

A Broomstick Can Shoot

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A VICTORY is a victory. A big victory is better than a small one, but a small victory is better than a defeat.

This week we won.

Immediately after the Turkel Commission was set up to investigate the flotilla incident, Gush Shalom filed a petition to the Supreme Court of Justice against its appointment. We demanded its replacement by a full-fledged State Commission of Inquiry. The court hearing was fixed for last Wednesday. But on Tuesday afternoon, the Attorney General's office called our lawyer, Gabi Lasky: the Prime Minister had decided at the last moment to increase the powers of the commission, and the government was about to confirm the change. Therefore, the Attorney General asked us to agree to a postponement of the hearing for ten days.

Not a single Israeli newspaper had published a word about our application – something unthinkable if it had been the initiative of a right-wing organization. But after the change, it became impossible to ignore it anymore: almost all papers pointed out that our application had played an important role in Netanyahu's decision.

Jacob Turkel and his friend, Jacob Neeman, the Minister of Justice who appointed him, had come to the conclusion that they would be defeated in court. That's why Turkel demanded an enlargement of the number of the commission members as well as its powers.

At the beginning, the commission had not been accorded any legal standing at all. Netanyahu just asked three nice people to find out if the government's actions were consistent with international law, nothing more. Now, it seems, it will be given the legal standing of a "Government Commission of Inquiry", but definitely not of a "State Commission of Inquiry". There is a huge difference between the two.

THE INSTITUTION called a "State Commission of Inquiry" is uniquely Israeli. It is based on a special law, which all of us can be proud of.

It has an interesting historical background. In the early 60s, the country was riven by controversy about the Lavon Affair, concerning a number of terrorist attacks carried out by an Israeli spy-ring in Egypt. The operation miscarried, the members of the ring were caught, two were hanged, and the question arose: Who Had Given The Order? The Minister of Defense, Pinhas Lavon, and the chief of army intelligence, Binyamin Gibli, blamed each other. (Later I asked Yitzhak Rabin about it and he told me: "When you are dealing with two pathological liars, how can you know?")

David Ben-Gurion passionately demanded a "Judicial Commission of Inquiry". It became almost an obsession with him. But at the time, Israeli law did not know such a creature. Emotion flared, the government fell, and the lawyer of the Labor Party, Jacob Shimshon Shapira, accused Ben-Gurion of fascism.

It seems that Shapira felt remorse for this accusation, and so,

when he became Minister of Justice soon after, he worked out an exemplary bill for the appointment of a "State Commission of Inquiry", which would resemble a regular court. He proposed that such a commission would have the power to summon witnesses, have them testify under oath (with the usual penalties for perjury), cross-examine them, subpoena documents, etc. Also, that the commission would warn in advance any persons whose interests could be harmed by its findings and accord them the right to be represented by a lawyer.

As a member of the Knesset at the time, I submitted two amendments that seemed important to me. The proposed law did provide that the Supreme Justice would appoint the members of the commission, but left it to the government to decide upon the setting up of a commission and its terms of reference. I argued that this would open the door to political manipulations, and proposed to confer upon the Supreme Court also the power to set up a commission and set its terms of reference. My amendments were voted down. The present affair shows how necessary they were.

The law provides an alternative - the appointment of a "Government Commission of Inquiry", which enjoys a far lower standing. It differs from a "state" commission in one extremely important aspect: its members are not appointed by the Chief Justice, but by the government itself.

That is, of course, a huge difference. Anyone with an elementary grasp of politics understands that he who appoints the members of a commission strongly influences its conclusions in advance. If a settler from Qiryat-Arba is appointed to head a commission about the legality of the settlements, its conclusion may not be quite the same as those of a commission chaired by a member of Peace Now.

That has been proven in the past. After the Sabra and Shatila massacre, Prime Minister Menachem Begin initially refused to appoint a State Commission of Inquiry. However, under the intense pressure of Israeli public opinion he was compelled to do so, and the commission removed Ariel Sharon from the Ministry of Defense. Ehud Olmert remembered this and drew the conclusion: after Lebanon War II he obstinately refused to set up a "State Commission" and agreed merely to a "Government Commission", whose members he appointed himself. Not surprisingly, he got away almost unscathed.

THE APPOINTMENT of the Turkel commission was greeted by the Israeli public with unveiled cynicism. The same media which had almost unanimously supported the attack on the flotilla, were now united in their attack on poor Turkel and his commission. They joked about the advanced age of its members, one of whom can move only with the assistance of a Filipino helper. All commentators agree that the commission was not set up to clarify the affair, but only to help President Barack Obama to obstruct the appointment of an international

inquiry commission.

All agreed that this is a ridiculous commission without teeth, that its composition is pathetic and the terms of reference marginal. It seems that Judge Turkel himself felt ashamed. After accepting the appointment on Netanyahu's terms, this week he threatened to resign if his powers were not extended. Netanyahu gave in.

Jacob Turkel, 75, is a decent person, born in the country, son of immigrants from Austria (Turkel, actually Türkel, is a German name meaning "little Turk" - rather ironic for a person charged with investigating the attack on a Turkish ship). He is religious, and his record as a judge discloses a rightist orientation. For example: he decided that the criminal behavior of the extreme rightist Moshe Feiglin was not "dishonorable", thus enabling him to run for election. He refused to condemn Rabbi Ido Alba for incitement, after the rabbi had pronounced that killing non-Jews is approved by the Jewish religion. He decided to acquit Binyamin Ze'ev Kahane, the son of Meir Kahane, from a charge of incitement. When Ehud Barak was prime minister, Turkel decided that he was not entitled to conduct peace negotiations because of approaching elections. And so on.

NETANYAHU'S DECISION to enlarge the powers of the commission, so that it will be able to summon witnesses, is far from what is needed. The commission will be unable to investigate how and by whom it was decided to impose the blockade on Gaza, how it was decided to attack the flotilla, how the operation was planned and how it was carried out. We therefore see no reason to withdraw our Supreme Court petition to disband the Turkel commission and to appoint an official State Commission of Inquiry. The more so since Turkel himself, a week before his appointment, had also called for the appointment of a State Commission of Inquiry.

The chances? Not the best. The Supreme Court can interfere in this matter only if we prove that the government's decision is "extremely unreasonable". And indeed, in the past, State Commissions of Inquiry have been appointed for far less important matters than this affair, which has undermined the Israeli public's confidence in the army and the government, aroused the entire world against us and dealt a heavy blow to our relations with Turkey. If this is not a matter of "public interest", as the law demands, what is?

A Jewish joke tells about a woman who dropped a dish of meat in the toilet bowl. When she asked the rabbi whether it was still kosher, he replied: "kosher but stinking". The court may decide in this spirit.

Turkel and his colleagues can, of course, surprise those who appointed them and arbitrarily enlarge the scope of their inquiry. Such things have already happened in the past. As another Jewish saying goes: "If God wills, even a broomstick can shoot." But chances are slim.

THIS AFFAIR has much wider implications than the flotilla incident. It is worthwhile to dwell on them.

Most of Israel's critics, especially abroad, see the country as a one-dimensional monolith. As they see it, all its (Jewish) citizens are marching in lockstep behind their rightist government, consumed by a dark ideology, supporting occupation and settlements and committing war crimes. This, by the way, is a

mirror image of the admirers of Israel in the world, who also see Israel as a one-dimensional monolith, with all citizens marching proudly behind their brave and determined leaders - Binyamin Netanyahu, Ehud Barak and Avigdor Lieberman.

The truth is far removed from both these caricatures. It is enough for a foreign visitor to stay a few weeks in Israel and come in contact with its population, to see that reality is far, far more complex. (Indeed, I dare say that anyone who has not done so cannot possibly understand what's happening here.)

All human societies are complex and many-faceted, and Israeli society, with its unique past, is more complex than most. The flotilla affair - relatively small but very typical - shows this again.

The demand to reveal the truth about this affair is a part of the battle for Israeli democracy, for the standing of the Supreme Court, and indeed concerns the essence of the state.

Some see this struggle as a battle between two big blocs - on one side, the nationalist, religious, militaristic, anti-democratic right, and on the other, the liberal, democratic, secular, peace-loving left.

Anyone with such a picture in his head imagines something like the battle of Waterloo, when two big armies clash on the battlefield and one overcomes the other. But the struggle for Israel is more like a medieval battle, when the clash of two armies turns into a melee of thousands of duels, one to one, and can go on for a long time.

THE BATTLE for Israel is indeed composed of hundreds of thousands of small battles, which are being fought out in a thousand and one different arenas. All Israeli citizens are involved - either actively or passively, judges and professors, army officers and politicians, voters and soldiers, activists and onlookers, journalists and youth idols, laborers and tycoons, rabbis and the anti-religious, environment activists and social activists - everyone of us, by his deeds and omissions, takes part in this battle over the character of our state.

The struggle against the occupation and against the settlements is a part of this war. The war itself is for the personality of Israeli society, a society still in the making. This war is far from decided. Anyone who believes that the end is foreseeable, that this or that "must" happen, thus and not otherwise, is mistaken. A defeat in one battle, and even in a series of battles, will not be decisive, because there will be more battles in the days to come. When millions of people are involved - men and women, young and old, Jews and Arabs, Westerners and Orientals, orthodox and secular, rich and poor, old-timers and new immigrants, all the vast spectrum of Israeli society - nothing is certain in advance.

The controversy over the Turkel commission, as well as the fight for freeing Gilad Shalit and all the other struggles taking place in Israel at this moment, must be seen in this light - as small fragments of a big, long and continuous struggle, in which our acts of commission and omission will decide the future of our state.

This, after all, was the aim of the entire historic exercise of creating Israel: to take our fate in our own hands and be responsible for the consequences.