



## Address of Rabbi Dr. Abraham Skorka



Rabbi Dr. Skorka was born in Buenos Aires and obtained a Ph.D. in Chemistry. He was ordained a Rabbi in 1973 at the Latin-American Rabbinical Seminary and was appointed Em. Professor of Jewish Law at Salvador University in 2002. He is a Doctor Honoris Causa of the Jewish Theological Seminary, the Pontifical Catholic University of Argentina and the University of the Sacred Heart. Since 1976 he has been the Rabbi of the Benei Tikva Community. He is the Rector of the Latin-American Rabbinical Seminary and has authored several books, including *On Heaven and Earth – Dialogues with Today's Pope Francis*. In 2014 he organised the meeting of Pope Francis with Shimon Peres, former President of Israel, and Mahmoud Abbas, President of Palestine, at the Casina Pio IV.

### CEREMONY FOR THE SIGNING OF THE JOINT DECLARATION OF RELIGIOUS LEADERS AGAINST SLAVERY

Casina Pio IV, Tuesday, 2 December 2014

#### *All Forms of Slavery are Crimes against Humanity*

This paper provides a brief overview of what Hebrew Law[1] says about all forms of slavery, including forced labour and prostitution.

Even though slavery was accepted under biblical regulations, a Hebrew would only be subjugated to slavery if he or she had stolen a thing which they failed to return, or if they became so impoverished that they had to sell their services to be able to survive[2]. However, a Hebrew slave was considered to be like a hired servant under Leviticus 25:40.

A Gentile slave does not have the same status as a Hebrew slave, and is considered to be just one more asset of his master. This biblical position requires further analysis, as it is seemingly inconsistent with the overall view of the Scriptures, whereunder all mankind is considered to originate from the same first human being—therefore sharing his same rights and obligations. In Genesis 9:25 we read that slavery is established by men. Noah curses Canaan, his grandson, saying that the lowest of slaves shall he be to his brothers. This seems to be the beginning of slavery—a result of human action. God's subsequent laws only came to regulate what had already been done by men. There is extensive bibliography on this subject[3].

There are two very significant laws in the Scriptures regarding slavery, which was an institution accepted by all civilizations until as recent times as the 18th century. The Torah, for instance, according to Exodus 21:16 and Deuteronomy 24:7, sets forth that a kidnaper, whether he sells his victim or still has him or her when caught, shall be put to death. This definitely establishes that biblical rules firmly reject the subjugation of people—the form of slavery most often encountered in history.

The laws of the children of Noah, which are the rabbinic version[4] of the Roman *jus gentium*[5], set forth that any Gentile who steals the freedom of any other person will be punished with death, as codified by Maimonides in Hilkhot Melakhim 9:9, based on Sanhedrin 57a.

The wise understood that Exodus 21:20, ruling that the death of a slave shall be punished with death, applies to both Hebrew and Gentile servants. If any of their visible organs were hurt, they should be let go free immediately in compensation.

On the other hand, Deuteronomy 23:16–17 holds that a slave who has escaped from his master will not be handed over back to him, instead he or she shall be let live in the community of his or her choosing. The verse ends with this warning, «Do not molest him.» Rabbis have understood that this verse is about Gentile slaves, who must be accepted into society, provided that they adhere to no pagan cult[6]. This law is completely against the codification of Hammurabi (15–19).

Maimonides emphasizes in Hilkhot Melakhim 9:8 that we must give merciful care to slaves. This is further elaborated in the Guide for the Perplexed III, Chapter XXXIX.

Rabbi Abraham Itzhak HaKohen Kook, one of the most preeminent rabbinic authorities from the 20th century, reviewed biblical and rabbinic laws referring to slavery in a letter he sent in response to Moshe Seidl in 1904[7]. He understands that, given the qualities that naturally distinguish one human being from another, there will always be someone who will in one way or the other work for others, with these others making use of their services. The Torah, Kook says, provides a set of rules governing this relationship for workers to be taken care of and protected by the work giver. Rabbi Kook strongly criticizes the owners of carbon mines of his time, who would force their workers to work under unhealthy and unsafe conditions.

There is one paragraph in the first two chapters of the book of prophet Amos (1:2–15; 2:1–6) which could be read as a precedent of the *crime against humanity* concept. The prophet describes actions of cruelty and devastation which will be punished by God, as their magnitude sets aside any possibility of forgiveness or absolution. These are crimes committed by different peoples—from Damascus, Gaza, Tzor, Edom, Bnei Ammon, Moab—ending with those committed in Judah and Israel. Among the hideous crimes perpetrated by Judah's and Israel's neighbouring peoples, two of them (those committed by the inhabitants of Gaza and Tzor) refer to individuals being taken captive and sold as slaves. In the prophet's view, such attitude must be considered a serious offense against morality and any sense of human justice.

Also, the exploitation of women and children has been condemned since biblical times by Judaism[8].

The views of Abrahamic peoples have shaped the conscience of Western civilization and, to a great extent, of the Eastern world. It is not surprising, then, that many of the documents drafted in the 20th century, which constitute the basis for the *crime against humanity* concept and scope, expressly refer to forced labour and prostitution as part of its definition.

In Article 7(c) of the Rome Statute of the International Criminal Court[9], slavery is considered a *crime against humanity*. In Article 7(g), same status is given to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

Article 7 of the International Criminal Court defines «enslavement» as «the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.»

Both in the letter to the Nuremberg International Military Court (Article 6), in Law No. 10 of the Allied Control Council of Germany (Article 2), in the Tokyo Statute (Article 5(c)), and in the multiple documents drafted by United Nations relevant agencies, slavery is consistently classified as a crime against humanity[10].

As a result, adherence by all States to these principles, by incorporating them into their constitutions and substantive legislation, is supported by Hebrew Law in all its forms and essence.

### **The Statute of Limitations Applicable to Crimes and the Crime against Humanity Concept under Hebrew Law**

A brief discussion now follows on the statute of limitations applicable to crimes and the crime against humanity under Hebrew Law.

Upon review the statute of limitations applicable to criminal felonies, a distinction is to be drawn between limitations rules affecting *res judicata*, and those barring the action.

Based on the Maimonidean codification, and to have in mind the basic codified rules applicable to the statutes of limitation concept, reference is made to Hilkhot Sanhedrin (13: 7–8), in the Book of Judges (Shoftim) of Yad HaJazakah:

«If one fled after having been convicted at a court and again comes up before the same court, the first judgment is not set aside. Wherever two witnesses stand up and declare, 'we testify that so and so was tried and convicted at a certain court and that so and so were the witnesses,' the accused is executed[11]. When is this law applied? In the case of a murderer[12]; but in any other cases where the death penalty is applied, such penalty cannot be executed without the presence of the witnesses who attested to the crime committed and testified at the trial which resulted in the death penalty being imposed, which shall be by themselves executed. Such testimony shall be given before a tribunal of 23 judges[13].

A sentence imposed by a Diaspora Court on a person who has fled and has appeared before a court of the land of Israel, is always cancelled[14]. If the court in Israel is the same as the Diaspora court, then the sentence is not revoked, even though it was issued in the Diaspora and they are now in Israel.»

It is clear, therefore, that sentences issued by a competent court (*res judicata*) are not time-barred under Hebrew Law. Furthermore, as per Rabbi Akiva[15], once a death sentence has been issued, no contrition or repentance of the accused shall lift the death sentence.

Concerning the limitation applicable to the action and its resulting punishment, there is one paragraph in Tractate Makkot (7a) which should be also considered:

«A Sanhedrin (court of 23 members authorized to hear criminal cases; also called Sanhedrin Ketanah) that puts to death one person every seven years is called murderous; Rabbi Eliezer ben Azaria says: Even once in seventy years. Rabbi Tarfon and Rabbi Akiva say: Had we sat in the Sanhedrin, no person would ever have been put to death (rabbinic courts authorized to impose death sentences were no longer in existence in their time, as they were eliminated forty years before the destruction of the second Temple, as referred to in Sanhedrin 41a). Rabban Shimon ben Gamaliel remarked: They would also multiply (with this attitude) the shedders of blood (murderers) in Israel.»

The Gemara *ad locum* explains that what Rabbi Tarfon and Rabbi Akiva did was to examine the witnesses with such a level of detail that their testimonies would eventually become distorted.

Maimonides summarizes this as follows (Yad, Hilkhot Sanhedrin, 10: 10):

«A thorough analysis must be performed by the court (before sentencing) in the case of criminal felonies, and nothing should be rushed. A Sanhedrin that puts a man to death once in seven years is a murderous one. However, if the situation requires them to sentence and execute wrongdoers even on a daily basis, they shall do so as required.»

This means that even though the Torah sets the principle of application of a death sentence in all cases of premeditated crimes committed in front of witnesses who warn the murderer of the crime he is about to commit, such application may be limited or expanded subject to the criterion of the wise men, based on the rules and procedures such wise men dictate. This principle as set forth by the wise men in the Talmud is applicable in all areas of the Halakhah[16].

Based on the above, it can be concluded that there is no time limitation for the criminal action under Hebrew Law; however, capital cases may be reviewed by rabbinic courts using all of the above juridical principles to lessen the sentence.

Finally, a famous Talmudic passage (Sanhedrin 37a) also deals with the *crime against humanity* concept: whoever destroys a single soul is as though he had destroyed a complete world, and whoever preserves a single soul is as though he had preserved a complete world. Thus, any premeditated criminal action should be, based on Noahide laws, reviewed and punished by Hebrew *jus gentium*, aside from whether it is against a single individual or an entire people. It is not the number of victims harmed, or the cruelty involved in the crime which substantially aggravates the crime, but in the conception of the Halakhah, the crime of a single person should be weighted in the same manner as those committed against all mankind.

Article 7 of the International Criminal Court Statute provides the following (descriptive, not restrictive) definition of crimes against humanity: any crime when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. As precedents for this definition, Article 6 of the Nuremberg Court Statute, the Nuremberg sentences, resolutions 3(I) and 95(I) of the United Nations General Assembly, and the legal principles underlying such documents (summarized by the ICC in 1950 under the title of «Nuremberg Principles») can be mentioned.

Article 6(c) of the London Statute defines crimes against humanity as follows: (c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Marcelo Ferreyra, in *Derechos Humanos* (GORDILLO, Agustín, 6th Edition, Buenos Aires, Fundación Derecho Administrativo, 2007, Chapter XIII, «Crimes against humanity: Grounds and Scope of Validity») notes that it is striking that rape is not expressly included, which is also the case in the 1948 Convention on Genocide. But sexual violence against women and sexual crimes in general have never been seriously contemplated in humanitarian international law, at least until the promulgation of the International Criminal Court Statute. Indeed, rape was not included in the London Statute which created the Nuremberg Military Court, there is only one reference to «family honour» in the Hague Conventions (Article 46 of the 4th Convention), and the Geneva Conventions only have one article forbidding sexual violence and forced prostitution (Article 27 of the 4th Convention).

The wide, descriptive scope of Article 7 of the International Criminal Court Statute adds the following as crimes against humanity: (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

