethnic origin, race, colour, language, age and sex are generally speaking not offered nowadays as reasons to justify discrimination against (or in favour of) other scientists in professional relationships, presumably because most

would agree that such discrimination is illegitimate. The question that needs to be considered is whether it can ever be proper to discriminate on the basis of **citizenship**, which is what is usually involved in proposing a boycott. Since discrimination on these grounds runs counter to the principle of universality of science, it is clear that if this principle is an absolute and inviolable guide to action boycotts will always be held improper. However, universality of science (like all general principles) must from time to time conflict with other principles, and it is possible to envisage circumstances in which universality would be overridden.

ICSU itself has occasionally encouraged members of affiliated organizations to decline invitations to hold or attend meetings in certain countries, where the principle of free circulation has been infringed. The question, however, is in what circumstances may a true scientific boycott be justified? For purposes of argument, we need to imagine an example so extreme that the reader will not dispute it - as extreme as a nuclear war. Suppose, then, that a general boycott of diplomatic, trade and cultural contacts has been declared against a rogue regime, as the only way to avoid nuclear war. Would not most scientists consider that the principle of universality of science should give way for the sake of a desperate attempt to avert an unspeakable evil?

If, in extreme circumstances, the principle of universality of science has to be weighed against conflicting imperatives, it is all the more important to spell out the reasons why scientists hold it to be precious. We suggest that they include the following:

- 1) The advance of science is potentially of benefit to all mankind, and therefore avoidable obstacles to its pursuit are undesirable.
- 2) Since the value of a given contribution to science ought to be judged on its own merits rather than on the basis of any characteristics of the person making the contribution, the exclusion of a particular group of people from the scientific enterprise for reasons that are irrelevant to the science itself (for instance, citizenship) is a perversion of the objectivity that science demands.
- 3) With humankind dangerously divided by race, citizenship, religion and so on, the continued ability of scientists to cooperate in a way that transcends these boundaries is an important symbol of, and impetus to, the breakdown of such divisions.

This last point, which we regard as having particular force, is worth expanding. The free communication of information and ideas has historically played a major role in the liberalisation of autocratic regimes - for example, it was one of the factors that led to the ending of the totalitarian regimes of Eastern Europe. Authoritarian governments try to suppress the flow of information



and ideas, and to control the participation of their citizens in international activities. The task of scientists in other countries is surely not to exclude their colleagues who live under such regimes from international contacts, but rather to draw them into dialogue. More generally, scientists can cooperate in their work even when they belong to states that are in dispute with one another. Such contacts, which make an important contribution towards reducing hostility, can be formed more easily by scientists than by some other groups, because science aspires, however imperfectly in its practice, to a relative freedom from emotional content.

In our view, these are compelling reasons for according the principle of universality of science a high priority. But there is an additional argument against boycotting groups of scientists on the basis of citizenship. Except in extremely unusual circumstances, any call for a boycott is likely to be opposed by some scientists, either because they think the particular case too weak to outweigh the general principle or because they find it morally repugnant to hold their colleagues living in another country collectively responsible for the misdeeds of their government. Thus the boycott itself would become a cause of discord which, at worst, could threaten the integrity of the scientific community.

For all these reasons, we are clear that the threshold needed to justify a boycott of scientific colleagues of a given citizenship should be extremely high. A boycott should not be proposed unless the following conditions are fulfilled:

1. The circumstances are wholly exceptional, and the decision to mount the boycott has been taken after the most considered and careful scrutiny. Such a decision would have to be based on an explicit judgement that, in the case under consideration, it is worth sacrificing all the benefits that flow from the principle of universality of science for some overwhelming gain.
2. There is good reason to believe that a boycott would help to change the unacceptable behaviour of a regime. It would be quixotic to sacrifice the principle of universality of science simply as a gesture if that were unlikely to be effective. Moreover, to make scientists suffer for the actions of their government is inherently unfair, and can be justified only if a greater good can be foreseen.
3. Revulsion against the regime that it is proposed to boycott, and a belief in the necessity for exceptional measures against it, are so nearly universal as to make it probable that a boycott would be very widely respected. Not only would a contentious boycott probably be ineffective; it would be likely to lead to a rift within the international scientific community.
4. The proposed boycott is part of an extensive programme of measures, imposed by international agreement, which

also includes diplomatic, economic, cultural and sporting sanctions. In such a case scientists would be joining with others in a collective expression of horror against a regime, with the intention of averting some foreseeable disaster.

In the hope of clarifying the way in which these principles might be applied to particular cases, we have considered some possible examples.

- a) *If scientists of a given state have asked their colleagues in other countries to impose a boycott against them with the intention of putting pressure on their government, of which they strongly disapprove, should one do as they ask?* It may be a noble act for scientists who are strongly opposed to their own government to sacrifice their interests for a deeply felt cause, and if they wish to withdraw from contact with their colleagues abroad we should respect that decision. But they are not entitled to sacrifice the interests of their compatriots, who may have a different opinion of their government, or who may feel that the shared cause is best served by maintaining contact with their colleagues abroad. Moreover, where the grave decision to violate the principle of the universality of science is at stake, the request of a group of scientists in one country cannot be taken as definitive.
- b) *Dr X is known to have been personally involved in actions that violate human rights. Is it appropriate to impose a boycott on him?* To boycott X in response to his own actions is not to discriminate against him on any of the grounds that are prohibited by the principle of the universality of science. Whether such a boycott is appropriate depends on the circumstances and on the strength of the evidence against X. In any event, X's actions do not entitle scientists in other countries to boycott his compatriots.
- c) *Dr Y has written to a scientist in another country, asking him or her to provide information or materials for use in studying the spread of infectious disease. The scientist receiving the request knows nothing about Y, and cannot find publications under his name. Moreover, Y writes from an address that suggests that he works for the military of his country. His government is known to have used chemical weapons against its own citizens, and is widely believed to be developing bacteriological weapons. Given the principle of universality of science, is it justified to refuse his request?* The development of bacteriological weapons is contrary to international Protocols. If one has good reason to believe that Y wishes to use the requested materials to further the development of such weapons the request must clearly be refused. However, one is not entitled to discriminate against Y's compatriot who writes for information about an

innocuous topic: he is not to be held responsible either for Y's behaviour or for the appalling actions of his government.

- d) *If the principle of universality of science prohibits discrimination against scientists on the basis of their citizenship, is there then no action that scientists in other countries may take to show their abhorrence of a reprehensible regime?* Scientists have the same rights as other citizens to oppose policies of which they disapprove by all the means that the laws of their country of residence permit. They may also seek to persuade their colleagues, both in their country of residence and elsewhere, to protest against the government of another state, again by all means that are within the law. What the principle of universality of science seeks to prevent is the use of scientists as pawns in any activity that should properly be conducted in the political arena.
- e) *If one accepts that a boycott against scientists of a particular nationality is to be ruled out, are actions short of a boycott permissible?* The arguments that we have put forward apply to all forms of discrimination on the grounds of citizenship that impede contact between scientists in different countries or put obstacles in the way of legitimate scientific work. Discrimination short of a boycott is still discrimination. We concur with the formulation in ICSU's *Statement on Freedom in the Conduct of Science*:

"On the basis of its firm and unwavering commitment to the principle of the universality of science, ICSU reaffirms its opposition to any actions which weaken or undermine this principle."

## POSTSCRIPT

Given the strength of ICSU's statements in support of the principle of universality of science, we find it surprising that ICSU itself and its constituent organisations are not more active in making the principle known among working scientists. This reticence leaves the scientific community bereft of standards against which to judge the merits of a particular proposal for a scientific boycott. We urge ICSU to clarify the wording of Article 5 of its Statutes, in light of changes in the conduct and organization of science since it was first drafted. But after such clarification we should like to see national academies of science and international scientific unions promoting the principle of universality of science more vigorously making their members aware that ICSU, acting on behalf of scientists all over the world, regards the principle as a central axiom of scientific conduct. We would also like to see the principle referred to in graduate training, and accepted as the norm to which scientists everywhere aspire.



Summer Holiday in the Galilee (Courtesy of the Israel Government Press Office)

# Censorship of Pornographic Television Channels: Is it Justified?

Ron Gazit

**T**he Supreme Court in Jerusalem, sitting with a panel of eleven justices, is currently hearing the petitions of eleven women's organizations and 52 Members of Knesset against the decision of the Cable and Satellite Broadcast Council to permit broadcast of the Playboy Channel as part of cable and satellite television transmissions.

The Council's decision to allow the broadcasts overturned a previous decision by the Council to disallow them. The Council's latest decision was made following a petition filed by Play T.V., representative of Playboy in Israel, to the Supreme Court, to invalidate an amendment made to the Communications Law, the gist of which is set out below.

The Playboy Channel shows soft pornography. The Council's new decision does not permit the broadcast of hard-core pornography.

Under the Council's decision, the Playboy Channel may be broadcast on both cable and satellite on a channel that is separate from other channels, encrypted and encoded, and is only broadcast late at night.

The section of the Law in dispute is Section 6Y of the Communications (Telecommunications and Broadcasts) Law, which provides as follows:

"A cable broadcast licensee shall not transmit broadcasts ...



Which contain obscene material as defined in the Penal Law 5737-1977, and in particular, broadcasts dealing with any of the following: (1) display of sexual relations which contain violence, abuse, degradation, humiliation or exploitation;

(2) display of sexual relations with a minor or with a person impersonating a minor;

(3) displaying a person or any of the organs of such person as an object available for sexual use;

The broadcasts enumerated in paragraphs (1) through (3) not clearly having any artistic, scientific, newsworthy, educational or explanatory value which would, under the circumstances of the case, justify broadcast of them".

There can be no dispute that sub-sections (1) and (2) do not apply to Playboy broadcasts.

Therefore, the dispute rests on the question of whether Playboy's television broadcasts present any person or any of the organs of such a person as an object available for sexual use.

This article will first set out the position of the feminist organizations, followed by the position of Playboy.

Since the author of this article has represented Play T.V., representative of Playboy in Israel, in the legal proceedings in the Supreme Court, and since a final judgment has yet to be handed down on the petition by the women's organizations and Members of Knesset (although the Supreme Court did decide not to issue an interim injunction and allowed the commencement of broadcasts), I shall not try to second guess the results of the legal proceedings, but will leave that to the reader.

## The Issue in Question

The right to broadcast and view content on television (as with the printed press and any other medium) is a fundamental right

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of freedom of expression which is protected by the Basic Law: Human Dignity and Liberty.

This fundamental right applies to pornographic content as well.<sup>1</sup>

In the case before us, there can be no dispute that all of the technical measures for protecting minors from viewing the Playboy Channel have been implemented. There is also no dispute that the films do not contain sex with children, violence or humiliation, and there are no close-up shots of intimate organs.

There is also no disagreement that freedom of expression is not an absolute freedom, and that it may be limited in extreme cases. The question that needs to be resolved is whether Playboy's programs are of the types that justify harming freedom of expression by disqualifying their broadcast *via* subscription television, even though they are encrypted and encoded.

## The Position of the Feminist Organizations

The main argument raised by the feminist organizations is as follows:

1. Alongside the protection of freedom of expression is the protection from freedom of expression, *i.e.*, from the dangers of uncontrolled use of freedom of expression.
2. The State of Israel, like most countries in Europe, limits freedom of expression when it forbids Nazi or racist expressions, since expressions of that kind hurt the sensitivities and dignity of a group of people, and might even undermine the democratic nature of the country.

In support of this, the feminist organizations refer to the Supreme Court judgment in the matter of Member of Knesset Kahane,<sup>2</sup> where the Court held as follows:

"The exceptional expression in our matter could harm the dignity of a group of people in our country and the sensitivities of persons in it. It might undermine the social order, social tolerance and public harmony. It constitutes a contradiction of the substance and foundations of a democratic state and the principle of equality between people which applies in such a state. It contradicts the national quality of the state, and our 'credo'."

And later on:

"An enlightened, democratic society is generally prepared to place a limit on people's self fulfillment. Therefore, the publication of obscene material is an offence, even if it is the result of the personal fulfillment of the creator of it. Freedom of expression is indeed a protection of democracy, but

sometimes there is no escaping the conclusion that the freedom might also harm democracy. Such harm might be caused when the expression is a racist expression, bringing with it an injury to public sensitivities, and hatred which causes a breach of the public peace and other sorts of serious harm that might flow from the publication of a racist expression. An enlightened democracy seeks to protect itself from cancers that wish to destroy it. Democratic regimes are indeed prepared to protect freedom of expression, so long as that freedom protects democracy. But where freedom of expression becomes an axe in the hands of those wishing to harm democracy, there can be no justification for democracy placing its neck on the line."

3. According to the feminist organizations, our matter is similar. The rationale behind the two limitations on racist expressions and sexist expressions is similar because the expression in question contradicts the principle of equality, harms the dignity of women and the sensitivities of a large group of the population, which might give rise to violence against women, to breaches of public order and harm to public stability, and might undermine mutual tolerance and increase trends of discrimination and radicalization.
4. According to the feminist organizations, the Playboy Channel specializes in presenting women as sexual objects, as sexual toys for the use of men. This is what paves the way for the claimed inequality and discrimination.
5. The feminist organizations have avoided relying on US Supreme Court precedents which have continually restrained laws that impose censorship on pornography as long as such pornography does not constitute real obscenity (by involving minors, violence, *etc.*).<sup>3</sup>

According to the organizations, the US Supreme Court has at times gone too far in stretching the limits of freedom of expression. By way of example, they cite a case where the Court permitted the Neo Nazis march in Skokie, a town with a large Jewish population including many Holocaust survivors,<sup>4</sup> and a case in which a statutory limitation on the

1. See for instance H CJ 14/86 *Laor v. Film and Play Review Board*, 41(1) P.D. 421.
2. H CJ 399/85 *Member of Knesset Kahane v. the Administrative Committee of the Broadcasting Authority*, 41(3) P.D. 255.
3. Recently, a ruling was handed down in the USA limiting Playboy broadcasts. See: *US v. "Playboy" Entertainment Group Inc.* 529 U.S. 803.
4. *Collin v. Smith* 578 F.2d 1197 (7th Cir.).

display of pornography containing “virtual children” – *i.e.*, displaying images of sex with “children” who are computer generated – was recently overturned.<sup>5</sup>

6. Therefore, the feminist organizations are asking the Supreme Court of Israel not to rely on U.S. precedents on freedom of expressions in respect of soft pornography. The Israeli Court has held in the past that U.S. law regarding racist expressions is not acceptable in Israel, and it would appear that the U.S. position would not be adopted in full in Israel with respect to hard-core pornography. According to the feminist organizations, soft pornography is also grounds for taking an approach that is separate and different from that acceptable in the U.S.
7. Women’s rights to equality are also protected by Basic Law: Human Dignity and Liberty. The right to broadcast pornography, which is an inferior right on the scale of rights protected by freedom of expression, will give way to this more superior right. Thus, for instance, political freedom of expression enjoys a high ranking whilst commercial freedom of expression, which includes pornographic freedom of expression, enjoys only a low ranking.

## Playboy’s Arguments

Playboy supports the Council’s decision to re-air the channel and claims that if the decision is overturned, the amendment to the Communications Law prohibiting erotic broadcasts would have to be declared void due to its contravening Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation. Playboy supports its claims, *inter alia*, on the following grounds:

1. The Playboy Channel is broadcast (usually in encoded form) in 175 countries around the world, including the U.S., Europe, Australia and New Zealand, Latin America and certain countries in Eastern Asia.

Most of the countries in the free world (apart from the United Kingdom) permit harder forms of pornography than that distributed by Playboy (known as XXX). In the United Kingdom only soft pornography broadcasts such as those transmitted by the Playboy channel are permitted.

2. In the US and Canada, attempts were made by feminist groups together with conservative groups<sup>6</sup> to enact laws against pornography on grounds similar to those being argued by the feminist organizations here.

All of these attempts failed in the US and Canadian Supreme Courts. In the US, it was held that the resultant statute was

unconstitutional.<sup>7</sup> In Canada, it was held that the law met the requirements of the constitution, but a later case held that the law does not prohibit soft pornography, but rather only the hardest core expressions of pornography involving violence.<sup>8</sup>

3. The wording of the amendment, “displaying a person or any of the organs of such person as an object available for sexual use”, do not apply to soft erotica broadcasts such as Playboy transmits.

In Playboy’s transmissions, women are not displayed as an object or as people without their own personality or will, or as nothing more than an implement for the satisfaction of other people’s desires.

4. Removal of the right to pornographic expression might be justified by indicating a high level of certainty of the fact that pornography causes harm.

None of the studies done in Israel or overseas have been able to prove any direct link between non-violent pornography (and *a fortiori*, soft pornography) and violence against women or violence at all.<sup>9</sup>

5. Absolute censorship of Playboy’s television broadcasts would be too extreme and unreasonable a step to take. The Council acted reasonably and moderately in drawing a distinction between hard-core pornographic channels and soft-core erotic channels and imposed limitations on viewing the channel (such as encoding, viewing late at night, *etc.* in order to prevent children or people not interested in viewing the channel from exposure to it).

6. Even if we were to accept the position taken by the feminist organizations that the channel is harmful to women (and Playboy does not concede this), the broadcast itself ought

5. *Attorney General v. Free Speech Coalition* 122 S Ct 1389 (2002).

6. In Israel too, the enactment was proposed by religious Members of Knesset.

7. *American Booksellers Association v. Hudnut*, 771 F.2d 323 (1985).

8. *R. v. Butler*, [1992] 1 S.C.R 452; *R. v. Hawkins*, [1993] 15 O.R. (3d) 549.

9. In this regard, Playboy relies, *inter alia*, on the results of the Knesset Research and Information Center published on 14 November 2000, which stated that: “No unequivocal conclusion can be drawn from the findings and therefore it is difficult to draw an unequivocal link between the viewing of pornography and violence against women”.

not to be prevented only in order to silence unacceptable views.<sup>10</sup>

The logic behind legal protection of freedom of expression stems from the view that the value of an expression need not be proven as a condition for permitting it, and that the “market of ideas” is what chooses, by way of natural selection, between things of value and things that have no value. Harmful, insulting expressions, or those which reflect a cultural infrastructure that ought to be changed, ought only to be banned where there is an almost certain danger of actual harm.<sup>11</sup>

7. A clear distinction must be drawn between displaying pornography to a captive audience, such as in public areas or in general television broadcasts which children can view, and an encoded television channel for subscribers, who have signed in advance and have asked to watch it. Even if pornography ought to be prohibited from being displayed to captive audiences, there can be no grounds for censorship which blocks pornographic expression from an adult audience which is interested in it.
8. Much harder-core pornographic films than those broadcast by Playboy are readily available at every street corner video cassette rental machines, as well as on the Internet. There is no reason for discriminating against Playboy only because the channel is broadcast on television.
9. Playboy has noted the danger of the slippery slope. If the Court were to permit censorship of Playboy broadcasts today, tomorrow mainstream films and programs which contain sex scenes or gay and lesbian themes could be prohibited. Women might also be harmed by films, advertisements, books or journals which show women as housewives doing jobs such as sewing, cooking and the laundry, or as the “weaker sex” which needs protection, and the status of women might also be harmed by fashion shows and any message that emphasizes feminine beauty care, *etc.* Should none of these things be displayed either?

## Summary

In the coming months eleven justices of the Supreme Court will rule on whether there is justification for censoring Playboy television broadcasts.

This ruling will be a precedent in Israel and perhaps in the whole world.

To date, the Supreme Court (and in particular President Aharon

Barak) has tended to follow the rulings of the US Supreme Court with respect to protection of freedom of expression, and has deviated from those rulings and imposed censorship only in extreme cases of near certainty of real harm to public stability.

In this case, the feminist organizations and Members of Knesset are asking the Supreme Court to deviate from this well founded law and to rule that Playboy’s films and programs harm women’s equality and constitute degradation, and that broadcast of them should therefore be prohibited.

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10. See the judgment in the case of *Hudnut*, *supra* no. 7 at pp. 325 and 332, where it was held that:

“The ordinance discriminates on the ground of the content of the speech. Speech treating women in the approved way -- in sexual encounters ‘premised on equality’ (MacKinnon, *supra*, at 22) -- is lawful no matter how sexually explicit. Speech treating women in the disapproved way -- as submissive in matters sexual or as enjoying humiliation -- is unlawful no matter how significant the literary, artistic, or political qualities of the work taken as a whole. The state may not ordain preferred viewpoints in this way. The Constitution forbids the state to declare one perspective right and silence opponents ...

Any rationale we could imagine in support of this ordinance could not be limited to sex discrimination. Free speech has been on balance an ally of those seeking change. Governments that want stasis start by restricting speech. Culture is a powerful force of continuity; Indianapolis paints pornography as part of the culture of power. Change in any complex system ultimately depends on the ability of outsiders to challenge accepted views and the reigning institutions. Without a strong guarantee of freedom of speech, there is no effective right to challenge what is”.

11. See: 1. HCJ 4804/94 *Station Film Ltd. v. Film and Play Review Board*, 50(5) P.D. 661.  
 2. Aharon Barak, *Interpretation in the Law*, Volume II, *Statutory Interpretation*, 401.  
 3. HCJ 399/85 *Member of Knesset Rabbi Meir Kahane v. the Administrative Committee of the Broadcasting Authority*, 41(3) P.D. 255.



# “A piece of land worth four hundred shekels - what is that between you and me?”

Michael Wigoda

**T**he purchase, by Abraham, of the Machpelah Cave from Ephron is discussed in a *Midrash* in the following terms:

As the text states: “He that oppresses the poor may well bring him gain” (*Prov.* 22:16). To whom does this apply? To Abraham, who descended into a fiery furnace for the honour of God. What did He tell him? “Arise, walk through the land, [through its length and its breadth, for I will give it to you].” Yet he was unable to find a burial place in which to bury his dead, other than by purchasing it, as it is written, “Abraham paid out to Ephron.” Why so? So that he may receive a greater reward in the world to come, thus “He that oppresses the poor may well bring him gain.”<sup>1</sup>

This *Midrash* emphasizes the exploitation of Abraham’s situation, when he had to pay hard cash for a burial place in the land that was, in the future, to be his own - the Land of Israel. Other *Midrashim* stress Ephron’s hypocrisy and cynicism, when he thrice so “generously” offers to give the field and the cave to Abraham as a gift:

No, my lord, hear me: I **give** you the field and I **give** you the cave that is in it; I **give** it to you in the presence of my people. Bury your dead. (*Gen.* 23:11)

But, when Abraham refuses to accept it as a gift, instead insisting on paying for it, Ephron has no problem in acceding to that

request. He points out that this particular plot of land is very valuable, “worth four hundred shekels;” yet, for a rich man such as Abraham this is surely no more than a trifle, “what is that between you and me.”<sup>2</sup> Nonetheless, he makes it clear that he is not willing to accept from Abraham anything other than the highest-value coinage. The Sages note this two-faced behavior:



The wicked say much, yet do not do even a little. How do we know this? From Ephron. Initially, the text states: “A piece of land worth four hundred shekels” (*Gen.* 23:15). Yet afterward it states,

1. *Midrash Yelamdenu* (ms), quoted by Rabbi Menachem Kasher, *Torah Sheleimah, Hayei Sarah*, chapter 23, note 76. [The *Midrash* here implies that the victim of exploitation (Abraham) is, in fact, the one who ends up gaining - this is not the simple meaning of the text - tr.]
2. *Midrash Tanhuma* (Buber), *Parshat Re'eh*, 4, notes: Since he cast an evil eye on Abraham’s wealth, the text (*Gen.* 23:16) spells his name defectively, without a vav.

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“Abraham paid out to Ephron the money that he had named in the hearing of the Hittites - four hundred shekels of silver **at the going merchants’ rate**” - that he would only accept from him *centenaria* [heavier coins, worth one hundred *selaim*].<sup>3</sup>

## The Exploitation Clause in the Contracts Law

This passage, dealing with the purchase of the Machpelah Cave, gives us an opportunity to look into the question of the validity of a contract made where one party exploits the other’s hardship or pressing need.

In Israeli law, this issue is regulated by Section 18 of the Contracts Law (General Part) 5763-1973, under the heading *Oshek* - “Exploitation”:<sup>4</sup>

“Where a person has entered into a contract in consequence of the other party or a person acting on his [that party’s] behalf taking advantage of his distress... and the terms of the contract are, to an unreasonable degree, less favorable than is customary, he may rescind the contract.”

This section is the last of a series of sections that deal with potential flaws in the conclusion of a contract. Legal commentators<sup>5</sup> explain that the flaw, for which the legislator allows the contract to be annulled, is different in the case of *oshek* from those applicable to the other sections. In a contract made for appearances sake, or a contract entered into as a result of error or deceit, or under duress, the flaw is in the resolve of the contracting party, who either did not actually agree to the contract, or whose agreement was flawed. In these cases, the flaw goes to the root of the legal definition of a contract as the meeting of the two contracting parties’ intentions. By comparison, where an individual’s weakness or distress is exploited by another, who convinces him to enter into a contract under disadvantageous terms, it would appear that the contracting party’s resolve to enter the contract is, in fact, wholehearted. The justification for the legislator’s intervention in his affairs is not, therefore, a legal justification, but rather a moral one: in the legislator’s opinion, the weaker party needs to be protected from being exploited by the stronger party.

## Sources for the Laws against Exploitation in Jewish Law

The *Talmud*<sup>6</sup> quotes a *Baraita* (*Tannaitic* source) that discusses the case of an escaping prisoner, who is forced into a disadvantageous agreement as a result of his distressed situation:

“There was a person fleeing from prison, and there was a ferryboat before him. He said to the ferryman: Take this dinar and ferry me [across the river, which was blocking his escape] - [in this case] the ferryman [is entitled to] receive only his fee. However, if he says to him: Take this *dinar* as your fee and ferry me across - he must give him his fee in full.”

The first part of the *Baraita* would seem to indicate that the escaped prisoner’s commitment to pay the boatman a *dinar* for the service that the latter provides is not binding, apparently because it is an excessive obligation undertaken when in distress. However, the *Talmud* wonders: If so, why does the second part of the *Baraita* state that, if the escaped prisoner tells the boatman that he obliges himself to pay the *dinar* “as your fee,” that he must fulfil his obligation? Here too the commitment was made at a time of distress! Or, in *Talmudic* terms, “What is the difference between first clause and the second clause of the *Baraita*?” The *Talmud* answers: Rami bar Hama says: it is in the case of a ferryman who is also a fisherman, who says to him, “You caused me a loss of fish worth a *zuz* (a *dinar*).” That is, according to the *Talmud*, the contradiction between the two parts of the *Baraita* can be resolved if we assume that the second part of the *Baraita* is referring to the owner of a fishing boat, a man who would stand

3. *Baba Metzia* 87a.

4. For an overview of the way in which the term *oshek* changed its meaning in Jewish legal sources, from referring to the exploitation of someone’s hardship, as in the verse “But I will step forward to contend against you, and I will act as a relentless accuser against those who have no fear of Me: Who practice sorcery, who commit adultery, who swear falsely, who cheat laborers of their hire, and who subvert [the cause of] the widow, orphan, and stranger, said the Lord of Hosts” (*Malachi*, 3:5), to the broader meaning of illegally withholding another’s money, see statements by Justice Elon, Civil Appeals 719/78, *Ilit Ltd. et al. v. Elco Ltd.*, 34(4) P.D. 673, at pp. 685-687.

5. See: G. Shalev, *Contract Laws* (1990), p. 251. See also the article by S. Deutsch, “The Exploitation Provision in the Law of Contracts,” *Mehkerei Mishpat* 2 (5742) pages 17, 24. Compare this with the statements of President Shamgar in Civil Appeals 11/84 *Rabinowitz v. Shelev*, 40(4) P.D. 533, 541. See Y. Meltz, “More on ‘Distress’ - An Interim Assessment,” *HaPraklit* 38 (5749) 571. See also D. Friedman and N. Cohen, *Contracts* (5753, 1992) Vol. 2, p. 970, where they write that the exploitation provision in Section 18 is based on the combination of two factors: lack of fairness and a “mitigated” flaw in resolve. However, even according to this approach, this flaw in resolve does not constitute sufficient, independent grounds for annulment of the contract, and must be combined with the moral grounds.

6. *Baba Kama* 116a.

to lose income were he to only accept the regular price of a ferry trip. For, if he were to continue fishing, he would make a profit of one *zuz*. Therefore, when the prisoner says to the boatman, "Take a *dinar* as your fee", he is, in effect, saying, "Take me across, and I will pay you a *zuz* to compensate you for the loss of profits that you will suffer." Thus, it is not fact that the prisoner used the words "for your fee" that determine the extent of his obligation, but the fact that the boatman would suffer a financial loss were he to accept only the normal fee for a ferry ride. Thus, the words "for your fee" can only be understood as "in lieu of the income that you would lose on my account."

A similar principle can be derived from another *Halachic* passage, dealing with the right to compensation of an individual who saves another from a financial loss.<sup>7</sup> The case deals with a person whose honey jar has become cracked. Were he to do nothing, the honey would drip out and be lost. Another person comes along and offers him the following deal: he happens to have an empty jar with him; the owner of the honey should pour his honey into the empty jar, and thus save the honey; however, he would then be obligated to pay half of the honey for this service. The owner of the honey agrees. In this case, the *Halacha* is that the owner of the honey may rescind his agreement to the deal, and the owner of the empty jar is entitled to no more than the normal fee for rental of the jar and compensation for his effort,<sup>8</sup> at the normally accepted rate. However, should the rescuer's jar have been full of wine, which had to be spilled out in order to save the honey, then the owner of the honey would be required to pay what he had agreed, since this is equal to the estimated loss incurred by the owner of the wine.

Another ruling, dealing with the laws of *halitza*,<sup>9</sup> also touches on our discussion. A widow whose brother-in-law refuses to release her [through *halitza*] promises him two hundred *zuz* (an enormous sum) in return for his agreement to do so. After the ceremony is complete, the woman refuses to fulfill her commitment, saying that she only made the promise because of her distress and the fear that she would remain an *aguna* [lit., a "chained" woman] all her life. On the basis of the *Baraita* quoted above, regarding the escaped prisoner, the *Talmud*<sup>10</sup> rules that she is in the right, and that she does not have to pay the brother-in-law anything.

From these sources we can draw two main conclusions:

- a. A person who is in a situation of distress or hardship, and, in order to escape from it, promises his fellow an exorbitant fee for his assistance (such as in escaping from imprisonment, saving the honey from being lost, releasing a woman from

being unable to remarry, and so on), is not obliged to pay his fellow more than the appropriate fee for the assistance that he has received. This conclusion is similar to the "Exploitation" provision in the Israeli Contracts Law.

- b. However, where the other party suffers a loss as a result of annulment of the exorbitant commitment, then the obligation remains binding. This conclusion is also consistent with the law: the law does not apply just because someone enters into a contract as a result of distress, but where he enters into a contract as a result of the other party exploiting that distress, and in this case no **exploitation** occurs.

## The Legal Foundation for the Right to Annul the Contract

One may ask: what legal foundation underlies the right to annul the contract in all of the above cases? The *Talmud* holds that the possibility of canceling the commitment is based on the fact that the contracting party may claim: "I was jesting with you"<sup>11</sup> (in *Talmudic* literature this is referred to as the "jesting claim"). That is, if someone in distress makes a commitment that is clearly in excess of the norm, he may say to the other party: "I did not seriously intend what I had said, and if I promised you an exorbitant sum, that was only to get you to agree to come to my aid." Based on this understanding, not only did the exploiter extract the commitment as a result of his fellow's distress, but we must assume that the contracting party never actually resolved to carry out his obligation.

7. According to Rambam, *Laws of Robbery and Loss*, 12:6; *Shulchan Arukh*, *Hoshen Mishpat*, 264:6. The source for their rulings is in the *Mishnah* and *Gemara*, *Baba Kama*, *ibid.*

8. See Sema, *ibid.*, no. 19.

9. *Yevamot* 106a. Where a woman's husband dies childless, the man's brother is required to marry the widow - this is *yibum*. Should he refuse to do so, he must release her through a ceremony called *halitza* [the drawing off of the shoe]. Until he releases her, she is not permitted to marry anyone else.

10. This is also the ruling of the *Shulchan Arukh*, *Even HaEzer*, 169:50. And, even though the brother-in-law had been deceived, the *halitza* is valid, since there exists a principle in the laws of *halitza* that *halitza* cannot be made conditionally. That is, the *halitza* releases the woman [from the brother-in-law] even if the condition is not fulfilled. See *Beit Shmuel*, *ibid.*, no. 52.

11. *Baba Kama* 116a; *Yevamot* 106a.

We need to understand why this claim - “I was jesting with you” - serves as the basis of the right to annul the contract, since there also exists, in Jewish law, a principle that “*devarim shebalev einam devarim*” - “unstated reservations are not binding.”<sup>12</sup> That being the case, what do we care that the party whose pressing need was exploited never intended to carry out his commitment under the contract, since he never expressed his reservations? The *Rishonim* and *Aharonim* offer various rationales to solve this problem. Some suggested a legal rationale, others a religious one, and there is one view that seems to offer a moral rationale. These rationales, which offer a legal basis in Jewish law for annulling a contract that was entered into as a result of one party exploiting the other’s distress, will be detailed below. We will also note the practical differences between them.

### The Legal Rationale (Deficiency of Resolve)

The explanation accepted by the **majority of Halachic authorities**<sup>13</sup> is that any unreasonable obligation that is the result of hardship or distress is not binding, since it is obvious that there was a lack of resolve to carry out the obligation. In the Ritva’s words:<sup>14</sup> “Agreement under duress is no agreement.” Thus, for example, the agreement by the escaped prisoner to pay a *dinar* for a service that is, in fact, worth a lot less, cannot be serious, and the only reason he “agreed” was because of his anxiety to escape. In fact, his intention all along was that, after the danger had passed, he would renege on the deal and not keep his part of the agreement. This is not a case of “unstated reservations”, since any person agreeing to an exorbitant commitment under similar circumstances would do likewise.<sup>15</sup>

Based on this rationale, if someone was in serious financial difficulties and needed to take a loan, and promised a third party an excessive sum so that the latter would serve as a guarantor for the loan’s repayment, he need not carry out this commitment, since his agreement to pay the excessive sum could not be seen as serious, given that it derived solely from his distressed situation.<sup>16</sup> This law applies even though there is no obligation on anyone to serve as guarantor for someone else’s loan.

### The Religious Rationale (The Reward for a *Mitzvah*)

There are those of the *Rishonim* who wrote<sup>17</sup> that an exorbitant commitment made by someone in distress is not binding, since the recipient of the promise is legally obliged to assist that person to get out of distress. The source of this obligation is in the laws

relating to the return of lost objects, which require a person to save his fellow from both monetary and bodily loss or harm. For this reason, the ferryman is not entitled to receive the exorbitant sum promised him by the escaped prisoner, since he is anyway obliged to save him, even without payment of the sum promised him.<sup>18</sup> In this case, he is entitled only to the normal fee payable for ferrying someone over the river, as is the case with any person who fulfills the *mitzvah* of returning a lost item in the course of his work, where the owner of the item is only required to pay him for his time and for the loss of other income that would have been

12. For a discussion of this principle in Jewish law, see *Encyclopaedia Talmudit*, volume 7, p. 170.
13. See, for example: *Ramban Novellae*, *Yevamot* *ibid.*, sv *Ud’amrinan*; *Rashba Novellae*, *Yevamot* *ibid.*, sv *Betar deHalatz*. Use of this rationale provides a clear explanation of a statement by Rabbenu Ovadiah MiBartenura, in his commentary on the *Mishnah* (*Bechorot* 4:6), regarding a certain rabbi who was in sole charge of arranging the preparation of divorce documents (*gittin*), and who would demand an exorbitant fee from the husband for doing so, thereby exploiting the husband’s distress, since he was totally dependent on that rabbi. Rabbenu Ovadiah writes of that rabbi in particularly harsh terms: “In my eyes, this [one] is no rabbi, but a **robber and rapist**.” In light of what we have written, the husband was only obliged to pay the rabbi the appropriate fee for preparation of the *get*, since his promise to pay a higher figure was a result of his distress.
14. *Ritva Novellae*, *Kiddushin* 8a, sv *Le’olam*.
15. In *Halachic* terms, this is called “*devarim shebelibo uvelev kol adam*” - “unstated reservations that are common to all.” That is, although the intent to treat the commitment as a jest is unstated by the contracting party, any person in similar circumstances would do likewise.
16. *Responsa Rosh*, 64, no. 3, codified as law by *Rema*, *Hoshen Mishpat*, 129:22. In our own times, there exist corporations which provide guarantees for a fee (See *Responsa Gur Aryeh Yehuda*, 71, where he writes that this was already customary in his own time). Given this development, the ruling of the *Rosh* is that the borrower is exempt from paying any more than the generally accepted fee.
17. See Mordechai on *Baba Kama*, chapter 10, note 174, in the name of Rabbenu Hizkiya, who wrote, in the case of the ferry: “And the reason... is that [here] he is obligated to save him... and this is also a *mitzvah*, but in the case of other crafts [where no *mitzvah* is involved], he [the other party] is obliged to give him whatever he agreed with him.”
18. According to this approach, we must indicate that the detention from which the prisoner was escaping was an illegal one (for, if it were legal, there would certainly be no *mitzvah* to assist him). This is not necessarily the case if we adopt the legal rationale, as above, which would apply even if the detention had, in fact, been legal, since there too the prisoner would not seriously commit himself to the exorbitant payment. This question was raised by Justice Y. Meltz (above, note 5) at page 576.

earned during that time.<sup>19</sup> The same applies to the *halitza* case: the woman is not obliged to carry out her commitment, since the brother-in-law had a religious obligation to release her.<sup>20</sup>

On the basis of the religious rationale, as opposed to the legal rationale, if someone promises his fellow an excessive amount for serving as guarantor, he would be obliged to pay that sum, since no one has a religious obligation to serve as guarantor for somebody else's loan. Similarly, someone who, because of intolerable living conditions, agreed to rent an apartment at an excessive price, cannot abrogate the contract, since the owner of the apartment is under no obligation to make it available to him at a the customary price. On the other hand, if we adopt the legal rationale discussed previously, that a commitment to an exorbitant fee is not binding, due to the absence of proper resolve on the part of the person making the promise, under certain circumstances - such as the level of hardship and the price differential when compared with market prices, and so on - **it may be** that the lessee could withdraw from his obligation.

It should be noted that the religious rationale for annulling a contract applies even when the contract was not concluded on the basis of one party's distress: it is sufficient that the subject of the contract should be of the nature of a religious obligation for the other party. According to this approach, one may use an exorbitant promise to trick someone into carrying out something he is anyway obliged to do.

## The Moral Rationale ("Compelling to Avoid the Trait of Sodom")

A third approach can be found in the *responsa* of the Maharshal, Rabbi Shlomo Luria (Poland, 16th century).<sup>21</sup> He argues that, in all those cases discussed by the *Talmud* where the *Talmud* rules that the contracting party is permitted to retract his commitment, the situation is one in which "one benefits, while the other loses nothing."<sup>22</sup> Thus, for example, when the ferryman receives his regular fee, he in fact incurs no loss, while the escaping prisoner has benefited. In such a case, "we may compel him to avoid the trait of Sodom."<sup>23</sup> That is, the refusal of the ferryman to make do with the regular fee is immoral - the trait of Sodom - and thus he may be compelled to act in a moral way.

According to this approach it would appear that, in the case of the ferryboat, we can assume that that, were it not for the prisoner's apparent distress, the ferryman would have agreed to take him across for the regular fee, but in this case he wanted to exploit the prisoner's situation. However, were this not the case

- for example, where the boat's owner was not in the habit of carrying passengers, even for the customary fee - we would not be able to argue that his demand for an exorbitant sum is "Sodom-like". Indeed, is everyone required, under the "compulsion to avoid Sodom-like behaviour" rule, to accept any and every request from someone else, even if that person offers the appropriate fee?! We can compare this to the case of a taxi driver who is looking for a fare, and is stopped by a woman in labor who asks him to drive her urgently to hospital, and he asks her for an exorbitant sum for his services. In such a case, we do indeed "compel him to avoid the trait of Sodom," and even if the woman had agreed to pay an exorbitant fee for getting her to the hospital, she is permitted to retract her agreement. On the other hand, if the taxi driver is gotten out of bed in order to drive the woman, we can't force him to agree to do so for the normal fare, since, in that case, his demand for a higher fare is "Sodom-like."<sup>24</sup> Indeed, this reservation derives from the second part of the *Baraita* quoted above. In the *Baraita*, the fisherman/boat owner who assists the escaping prisoner to cross the river is entitled to the full sum agreed upon, since, in this case, his demand for a higher fee is not like "the trait of Sodom."

Thus, according to this approach, the legal basis for annulling a disadvantageous contract entered into because of distress is a moral one, that another person's distress is not to be exploited to his disadvantage. Here the *Talmud's* rulings don't relate to the exploiter's religious obligations, but to a general framework of

19. The reason for this is that the returning other person's lost item is not more important than [returning] his own. See J. Blass, *Hok Leyisrael*, Unjust Enrichment, pp. 126-127.

20. In the religious rationale discussed here, it is not clear how the *Talmud's* "jesting" claim applies. If the exemption from paying the exorbitant sum derives from the fact that the other party has a religious obligation, what difference does the lack of intention to pay the exorbitant sum make? In this regard, see *Machane Ephraim*, Laws of Hiring, no. 15.

21. *Responsa Maharshal*, nos. 24-25. Similarly, see *Piskei Din Rabbaniim*, part 3, p. 375: "That the fact that this one may exempt himself afterwards and [only pay] his [regular] fee, is based on the principle that "we may compel to avoid the trait of Sodom."

22. As in the case in *Baba Kama* 20a.

23. For the relationship, in general, between "This one benefits, while this one suffers no loss" and "we may compel him to avoid the trait of Sodom," see: Rambam, *Laws of Neighbors*, 7:8. And, for a lengthier exposition, see: N. Rakover, *Unjust Enrichment in Jewish Law*, Jerusalem 5748, pp. 20, 22; J. Blass, *Hok Leyisrael*, Unjust Enrichment, Jerusalem 5742, p. 55.

24. Compare with *Pnei Yehoshua*, *Baba Kama* 20a, sv *BeTosafot*.

maintaining social order. This approach approximates that of the Israeli legislator.

## Conclusion

On the basis of *Talmudic* sources, and in light of the various approaches that we have looked at, *Halachic* authorities have discussed the validity of various types of contracts - such as those involving medical fees,<sup>25</sup> matchmaking fees,<sup>26</sup> fees for interceders,<sup>27</sup> agents<sup>28</sup> and others<sup>29</sup> - where the common factor involved is the hardship or distress being suffered by the recipient of the service,<sup>30</sup> and the exorbitant payment demanded.

Various rulings have been issued regarding the validity of the abovementioned agreements, based on what the different authorities view as the legal basis for revoking the commitments made, in the various *Talmudic* cases that we have looked at. As we have noted, the majority of the *Halachic* authorities hold that the legal basis lies in the lack of a proper resolve on the part of the party who makes a exorbitant commitment when in distress. Others hold that the basis lies in the exploiter's religious obligation to assist his fellow in his time of need, and, absent such obligation, there would be no grounds to exempt the contracting party from his commitment. Finally, there are those who argue that the exemption from fulfilling the commitment is a moral consideration, wherein it becomes appropriate to prevent the exploitation of another party's distress.<sup>31</sup>

30. There are, however, cases which are different from those described here, where the hardship involves the lack of an alternative to entering into the contract, and not any personal distress or hardship suffered by the contracting party. Examples of this would be lawyers' or realtors' fees, where the hardship arises from the fact that the client cannot (or is legally prevented from) achieve his purpose, such as the purchase of a house or defense in court, without contracting for the services of a lawyer or realtor. See note 13, above, where we quote the commentary of Rabbenu Ovadiah MiBartenura.
31. According to this approach, it would appear that this applies in any case of distress, and that it might even be permitted to use this "jest" approach *ab initio*. See *Piskei Din Rabbaniim*, part 3, p. 375, where it states explicitly, in regard to the Maharshal's approach, that this is a legal way of motivating the husband to issue his wife a *get*, when the *Beit Din* has ruled that he is obliged to do so.

25. See, for example, *Responsa Tzitz Eliezer*, Part 5, *Kuntres Ramat Rahel*, no. 25.

26. See *Rema*, *Hoshen Mishpat*, 264:7. Compare with Civil Appeals 4839/92, *Ganz v. Katz*, 48(4) P.D. 749, in which the court recognized the validity of a matchmaking contract in the sum of \$100,000!

27. See, for example, *Responsa Rema*, 86.

28. See, for example, *Responsa Mahari ben Lev*, part 1, no. 100.

29. Such as a discussion on the exorbitant salary promised for a rabbinical posting, as a result of the community's hardship due to the lack of a local rabbi. See *Responsa Maharshach*, part 2, no. 80. See *Responsa Havot Yair*, 186, regarding the fee to be paid to the person who blows the *shofar* (ram's horn) on *Rosh Hashanah*. *Responsa Meshiv Davar*, part 2, no. 51, deals with the case of a high fee promised to a rabbi for officiating at the wedding ceremony, where the groom only agreed to pay because all the necessary arrangements had already been made, and the wedding could not be postponed. For a case where a woman promises an exorbitant sum to her husband so that he will divorce her (when there is evidence of the woman's distress), and where, after the divorce she wishes to cancel her agreement, see *Responsa Maharshal*, nos. 24-25; *Piskei Din Rabbaniim*, part 3, p. 375.



Absalom's Tomb in Jerusalem  
(Courtesy of the Israel Government Press Office)

PLEASE MARK YOUR CALENDAR:

# The 12th International Congress of The International Association of Jewish Lawyers and Jurists

To be held in Israel, 23-26 of December, 2003  
followed by a Post-Conference tour to the  
Dead Sea, 26-29 December, 2003

Details to follow

*The right to vote and to be elected at the Congress will be limited  
to members who have paid up their membership fees by no later than 20 October, 2003*

## In Memoriam: Dr. Meir Cotic, 1908 - 2003

Meir Cotic was born in Marculesti, Bessarabia. He earned a B.A. in philosophy and literature and a doctorate in jurisprudence at the University of Brussels.

In Romania he was secretary of the Zionist-Socialist party, *Poalei Zion - Ze'irei Zion*, and editor of its publications. He also served as Vice-Chairman of the Zionist Federation, as an organizer of the *Youth Aliyah* and the "illegal immigration" to Palestine under the British Mandate, as a delegate to Zionist congresses and as a member of the World Zionist Organization General Council.

He emigrated to *Eretz Yisrael* in 1941 and practiced law in Tel Aviv. He was an emissary of the Labor Zionist movement in Europe (1947), chairman of the Romanian

Olim (Immigrants) Association (1952), and a member of the presidium of the World Association of Bessarabian Jews and of the presidium of the Israel-France Friendship League.

Dr. Cotic was a long time active member of our Association.

Dr. Cotic wrote (in Hebrew) a number of books on historic Jewish trials, including *The Schwarzbard Trial: A Murder of Revenge against the Background of the Pogroms in the Ukraine* (1972); *The Beiliss Case: Blood Libel in the Twentieth Century* (1978); and *The Dreyfus Affair* (1982).

He won the *Phicman Prize* in 1998 and a distinguished award from the *Yankelevitch Fund* in 2000.

Dr. Cotic died in Jerusalem on 10th May, 2003.



# INTERNATIONAL CONFERENCE

Paris, France, 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> OCTOBER 2003

on

## INTERNATIONAL TERRORISM, RACISM, ANTI-SEMITISM: WHAT RESPONSE TO EVIL?

Venue: Palais de Justice, 1<sup>st</sup> Chamber of the Court of Appeal of Paris

UNDER THE AUSPICES OF:

Mr. WALTER SCHWIMMER, General Secretary of the Council of Europe  
Justice GUY CANIVET, Premier President de la Cour de Cassation  
Justice JEAN-MARIE COULON, Premier President de la Cour d'Appel de Paris  
Justice AHARON BARAK, President of the Supreme Court of Israel  
The Rt. Hon. The Lord WOOLF, Lord Chief Justice of England

AND UNDER THE PATRONAGE OF:

Président **Robert Badinter**, *Président, "Cour Internationale de Conciliation et d'Arbitrage", anc. Président "Conseil Constitutionnel", France*; Grand Rabbin **Gilles Berenheim**; Pasteur **Jean-Arnold De Clermont**, *Président de la Fédération Protestante de France*; Recteur **Dalil Boubakeur**, *Président du Conseil Français du Culte Musulman, Recteur de la Mosquée de Paris*; Président **Roger Cukierman**, *Président du CRIF*; Bâtonnier **Guy Danet**, *Président d'honneur du Conseil National des Barreaux de France*; **Edouard De Lamaze**, *anc. Délégué Interministériel aux professions libérales*; Président **Pierre Drai**, *anc. Premier Président de la Cour de Cassation*; Président **Miryam Ezratty**, *anc. Premier Président de la Cour d'Appel de Paris*; Bâtonnier **Bernard Du Granrut**; Bâtonnier **Georges Flecheux**, *Président de l'Institut des Droits de l'Homme du Barreau de Paris*; **David Gordon Krief**, *anc. Président de la Fédération Nationale de l'Union des Jeunes Avocats*; Professeur **François Gros**, *Secrétaire perpétuel honoraire de l'Académie des Sciences*; Bâtonnier **Paul-Albert Iweins**; Président **Jean Kahn**, *Président d'Honneur de la Commission Consultative des Droits de l'Homme*; **Théo Klein**, *anc. Président du CRIF*; Monseigneur **Jean Marie Lustiger**, *Cardinal de Paris*; Professeur **René Remond**, *de l'Académie Française, Président de la Fondation Nationale des Sciences Politiques*; Grand Rabbin **Rene Samuel Sirat**, *anc. Grand Rabbin de France*; Professeur **Ady Steg**, *Président de l'Alliance Israélite Universelle*.



## PROGRAMME

**Wednesday, 15 October, 2003**

**18:30: OPENING SESSION at Sorbonne University**

**Opening Remarks:**

*Dr. JOSEPH ROUBACHE*, attorney-at-law, President of the French Committee of the Association.

*Judge HADASSA BEN ITTO*, President of the International Association

**Greetings:**

Monsieur *DOMINIQUE PERBEN*, Minister of Justice, France.

**Keynote address:**

*Dr. BERNARD KOUCHNER*, Professor, Conservatoire National des Arts et Metiers (CNAM), former Minister of Health, former U.N. representative to Kosovo.

**20:00: Award Ceremony:**

**Honorary Award -**

**“RENE CASSIN\* PRIZE” to**

**Mrs. FRANCOISE RUDETZKI**

**President of the association “SOS ATTENTATS, SOS TERRORISM”**

*\*RENE CASSIN, Peace Nobel Prize Laureate, founder of the IAJLJ*

**21:00 Reception at the Sorbonne University**

**Thursday, 16 October, 2003**

**INTERNATIONAL TERRORISM**

**09:00-11:00 SESSION 1**

Introduction: *Dr. FRANCIS ROSENSTIEL*, President of the Forum for Democratic Europe; Goodwill Ambassador of the Council of Europe

**18:30:**

**Organizing and Financing of International Terrorism**

*Professor XAVIER RAUFER*, Institute of Criminology, University of Paris, France

**International Terrorism: An Israeli and a Jewish Perspective**

*Mr. EFRAIM HALEVY*, former National Security Adviser to the Prime Minister of Israel

**11:00-11:30 Coffee break**

**11:30-13:30 SESSION 2**

Moderator: *Dr. JOSEPH ROUBACHE*, President, the French Committee of the Association

**Respecting Human Rights in the War against Terror:**

**The Israeli Perspective**

*Justice AHARON BARAK*, President of the Supreme Court of Israel

**The American Perspective**

*Professor RUTH WEDGWOOD*, Yale University and John Hopkins University, USA

**Combating Terrorism in Europe**

*Mr. GUY DE VEL*, Director General of Legal Affairs at the Council of Europe

**Reception by the KRAEMER families at their mansion; view their exceptional private collection of 17<sup>th</sup> and 18<sup>th</sup> century antiquities and furniture.**

Friday, 17 October , 2003

11:00-11.30 Coffee break

**RACISM AND ANTI-SEMITISM**

11:30-13:30 **SESSION 4:**

**09:00-11:00 SESSION 3:**

Moderator: **Mr. ITZHAK NENER**,  
attorney-at-law, First Deputy President of the  
Association

**Xenophobia, Racism and Anti-Semitism**

**Professor SCHMUEL TRIGANO**,  
University of Paris, France

**Anti-Zionism: a Form of Anti-Semitism**

**Professor GEORGES ELIA SARFATY**,  
University of Clermont-Ferrand and CNRS,  
France

**The Protocols of the Elders of Zion: An  
Old Libel – a New Weapon**

**Judge HADASSA BEN ITTO**,  
President of the Association

Moderator: **Mr. DANIEL LACK**,  
Permanent Representative of the IAJLJ to the  
U.N. in Geneva

**The International Community, a Record of  
Failure**

**Professor ANNE BAYEFISKY**,  
York University, Toronto and Columbia  
University, New York

**Combating Racism and Anti-Semitism in  
France**

**Mr. YVES BOT**,  
Procureur de la Republique pres le Tribunal  
de Grande Instance de Paris

20:30:

**Shabbat Dinner**

*The International Association of Jewish Lawyers and Jurists*

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Website: [www.intjewishlawyers.org](http://www.intjewishlawyers.org) – [www.lawyersdirectory.org.il](http://www.lawyersdirectory.org.il)

*Participation in the conference will be limited to members of the Association and invited guests.*

# Paris Conference, 15 - 17 October 2003

And

**5 night hotel package, 15 - 20 October, 2003**

**3 days/2 nights post conference tour to  
Normandy, 20 - 22 October, 2003**

## Itinerary

### Wednesday, 15 October

Arrivals, registration and check into hotels

Late afternoon: Welcome Reception and Opening Session  
- Sorbonne University

### Thursday, 16 October

09:00 - 13:30 Deliberations at Palais de Justice

Afternoon free

Evening reception at the private mansion of the Kraemer family

### Friday, 17 October

09:00 - 13:30 Deliberations at Palais de Justice

Afternoon free

Evening: Shabbat dinner

### Saturday, 18 October

Morning synagogue services

Afternoon and evening free

### Sunday, 19 October

Free day

### Monday, 20 October

Departures

## OR

**3 days/2 nights Post-conference tour to Deauville  
and Normandy**

## Hotels in Paris

**Headquarter hotel:** Le Meridien Etoile, Paris, **Executive rooms.**

**81 Boulevard Gouvion Saint-Cyr , 75848 Cedex 17 , Paris, 75017**

**Le Meridien Etoile** is strategically located on Paris' Right Bank, facing the Palais des Congrès, a few steps away from the famous Champs-Élysées and only two metro stops from the famous shopping center Galerie Lafayette. Porte Maillot metro station is across the street from the hotel, beneath a shopping mall containing 130 shops.

**Le Meridien Etoile** was extensively renovated and redecorated in 2001 and welcomes you to its warm and modern setting.

**Moderate accommodation:**

**Hotel des Deux Accacias** (limited number of rooms). Fully renovated rooms, centrally located within walking distance of the famous Champs-Élysées.

**28, rue de l'Arc de Triomphe, Paris, 75017**

## Rates:

## Registration fees:

<b>Participant</b>	<b>Euro 200</b>
<b>Accompanying person</b>	<b>Euro 150</b>

## Registration fees include:

- Wednesday Oct. 15 - Welcome reception and Opening Ceremony
- Thursday, Oct. 16 - Reception at the home of the Kraemer family
- Friday night dinner
- Simultaneous translation (English/French/English)
- 2 coffee breaks
- Transportation
- Kits, name tags, program

## Hotel packages

### Hotel Le Meridien Etoile - Executive rooms

- Rate per person sharing a double room on BB basis **Euro 635**  
Single room supplement **Euro 522**
- **Full buffet breakfast**

### Hotel des Deux Accacias - moderate accommodation

- Per person sharing a double room on BB basis **Euro 345**  
Single room supplement **Euro 275**
- **Continental breakfast**

## Includes:

- 5 nights accommodation on bed and breakfast basis
- Group arrival and departure transfers to/from airport
- Taxes and service charges
- Porterage

## Post-conference tour to Deauville and Normandy, 3 days/2 nights, 20 - 22 October 2003

### Monday, 20 October

#### Paris/Les Andelys/Rouen/Honfleur/Deauville

Departure from Paris to Rouen, an historical city where Joan of Arc was burnt at the stake, continue to Honfleur, an enchanting fishing port and the Eugene Boudin Museum. Arrival at Deauville. Stroll along the famous promenade. Overnight at the Libertel Yacht club

### Tuesday, 21 October

#### Deauville/Caen/Landing Beaches/Deauville

After breakfast, departure to Caen. Visit the "Memorial Museum" - a museum for peace with its collection of photographs and films documenting D - DAY. Continue to Longueville, Omaha Beach and the American Cemetery. Continue to Point Du Hoc where remains of the war are still there. Overnight at the Libertel Yacht club

### Wednesday, 22 October

#### Deauville/Gastronomical Tour/Giverny/Paris

After breakfast and check out, leave Deauville to Domaine St. Hippolyte, a majestic manor from the end of the 15th century to visit a cheese farm. Visit the manor, and the farm. Continue to Coquainvilliers to visit a Calvados Factory and on to Giverny to discover the fabulous world of the impressionist painter Monet. Visit the Museum and stroll in the magnificent gardens. Afternoon arrival in Paris airport or back to Paris

<b>Rate per person sharing a double room</b>	<b>Euro 377</b>
<b>Single room supplement</b>	<b>Euro 99</b>

## Rate includes:

- 2 nights accommodation on bed and breakfast basis in tourist class hotel in Deauville
- Touring, guiding and entrances as per the above program
- One lunch en route

# The International Association of Jewish Lawyers and Jurists

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Justice Moshe Landau

## Honorary Deputy Presidents:

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