

## FOREWORD: ARAB CITIZENS OF ISRAEL: THE CHALLENGE FOR ISRAEL AND ITS CRITICS

SAMUEL ESTREICHER\*

The Conference represented in these pages originated in conversations I had with Jamil Dakwar, while an LL.M. candidate at NYU. A talented Israeli Arab lawyer active in Israeli civil rights organizations, Jamil suggested both the theme for the Conference and many of the speakers. The proposal struck a chord. I was engaged in teaching for only the second time a seminar on the International Law of the Israeli-Palestinian Dispute, and having just lectured on the moral, if not legal, obligation of Arab host states to integrate long-term Palestinian refugees residing within their borders, the need for a symmetrical focus on Israel's own obligations to its own long-term residents—indeed, citizens—was obvious.

Several of the papers below highlight the deficiencies of Israel's treatment of its Arab citizens—notably the papers on discrimination in employment (Sharon Rabin Margalioth), public accommodations (Moshe Cohen-Eliya), and public education (Zama Coursen-Neff). Affirmative measures are the subject of the papers on equality urging more of an effects-based jurisprudence (Eyal Benvenisti and Dahlia Shaham) and group-based rights within a multicultural Israel (Ilan Saban). A fifth contribution (Yoram Margalioth), sounding a somewhat different note, maintains that much of what might appear to be ethnic/religious discrimination against Arab citizens is best explained as disadvantages often faced by lower-income groups. Each paper exhibits considerable research and command of the literature, making a contribution to our understanding of these critical, though contentious, issues.

Let me offer a few general themes that might help locate the discussion that follows. They take the form of two challenges for Israel, and two for its domestic critics.

---

\* Dwight D. Opperman Professor of Law & Co-Director, Institute of Judicial Administration, New York University School of Law.

## I. THE IMPERFECT DEMOCRACY AND THE GARRISON STATE

Unfortunately, Israel has not had the luxury of a sustained peace. One need only glance at its newspapers to see that interstate relations are the obsession of both the media and political elites. Clausewitz said that war was the continuation of domestic politics by other means. Israel has it the other way around: Domestic affairs is the continuation of foreign policy by other means. The major political party coalitions—Likud and Labour—are patronage machines committed to different foreign policies; there is hardly a cat's whisker separating their domestic policies. "Left" and "right" are not so much categories for evaluating positions on housing, education, employment, or income redistribution, as they are windows on one's predisposition to withdraw from the territories or to retaliate against the families or homes of attackers.

This confined domestic space for politics, understandable in the circumstances, leads to an impoverishment of the political dialogue Israel must engage in to begin to tackle the integration of its minority groups and poorer classes. Few nations have pursued social integration on their own steam; it often takes prodding, peaceful and violent, from the disadvantaged elements. It also takes prosperity and social order. Israel has achieved the necessary level of prosperity; it must now, despite the ravages of terror and war, embark on a domestic agenda that holds a tangible promise of a better life for its minorities.

Related to the needs of the garrison state are the many advantages accruing to veterans of the Israeli armed forces. These privileges are presently denied to Arab citizens, other than those from Druze and Bedouin communities, who are not required to submit to military service. In retrospect, this may not have been a wise decision as it has helped reinforce the "outsider" status of its Arab citizens. But it is not too late for Israel to require some form of national service, military or otherwise, from all of its citizens, and in the process diminish this source of social and economic disadvantage.

## II. THE IMPERFECT DEMOCRACY AND THE ZIONIST STATE

A state can have a special character—whether symbolic commitment to a particular ethnic group, or commitment to a particular dominant religion, as in Ireland or the emerging Iraqi democracy—without forfeiting its claim to being a de-

mocracy or legitimately inviting charges of racism. Israel, of course, was founded as a homeland, a refuge, for the Jewish people, but it is also a nation of all its citizens. In the political sphere, the electorate has included Arab citizens for over 50 years, and for this Israel deserves praise. Few nations in the history of the world, faced with equivalent, ongoing threats to national security, would have extended the franchise to individuals from ethnic/religious groups who, outside the nation's borders, were (and remain) committed to its violent end.

It is in the social sphere that much work remains to be done. Israel need not become "post-Zionist"; it can remain a refuge for Jewish people, and continue to facilitate observance of the Jewish religious tradition through Sabbath laws and the like. What it does need to do is break down discriminatory barriers, of the type discussed in the papers for this Conference, so that its Arab minority can feel, in tangible ways, that they are indeed part of the Israeli social order. The daily existence of Israeli Arabs must be normalized, so that avenues of opportunity are in fact, and are seen, as open to Arabs as they are to Israeli Jews. This is a tall order; it cannot be achieved overnight. It will take a profound commitment of resources and national will. For those who care about Israel's future as a stable society, there is no alternative course.

### III. MULTICULTURALISM AND THE RESPONSIBILITIES OF CITIZENSHIP

Citizenship is a two-way street. It provides not only a predicate for claiming social resources, for asserting rights. It also embodies a source of obligations, a predisposition to reciprocity. Perhaps the Israeli majority first needs to acknowledge and remedy its prior default to Arab citizens, but once the process is undertaken in earnest, the Arab community has to meet it half-way. It cannot stand back, entrench itself as a potential "fifth column," and then expect any sustained effort on the part of the Israeli political, economic, and intellectual establishment to commit resources and national energy to their undoing. Politics is the art of the possible. The political will to change can come only from a perception that a new social order, still respectful of the special character of the state, is achievable.

There is a dilemma here for educated Israeli Arabs who must decide whether they are part of an essentially oppositional culture engaged in a process ultimately seeking a unitary state aligned with an emerging Palestine in which Jews will be the new, barely tolerated minority. Or, rather, will they march more in the spirit of the African-American civil rights struggle in the United States, where social integration rather than overhaul was the goal?

#### IV. THE PERFECT SHOULD NOT BE THE ENEMY OF THE GOOD

This is, I am told, an old French proverb. It suggests that criticism of Israeli institutions and commitments needs to be vigorous, comprehensive, but that it also needs to appreciate the inevitable slowness of democratic change. We have learned too well from the "radical" experiments of aspirational regimes of the right and left that political change viewed principally as an act of will clearing all obstacles before it, as so much underbrush, typically results in a greater wrong done to even larger numbers of people. Israel represents a rare democracy in this part of the world, and a democracy which has enfranchised, however imperfectly, its Arab citizens. Improvements are being made, both when spurred by the Israeli Supreme Court and those brought about by an emerging perception of Israeli leaders that the nation's self-preservation requires a change in policy towards their Arab minority. We should spur that process along, while remaining mindful of Israel's values and its value to the world of nations.

I thank the editors of the *Journal of International Law and Politics* for making the fruits of our Conference available to a larger readership.