

## COMMUNICATION

### UNITY OF EXPRESSION FOR THE PEOPLE OF ISRAEL

1. When the Jewish State came into existence, its first constitutional body, the Provisional Council of State, invited advice and suggestions from jurists for the creation of institutions in the realm of public law. One of the questions was then, whether there ought to be only one elected Assembly, or two such Houses, one being a sort of Senate or Council of Notables, and the other a Chamber of Deputies, each having its particular functions and competence, on the model of many parliamentary systems of legislature.

In a Memorandum I prepared at the time for the Provisional Council I stressed that Israel was confronted with a specific problem, unknown to any other nation, due to the fact that during thousands of years, the Hebrew nation, although deprived of territory, had been living as a single unit, one might say as a constitutional unit that had survived to that day and that ought to maintain its functions and powers within appropriate limits. This object, I added, could be attained by creating, next to the Assembly which was eventually called the Knesset, a Council of the Nation (*Mo'etzet ha-Oomah*).

I further remarked that this our new State of Israel was not meant to be merely an autonomous entity, "born to be at once sundered from the womb of World Jewry and to live its own life without any legal connection with the Jews of the Dispersion"; on the contrary, I warned that "such a trend was most dangerous, as it might cause the basic unity of the people of Israel to be disrupted and the local population to be deprived of the immense contribution to be made by Jews from every corner of the world". The contribution I had in mind was clearly not the financial assistance, however considerable it might be (and still is for all to see), but rather the moral support which the whole of Judaism has both the right and the duty to offer.

To this Memorandum no reply was ever given by the Committee of Ministers, nor does it seem to have even been taken into consideration. And yet, the vitality displayed by Judaism during the past twenty-five years demonstrates that the Diaspora is not, and cannot remain, aloof from the public bodies of the State of Israel. Solutions have been sought in voluntary institutions, in superficial formulas, incapable of solving any problem. Loud laments are being voiced deploring the drift to assimilation which threatens

to break the very backbone of Jewish tradition. But no attempt is being made in the proper direction, for no one has the courage to concede what has been proved by the experience of twenty centuries, i.e., that even in its dispersion the Jewish people has been living as one national unit, bound by one common destiny.

I have therefore felt the urge to repeat and elaborate my original suggestion, in the hope that someone else, better qualified than myself, may amplify its foundation in history, logic and law.

2. The concept of a single social structure capable of creating legal relations in its own midst has undergone constant development in the long course of human history, giving rise to successive forms typified by the progressive passage from primitive simplicity to the complexity of variegated relations and presenting features that were essentially new as one passes from one stage to another.

The earliest form of social organisation was probably the *family*, held to have grown as it were from the very impulse of nature. The family then widened its scope to that of the *tribe*, within whose closed circle—as in the case of nomadic communities—the basic relations are aimed at the search for food and its distribution, or are devised to regulate the rank of authority of certain individuals, and the norms and methods needed for collective defence, since this was the main element of external relations of the community with other groups.

In the following stages new structures appear, whose embryonic form is already called that of a *State*, as they seek to regulate the relations among the various social groups already described. At this stage these groups and the individuals belonging to them initiate normative relations within other groups; and, as generations follow one another, trade and cultural links are created, steadily gaining in intensity and giving rise to the institutions of international law. Thus we come to witness the creation of *international bodies* capable of enacting collective norms binding upon the States as well as their subjects, so that anyone of them can be made liable to a duty or entitled to a right beyond the political limits of his respective State.

This abridged synopsis is merely meant to recall, for the sake of argument, that the creation of rights and duties of the citizen outside his own particular State is by no means something abnormal or contrary to the structure of law in general: it is simply the outcome of an evolution parallel to the changing human relations. Whatever the case may be, political and cultural relations did exist even in ancient times between a State and its subjects living abroad, although they may have been somewhat fragmentary and transient, as in the cities of ancient Greece and in imperial Rome.

3. On the other hand, for scope and permanence, the case history of Israel is unique.

Indeed, if we consider the Jewish people in particular, we note that ever since its earliest days its structure is quite peculiar; and—as we shall see presently—its exceptional character resides in its univocal functionality.

It is generally agreed that for a given nation to acquire its structure as a State, it must meet the fundamental requirements of territory, people, and culture: the amalgamation of these three elements then crystallizes into one common legal system which gives form and force to the State.

Nevertheless, these three constitutive elements are not always present in the same, fixed and permanent, proportion. Their respective share may vary; and the manner in which they combine will be reflected in either more or less dynamism and ability to survive. The “territory” factor is material to the existence of the group as a so-called “State” in full-fledged possession of its power. Lacking such power, as in the event of foreign conquest, the “social entity” may be able to survive in a subdued form, especially where the “cultural” element is vigorous and autonomous; but with the passing of time it will weaken, until it decays and disappears completely, unless “people” and “culture” have acted to retrieve their lost “territory”.

In another respect, the “social entity” can possibly subsist without a “territory”, provided the people, or any substantial part thereof, although exiled to some other region, manages to preserve its cultural values as a living and actually operative legacy, transmitted in its entirety by tradition. Even then the State authority may continue to exist more or less, for some time and to a certain extent; but is doomed eventually to die out, as occurred to the nations mentioned above. Now this did not happen to Israel: although forcibly expelled from its country, disintegrated by constant persecution into numerous fragments and scattered all over the world, it has clung to its peculiar spiritual way of life, keeping ablaze its aspiration to return to its home-country and preserving its memory as if it were still physically affected by its seasons, its climate, agriculture and produce, the geographic conditions of its hills and valleys, the aspect of its towns and villages; and it has persisted in observing its specific norms of human relations and the unbroken transmission of its tradition by history and culture.

A common language, a distinctive culture, a common moral and religious tradition and an unrelenting aspiration to the land of the forefathers have preserved for that nation, spread over many distant communities, the character of a social unit equivalent to a State; so that, over the many centuries, one common legal system has remained in force as an accepted discipline, in the form of case-law enacted by its sages and rabbis, communicating among themselves for the purpose of adjudication.

It will also be recalled that at all times there subsisted some symbolic physical connection with land within the territory of Israel and that the Jewish centres of Jerusalem, Safed and Tiberias were constantly looked upon as a physical and spiritual nucleus interrupting the course of prescription of the nation’s claim to its homeland.

The aggregate of all these elements justifies the conclusion that, as an exception unique in history, Israel has continued to exist and to act as if it had never ceased to be State; until the prophetic vision of a Return actually came true.

Now since this Return is still incomplete, might it be objected that the age-long unity of the Nation has finally been broken? Have all the unifying factors described above ceased to operate as between the new State and the Dispersion?

4. This question confronts us with the very problem raised some twenty-five years ago; and we now propose to discuss it in the light of recent experience.

When faced with a problem of constitutional law, scholars will generally refer to the example of the best-known constitutions and will feel tempted to reject as something impossible or, at best, abnormal the possibility of a public law link between a subject and two different States. It is generally held that the subject cannot be connected to more than one State and that his duty of allegiance is exclusive of any other competing link towards some other State-entity. *Unto this day such outdated axioms still appear in legal literature, and the idea of double allegiance is sometimes denounced as sheer heresy.*

But mankind has gone quite a long way since the days when the State authority was strictly confined to a closed and isolated group. Just as families managed to combine into tribes, villages or townships, and the latter into States, so the States themselves have entered into mutual relations in every field of life, thereby promoting, in turn, relations among their respective nationals. And in order to regulate all these relations, it became necessary to create institutions whose character is properly international and occasionally supra-national.

In fact we now have a wide section described as the "Defence of Human Rights" and which is binding beyond the jurisdiction of the several States. That authority, established by the Charter of the United Nations, is empowered to apply sanctions; and a citizen may exercise these rights beyond the jurisdiction of his State and notwithstanding his subjection to that State. Admittedly, the sanction referred to may not always succeed in overcoming the resistance of the municipal State authority; but this does not disprove the existence of the norm: are there no instances of a sanction proving ineffective within the jurisdiction of the State itself?

Objection is also being made to the coexistence of moral links between one person and two different States; and we still remember the charge of double loyalty recently raised against the Jews by a French statesman. But this is no more than a vestige of anachronistic notions whose persistence only serves as a pretext for anti-semitism. This scarecrow of double loyalty is dying off, as life is discovering a practical way of harmonizing the divergent aspirations to universality: the network of human relations in the fields of religion, ideas, professional and scientific activity calls for appropriate norms as a background

for valid legal relations; and these norms are bound to break loose from the straitjacket of State authority. Consequently, in the most progressive countries, double nationality has long since become an entirely normal feature, as shown, by two examples borrowed from positive constitutional law. A statute of the Vatican formally confers the citizenship of that State to any person exercising an official function within its territory. The other example (which is even closer to our own case) is to be found in the Constitution of the Italian Republic of 1947, which provides in its art. 51 that:

It is possible for a Statute to confer upon Italians not belonging to the Republic a status amounting to Italian citizenship for the purpose of appointment to public offices or elective functions.

This last example amply proves our view, although Italians having acquired a foreign nationality have never been personally involved in a bond of an extent or intensity comparable with that by which the Jews have been kept together all over the world during so many generations!

5. These premises bring us to our conclusion. It is quite legitimate to create, within the sphere of constitutional law as conceived in modern times, a joint normative body for both the Jews of the State and for those of the Diaspora; and it is absurd to anticipate that the creation of the State in the land of Israel's destiny is bound to cause a dichotomy capable of disrupting its millenary unity. The experience acquired during the first twenty-five years of the State has shown that the faith in a common destiny has increased immensely by a constant process of development in various fields. Efforts have been devoted to meet the most urgent needs of Jewish reality by resorting to inadequate devices and by creating amorphous organisms deprived of constructive vigour. What cries for a solution lies at the crux of the problem; and it is there for all to see, as disclosed by past history and by present creation. The unity of Judaism must find its proper expression in the State of Israel, in order to pave the way for the future.

I have no detailed blue-print to propose. This will require far greater efforts; but there is no limit to what we may expect from our men of learning, conversant as they are with both constitutional law and Jewish tradition, and willing to respond to the call of the State and of the Diaspora. The object of their enquiry and material for their draft statute for the creation of a Council of the Nation will include all that has formed the basis of Jewish life in the past and is still required for its present spiritual needs.

The competence of the proposed Council will obviously not extend to anything appertaining to the internal organization of the State, such as administration, police, defence, judiciary, health services, communications, economic structure, customs, internal taxation, and the like. But the Council, composed of representatives of the entire Jewish people, whether resident in Israel or abroad, could be empowered to discuss and decide on matters of

common interest, such as: education generally, specific traditions in their permanent aspects, problems of *aliyah* (immigration), representative functions in the world at large, protection of the Jews from persecution, economic cooperation between both sections of Judaism, and, above all, the promoting and spreading of Jewish thought.

The last item is fundamental, for it is nonsense to believe that the State of Israel was created merely as a place of refuge, where Jews escaping persecution may find a physical shelter and possibility of rehabilitation, or that it is merely destined to become another of the States that manage to vegetate and to lead an amorphous life deprived of moral significance; that all its efforts will be aimed at fighting its way in the clash of material interests in the arena of economic, agricultural and industrial competition, or to achieve scientific progress for purely material aims, leading to ever greater technological development. All these are already being done anyway; but they are not enough. For thousands of years, the destiny of Israel has followed one continuous course; it has been marked by an uninterrupted series of torments; it has suffered every conceivable form of persecution, from the perfidy of false accusation and the ferocity of torture, aimed at destroying its creative force, denying its right to work and wiping it out of existence by extermination. And yet it has always managed to preserve at least one spark of life, from which we have eventually inherited its spiritual values, the Divine Learning, by which we have lived and by which we have been enriched during these many centuries.

This Learning should be studied and put into practice by the Jewish people in its free and independent commonwealth, so as to achieve in effect that ideal of harmony which is vouched by the principles of our doctrine: by the principle of equality among men, as proclaimed and sensed within the Jewish nation; the principle of individual liberty, more widely expressed than anywhere else; and, above all, the ideal of justice tempered by mercy.

The Jewish people have an instinctive awareness of these principles and are guided by their impact: we witness it among our brothers, as they shed the successive layers of assimilation's crust. True, we are no angels; we are not infallible and probably shall never be; but our natural inclination, as demonstrated by free and tolerant dialogue, will draw our nation closer and closer to the promised harmony in human relations.

Such is our lot and our age-long dream; and the entire Jewish nation should be welcomed to participate in its realization, including that part of the nation which still remains in the Dispersion. In contact and community of thought with the independent State of Israel, the Diaspora will be made to realize new spiritual values and to disseminate them among the nations.

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## PERIODICALS

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