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RABIN'S GIVING AWAY OF THE GOLAN

NO institution in Israel commands the respect of the nation in such overwhelming measure as the Supreme Court.

That body, sitting in its capacity as the High Court of Justice, has become famous as the readily accessible dispenser of justice in disputes between private citizens and public authority. The Court, however, is bound by the laws of the land, and even its profound interpretation of the law may come into collision with the justice which is presumably its central function and purpose. On January 10, 1993, the Court published its reasoned rejection of a petition to call on the government to refrain from negotiating on the future of the Golan Heights.

The petition was grounded in Clause 97(b) of the criminal law which laid down that: "Whoever, with a view to the transference of territory from the sovereignty of the state to the sovereignty of a foreign state, has taken action which is liable to bring this about, will suffer the death penalty or life imprisonment." The petitioners claimed that for the government to conduct such negotiations it must obtain the prior consent of the Knesset. The High Court, rejecting the petitioner's arguments, pointed out that a further interpretive clause in the law legitimized any action that was undertaken lawfully, and the government's action in conducting negotiations for peace or any other purpose, was perfectly lawful, derived as it was from the confidence of the Knesset. The government, it said, could, after all, be toppled by a vote of no confidence of the Knesset.

This was also the response of the prime minister to the petition; and he pointed out, further, that "it may be taken for granted that the government would not take any action inconsistent with the law of the state." Thus far all is logical and accords with the rules. Yet in this very High Court, ruling Justice Aharon Barak is quoted as having said in an earlier judgment: "Maybe on a decision to make peace or to go war one should not apply the usual rules of administrative deliberation." Be that as it may, surely an issue so serious, indeed fateful, that the legislature laid down the extreme penalty of the death sentence, merited a deeper probe of the circumstances governing the government's action. Surely the High Court designated as a court of justice, whose members live, as the Hebrew saying has it, "in the midst" of their people, should have noted the razor-thin majority in the Knesset by whose mandate it planned to give away national territory. (Where in the world could you find a government that would deal so lightly with the territory of the nation?)

HAD THE High Court justices examined the results of the 1992 election, they would have discovered that though the Labor-Meretz coalition had achieved the razor-thin majority in the Knesset, the opposition had a narrow majority in the popular vote - surely a significant moral factor in an issue so grave as the claimed mandate for a historic initiative to give away the Golan. Did this phenomenon not merit some comment from the High Court? The full facts relating to the 1992 election reveal themselves as even more serious. Precisely on the subject of the Golan, Mr. Rabin played a confidence trick on the electorate.

There were rumors in the air that he and his party would be prepared, as part of a

peace accord with Syrian President Assad, to give him a part or all of the Golan. Mr Rabin visited the Golan days before the election (on June 10), and spoke at a public meeting. There he assured the audience, and through them the rest of the nation, that if elected, he would on no account give up the Golan.

The time and the place were most emotive. The day was the 25th anniversary of the capture of the Golan; and Rabin recalled for his listeners the murderous rain of shells on the northern Galilee villages from Syrian-held Golan which had been the order of the day before that war. "The terrible nightmare" he called it.

The capture of the towering Heights by the IDF at a heavy cost in casualties had put an end to that threat "forever," said Rabin, "forever." He went on to shower praise on the 32 communities of the Golan which, with the IDF, constituted a "sturdy rampart." He mentioned his personal pride in the fact that the town of Katzrin was founded during his previous tenure of office in the Seventies. He was, he declared, "filled with hope that Katzrin would become a great Israeli city securely and forever." But it was not enough to talk about the Golan and the Jordan Valley. These communities should be given preference in building and employment.

"Let us all invest," he cried, "invest, here in Katzrin, in the villages and kibbutzim, let us help them live in dignity, maintain their families, absorb immigrants, absorb settlers." What could be more reassuring, what identification could be clearer? Mr Rabin, however, found that he must round out his vision of the Golan. "As for the future," he told that Golan audience, "it is inconceivable that even in peacetime we should go down from the Golan. Whoever even thinks of leaving the Golan wantonly abandons, wantonly abandons, the security of Israel." It is not unusual for the High Court to make pronouncements or comments beyond the dictate of the law - the traditional *obiter dicta* of a judge.

How is it possible that the High Court of Justice had not a word to say, to educate the public on the fearful conflict in this case between the bare binding letter of the law and the cause of truth - and justice?