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Protected Speech or Unlawful Incitement: An Israeli Perspective

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POINT/COUNTERPOINT

Is There A Right to Hate Speech?

by Natan Lerner

I have been asked to discuss whether international human rights law does or should permit limits on "inflammatory political speech" in the context of the debate that followed the assassination of Prime Minister Rabin. Leaving aside the question of the precise legal meaning of the words "inflammatory" and "political speech," I would like to point out that the debate in Israel regarding measures against the abuse of freedom of speech and association in order to incite against others, because of racial, reli-



Photo courtesy of Natan Lerner

Natan Lerner

gious or political motives, is not new. This debate does not differ from the worldwide controversy on how to strike a balance between those freedoms, in a democratic and pluralistic society, and the principles of coexistence, tolerance and respect for the human rights of all.

Sandra Coliver's *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination* defines hate speech

Hate speech laws are those which prohibit any of the three types of hate speech: group libel, harassment, and incitement.

Protected Speech or Unlawful Incitement: An Israeli Perspective

by Gabriel Eckstein

Freedom of speech and expression are arguably two of the most guarded liberties globally. They often are touted as fundamental to any democratic society that is based on pluralism and respect for human dignity. Yet, states worldwide have devised varying rationales for imposing limitations on the enjoyment of such rights. U.S. jurisprudence, for example, formulated the concept of "fighting words," while Germany places restrictions on statements considered to promote a belief in racial superiority.

Recently, the extent to which the freedoms of speech and expression should be protected has come to the fore of Israeli debate in light of the recent assassination of Israeli Prime Minister Yitzhak Rabin by a right wing extremist. Many Israelis, including the Prime Minister's widow, accuse the right wing Likud political party of inciting extremists to go beyond the bounds of civil disobedience (i.e., to engage in violence). One parliament member recently demanded that the Israeli media refuse to report on extremists' views and demonstrations. In addition, the Knesset (parliament) has been considering several bills that could modify the scope of the right to free speech and a free press in Israel.

In this issue's Point/Counterpoint, the authors consider whether or not international human rights law should permit governments to impose limitations on certain speech, in the context of the ongoing debate in Israel following Rabin's assassination. Natan Lerner is Professor of Law at Tel-Aviv University, where he teaches international law, and a lecturer at the Interdisciplinary Center for the Study of Business, Law and Technology. His most recent book is *GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW*. Zeev Segal also is Professor of Law at Tel-Aviv University and a legal commentator for the Israeli newspaper *Ha'aretz*. He specializes in administrative, constitutional, and media law. He recently published *Israel Ushers in a Constitutional Revolution: The Israeli Experience, The Canadian Impact* in *CONSTITUTIONAL FORUM*.

as: "an expression which is abusive, insulting, intimidating, harassing and/or which incites to violence, hatred or discrimination." Hate speech laws are those which prohibit any of the three types of hate speech: group libel, harassment, and incitement. These categories seem to cover the concept of "inflammatory political speech" and it is in this sense that I use the phrase in this article.

The decision taken by the Government of Israel, on November 19, 1995, to declare illegal extremist, violent, and racist organizations, does not imply a departure from former norms, nor the addition of new limitations on freedom of speech or association. Israel has ratified the 1965 Convention on the Elimination of All Forms of Racial Discrimination (Convention), without reservation, and the 1966 Covenant on Civil and Political Rights (Covenant), with some reservations not related to the issue of incitement.

Israel is therefore bound by universal human rights law regarding hate speech and incitement, as provided by Article 4 of the Convention and Article 20 of the Covenant. It should be noted that, unlike the United States, Israel did not introduce any reservation to the above-mentioned Article 4 of the Convention.

At its December 1994 session, the UN General Assembly adopted two significant resolutions. The first deals with "contemporary forms of racism, racial discrimination, xenophobia and related intolerance." The second expresses alarm at "the acts of violence, of intolerance and of discrimination on the grounds of religion and belief," and condemns "all instances of hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and intolerance."

A year earlier, the Committee on the Elimination of Racial Discrimina-

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