

THE VICTIMOLOGIST

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NEWSLETTER OF THE WORLD SOCIETY OF VICTIMOLOGY

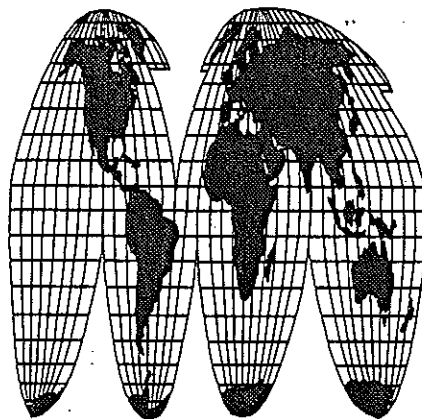
Implementation of the UN Declaration on Victims in Israel

Leslie Sebba

Israel and Israelis have in many respects pioneered the field of victimology. Advocate Benjamin Mendelsohn, originally a resident of Roumania, immigrated to Israel soon after the foundation of the state, where he died in Jerusalem last year. Prof. Israel Drapkin organised the First International Symposium in Jerusalem in 1973 - thereby placing victimology on the map as an internationally recognised field of academic study - and subsequently as an international movement. A tradition was thereby established for Israelis to contribute to this developing academic field, whether by participating in (and organising) subsequent international symposia, publishing in (and editing) academic journals in the area of victimology, etc.

This academic dynamism, however, has not been matched in the field of the promotion of victim-oriented policies in the political arena, and Israel's record in this respect is mixed. The number of persons systematically contributing to the promotion of such policies on a general level in this country seems limited to one or two senior officials of the Ministry of Justice and one or two university faculty members.

Other activists confine their activities to a particular area of victimisation - notably violence against women or child abuse. Attempts to form a national organisation for victim support do



There are still many limitations as to the extent to which Israel has implemented the provisions of the UN Declaration

not seem to have gathered much momentum. In the absence of strong and active pressure groups, major funding for victim-oriented programmes is unlikely to become available - in the light of Israel's numerous problems and priorities. Nevertheless, there are some positive developments to report, as the following observations will

indicate.

COMPASSION, DIGNITY AND ACCESS TO JUSTICE

Perhaps the most significant developments of the last years have been in the context of section 4 of the Declaration with its requirement of "compassion and respect for dignity". In 1992 the Knesset, Israel's Parliament, adopted the Basic Law: Human Dignity and Liberty, which incorporated such basic principles as "the value of the human being" and "the sanctity of human life", citing as inspiration Israel's Declaration of Independence. This law has been held by many jurists to have a quasi-constitutional status, since it purports to bind both the administration and the legislature in respect of future policies. Determining which policies are consistent with the Basic Law is a matter for the courts. It is thus of great significance in the present context that both the previous President of the Supreme Court Meir Shamgar, and the incumbent President Aharon Barak, have declared that in the context of the criminal justice system the Basic Law protects not only offenders and suspected offenders - but also victims.

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These values of compassion and human dignity are also evident in the legislation designed to protect children involved in sex offences (in particular those abused by adults) from having to face adversary proceedings in court. Already in 1955 Israel's adopted a law providing that only specially appointed child examiners (in practice social workers) may question such children. If the child examiner believes that the child will be harmed by participation in the court proceedings, then he or she will testify in place of the child. These provisions have recently been extended to child victims of domestic violence. In a similar vein, adult victims of sex offences may no longer be routinely cross-examined on their previous sexual conduct ("rape-shield"), while a recent statutory amendment provides that sex victims may testify without the physical presence in court of the accused (who will be enabled to follow the proceeding by video or similar technique). Moreover on an administrative level, efforts are being

made by the law enforcement authorities - both the police and the district attorneys' offices - to sensitise personnel to the problems of victims of sex offenders, by issuing special instructions as to how these cases should be dealt with (including liaising with medical centres and crisis intervention centres), and organising training courses. An experimental programme has been instigated by the Women's Network to accompany sexual assault victims throughout the criminal process. Considerable attention has also been focused on domestic violence, with the introduction of protection orders and treatment orders both in a criminal and a civil setting.

More general instructions vis-a-vis victims have been issued both by the police and the State Attorney (who oversees the district attorneys' offices), but their implementation seems to have been only partial - and has not included the provision that each district attorney should appoint a victim liaison officer. Similarly, while there are a number of rape crisis centres and battered women shelters,

there is no comprehensive victim support programme available for other types of victims. Other specialist organisations deal with victims of terror and holocaust victims, while recently a support group for parents of murdered children has been organised.

Progress thus seems to be continuing, if at a gradual pace, in the area of protective services for victims, whether within the criminal justice system or in the community. There appears to be less enthusiasm for granting the victim an active role in the system, such as by making provision for the presentation of victim's views, as envisaged by section 6(b) of the Declaration. Victim impact statements have recently been introduced, but only for sex offences, and it is unclear whether they will incorporate victims' views. The Israeli amendment states that the court may ask a public official appointed for this purpose to submit "a report on the situation of the victim of the offence and on the harm that has been caused to the victim as a consequence of the offence." A bill currently being debated which is designed to regulate the practice of plea-bargaining incorporates a modest provision for enabling the victim to be consulted before the "bargain" is finalised; but this proposal has met with strong resistance. On the other hand, one victim-sensitive district court judge has (a) allowed a victim's advocate to plead in court in favour of in camera proceedings and (b), when presiding over a Prison Release Committee (parole board), was willing to consider arguments against release proffered (in writing) by the family of the prisoner's victim.

ALTERNATIVE REMEDIES

With regard to various alternative remedies for victims envisaged by the Declaration (see sections 5 and 7): Some encouragement was given to

From The Editor's Desk ...

Continuing our series on the implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power around the world, Dr. Leslie Sebba of the Institute of Criminology at the Hebrew University of Israel has written an article on the Israeli situation. In his article, Dr. Sebba candidly discusses both the achievements and the shortcomings of the Israeli justice system regarding victims of crime and abuse of power. In addition, this issue contains information on the upcoming Victimology symposium, which will take place next year in Montreal, Canada.

This issue of *The Victimologist* is shorter than usual. This is because the members of the Editorial Board have received very few submissions from the WSV members. *The Victimologist* is entirely dependent upon the members of the WSV

for input. The members of the Editorial Board strongly urge all WSV members to send articles, reviews, announcements; etc. for publication in future issues. Without your input there will not be a newsletter.

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civil suits in the 1970s when the legislature provided that criminal verdicts would be admissible in evidence in civil cases. (Their prior non-admissibility was a rule of English law that was adopted by Israel during the period of the British Mandate). It was further provided that the victim could request that the same court (with the facts of the case fresh in the judges' minds) could hear the civil case. It is uncertain how far this provision has been exploited; but there has been at least anecdotal evidence in recent times of crime victims suing in tort.

Secondly, there is a provision in the Criminal Procedure Law for private prosecutions for a number of misdemeanours (punishable by no more than three years' imprisonment). While proposals are sometimes heard for the abolition of this institution, in *Schubert v. Tsafir* (1992) the Supreme Court drew attention to its importance as a citizen's right and placed it on (almost) equal footing with a public prosecution. The complainant could, like the public prosecutor, request from the court an order detaining the alleged offender in custody until the termination of the trial.

Finally, there has been little development with respect to mediation or other informal proceedings in relation to criminal proceedings. There is a tradition among some sections of the Arab minority to hold a *Sulha* or reconciliation proceeding, and this may be taken into consideration in the course of the official trial. Further, an experimental programme exists in Beer-Sheva for a reconciliation proceeding where the offender is juvenile and juvenile justice personnel are taking an increasing interest in "family conferencing". Moreover

in the last five years the concepts of mediation, compromise, etc., have attracted much attention as adjuncts or alternatives to civil litigation - and this may spill over into the criminal sphere.

RESTITUTION AND COMPENSATION

The sanctioning system inherited from the British mandate included the option of imposing a restitution order of a small denomination, which would be enforced at the instigation of the victim as a civil debt. The sum has now been increased to the equivalent of about \$20,000. - per offence - and this amount is updated from time to time in accordance with the cost of living index. Moreover it is now enforceable by the state in the same way as a fine - over which it takes precedence if the offender is unable to pay both. However, making a restitution order remains purely discretionary on the part of the court, and although prosecutors have been encouraged from time to time to request such orders, it is not clear how frequently and in what circumstances they are used.

Nor can the victim rely upon any comprehensive programme of compensation from the state, even though such proposals have been considered from time to time. Specific legislation deals with certain categories of victims who are entitled to such compensation - in particular certain categories of holocaust victims for whom the Israel government received reparations from Germany (others receive compensation directly), and victims of terrorist acts. Further "good samaritans", who suffer injury when acting to save the lives or property of others, or - at the request of the police or military authorities - to aid in the search for missing persons, are entitled to compensation from social security

under 1991 regulations.

ABUSE OF POWER

Owing to ongoing conflict with some of its Arab neighbours and with residents of the occupied territories, Israel has a permanent "state of emergency", in the course of which various oppressive sanctions are applied. These include the use of "moderate physical pressure", which is widely considered to constitute torture, but which the Israeli government (following the Landau Commission) views as legitimate self-defence. Although Israel has ratified the Torture Convention, a specific prohibition against torture (drafted by the previous government) has not yet been adopted - nor has the High Court ruled on the constitutionality of moderate physical pressure. Thus at this time no compensation is payable in such cases. However in other cases of wrongful use of force by the authorities, compensation is sometimes forthcoming either on tort principles or as *ex gratia* payments.

Hopefully these and other related issues will be dealt with in the framework of the peace negotiations - if and when these are revived.

CONCLUSIONS

This brief survey indicates that there are still many limitations as to the extent to which Israel has implemented the provisions of the UN Declaration of Basic Principles for Victims of Crime and Abuse of Power. However the rhetoric of the Supreme Court as to the need to consider the interests of victims of crime may impact the system, given the status of the Basic Law on which this rhetoric is based. It may be noted, moreover, that this law, subject to certain provisos, guarantees the protection of the person and property of the individual,

as well as his or her liberty and privacy. It thus may have implications not only with respect to criminal procedure, but also with respect to the content of the criminal law - mandating a minimum protection for the victim or potential victims. In this respect the Basic Law may go beyond the requirements of the Declaration, in which an obligation to reform the substance of the criminal law (as well as preventive policies) are specified only in respect of the abuse of power (sections 19 and 21), and not in other areas.

In this connection some recent legislation of a substantive character (albeit not mandated by the court under the Basic Law) may be worthy of mention - for example the provisions of the Penal law dealing with "vulnerable victims". Moreover, in addition to such "primary norms" designed to preventing the infliction of harm, some "secondary norms" have been adopted, to ensure that offenders are apprehended or that further harm is prevented. Examples are the duty to report the infliction of harm on vulnerable persons and the recently introduced "duty to rescue" - based upon a biblical norm (Leviticus 19 (xvi)). An earlier provision (dating back to the British Mandate) imposes an obligation to report information regarding another person's intention to commit a felony. (A friend of Yigal Amir, the assassin of Yitzhak Rabin, has been convicted of this

INTERNATIONAL REVIEW OF VICTIMOLOGY

Forthcoming Issues

The Editors are pleased to announce three special issues to be published during the current and forthcoming volumes.

- * *Mediation*
guest editor: Dr Curt Taylor Griffiths
- * *Domestic Violence*
guest editor: Dr Edna Erez
- * *Victims and Fear of Crime in Contemporary Sweden*
guest editor: Dr Per-Olof Wikstrom

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a special issue containing papers given at the International Conference at York, Great Britain July 1998 "*Integrating a Victim Perspective within Criminal Justice*"

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Important Dates

Deadline for submission of
proposals: *October 15, 1999*
Publication of Final Program:
March 2000
Fast-track registration and
reservation of accommodation:

**Publish your short article or review in
The Victimologist**

The Editorial Board of the *Victimologist* strongly urges all members of the World Society of Victimology to send in contributions for upcoming issues of *The Victimologist*.

The Editorial Board is particularly interested in receiving articles from members concerning the implementation of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in their own country.

Contributions should be sent to the members of the Editorial Board. See page 2 for more information.

May 15, 2000

Word from the Co-chairs of the symposium

On behalf of the World Society of Victimology and the Association québécoise Plaidoyer-Victimes, we invite you to Montreal to attend the X International Symposium on Victimology in 2000. The start of the new millennium will mark the fifteenth anniversary of the adoption of the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations General Assembly, that urges us to promote victims' rights and the establishment of services and new initiatives to respond to victims' needs.

Where are we now? Have our policies and practices created a level of justice more responsive to victims' rights? Have we managed to eliminate the barriers engendered by indifference, ignorance and discrimination against victims? Have we developed a measure of solidarity and a greater sense of social responsibility in their regard? Has our research allowed us better to understand criminal victimization and to open the way for change?

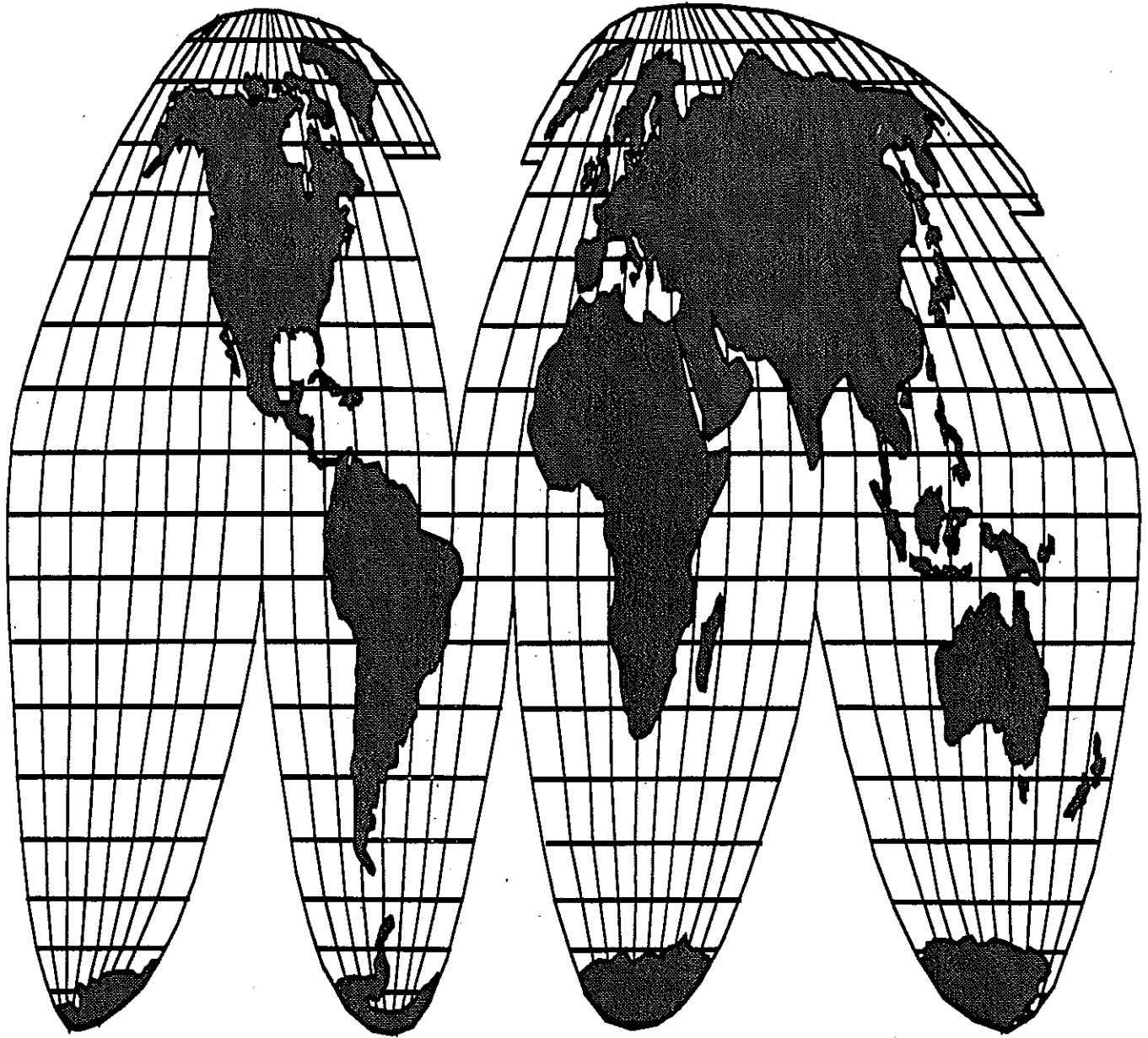
We invite you to embark upon a critical examination of these issues to prepare the way forward into the future. Reaching Beyond boundaries, we must create bridges, share our knowledge and experiences and develop a greater level of international cooperation and assistance. It is in this spirit that the Association québécoise Plaidoyer-Victimes is planning the X International Symposium on Victimology. Several committees are already at work sharing the same enthusiasm. This initiative is supported by various levels of government sector and by numerous organizations throughout Canada.

We are organizing a diverse program including professional visits and the chance to interact with experts in victimology from across the globe. This sharing of our research and experiences will allow us to improve our own practice as well as services offered to victims. We need your ideas, your proposals and your participation.

We look forward to seeing you there. Let's rendez-vous in Montreal, August 6-11, 2000.

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