

Palestine/Israel: Making Monitoring Work: (Re-) Enforcing International Law in Europe

A CONFERENCE BRINGING TOGETHER PALESTINIAN,
ISRAELI, AND EUROPEAN HUMAN RIGHTS NGOS AND
LAWYERS.

Conference Report

HOSTED BY THE CENTRE FOR ECONOMIC LAW & GOVERNANCE, FREE UNIVERSITY BRUSSELS



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diakonia

FOREWORD

International humanitarian law risks becoming a ‘dead letter’ unless transgression of its principles is met with a response that does justice to the harm suffered by its victims.

The idea of this conference, held in September 2008 in Brussels, Belgium, stems from regular meetings between Diakonia and local Israeli and Palestinian Human Rights organisations, whose fieldworkers tirelessly record and document the daily human rights and IHL violations. Our mission thus far had been to support the monitoring process by providing training on documentation methods, and guidance on interviewing, evidence preservation, storage and archiving. However, we were constantly asked the question: what is the use? What is the use of gathering all this information and document every aspect of violations if reports only end up gathering dusts in archives and folders? This is not an effective way of increasing the respect for IHL and it triggers the pivotal question - how can we make monitoring work?

Effective enforcement of international humanitarian law in the context of Israel/Palestine requires a readiness on part of civil society organisations and public opinion makers to support legal enforcement actions. Civil society organisations also play a vital role in educating the public on both the violations committed, and the need to bring perpetrators from Israel/Palestine, as well as their accomplices in Europe, to national or international justice. Finally, Israeli and Palestinian civil society organisations have a leading role in providing strategic advice and physical evidence to European legal practitioners. With this in mind, we set about bringing together European, Palestinian and Israeli legal practitioners and members of civil society organisations with the common agenda of enforcing international law in the context of Israel/Palestine.

The questions we need to answer can roughly be grouped into four categories:

Firstly, what is the status quo on accountability in Israel? Are the Israeli justice mechanisms working, and what, if anything can be done to improve them? What are local organisations doing pertaining to that issue?

Secondly, if we are going to be looking abroad for opportunities to ‘make our monitoring work’, how should this be done? Who is available both on the ground and in European civil and legal societies to answer the call for accountability? How can we connect them and what do they need from each other? This is a head-count, as it were, or a roll call.

Thirdly, how can Europe respond to the ‘accountability call’? European organisations and individuals could ask their respective governments to support efforts in improving the justice system in Israel. Alternatively, advocacy tools and legal cases could be disclosed to the public in Europe. How can we strategically optimise our efforts? How do we mobilise interested actors? How can we avoid duplicating efforts and target the rights spots, at the right time? When we chose the legal route, how do we select our cases and venues?

Finally, and fourthly, if we narrow down by looking at the legal enforcement route in European courts, how, do we go about it technically? We selected a number of outstanding lawyers who have done groundbreaking work in this area to analyse and discuss the pitfalls and potentials of this route.

No conference on IHL/IHR enforcement in the context of Israel/Palestine could ever be complete without the participation of a number of key individuals from Gaza. We invited Raji Sourani, the General Director of PCHR, without doubt the front runner when it comes to enforcement of IHL in local and foreign courts, to share his experiences with us in a keynote address. We invited Issam Younis, General Director, and Mahmoud Abu Rahma, Training, Communications and International Coordinator of Al-Mezan, to talk about their important work. Finally we invited Iyad Nasr, Spokesperson of the ICRC in Gaza, who has been involved in pioneering dissemination of IHL in Gaza and beyond.

In order to attend a conference in Brussels, people from Gaza – like our invited participants – need formal permission from Israel to exit the Strip (every exit route from Gaza is controlled and monitored by the Israeli military), a diplomatic car to take the him or her straight to the Jordanian border at Allenby, a formal ‘letter of no objection’ from the Jordanian government, and finally a Schengen visa. Having begun the process several months in advance, close to the date of the conference we received approval for the Schengen visas for our four Gaza participants, as well as the Jordanian letters. With gratefully received intervention from Lara Deramaix of Avocats sans Frontières in Brussels, and Nathalie Stanus of the Euro-Mediterranean Human Rights Network, the Belgian Consulate in East Jerusalem agreed to negotiate with the Israeli authorities on our behalf. Two days before the conference the happy news came that the Belgian Consul had reached an agreement with the Israeli Ministry of Foreign Affairs, that our Gaza participants would be allowed to exit Gaza, on condition that they would be taken straight through Israel to the Jordanian border in a Belgian diplomatic car. Our four participants, who each had not been able to leave Gaza for a very long time, were relieved and ready, bags packed. On the day before the conference

when travel was scheduled, however, at the Erez crossing, the military commander refused to carry out the agreement reached between the Israeli Minister and the Belgian Consulate. Nothing could be done, the Gaza participants had to stay in Gaza and their presence was sorely missed at the conference. We dedicated the conference to their ordeal.

It leaves us just to thank those without whom the conference could not have been possible. Particular thanks is due one person who was key in conceptualising the event, Ram Rahat of Yesh Gvul. Our hardworking and inspiring team working out the detail of what the conference would look like included Grazia Careccia and John Reynolds from Al Haq and Risa Zoll and Jessica Montell from B'Tselem. We are eternally grateful for the tireless efforts expended by the staff of the Vrije Universiteit Brussels, and in particular Kim van der Borght and his colleagues Ann Maertens and Shirley de Meue. Lara Deramaix and Lieven Denys of ASF and Nathalie Stanus of EMHRN provided vital support and essential intervention in relation to our Gaza participants.

The main set of thanks of course goes to our excellent, expert and energetic conference participants and presenters, whose contributions you will read in this report. We had a challenging and also enjoyable two days. Much of what happened cannot be captured on these pages but we hope the content will form a fertile basis for future efforts, events and processes, many of which have already begun.

Diakonia IHL team, Jerusalem 2009

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SUMMARY

The goal of the conference was to gather legal practitioners and civil society organisations working, inter alia, with the enforcement of international humanitarian law, to consolidate their knowledge, networking skills and refine existing tools and methods whilst finding new possible platforms from where to further improve effective monitoring of international humanitarian law.

The conference panellists addressed issues pertaining to enforcement of international humanitarian law and this part of the report will provide a brief summary and conclusions from the four panels dealing with accountability in Israel, identifying and improving networking, the possibilities for European lawyers and civil society organisations to heed the accountability call and, finally, how we go about bringing cases to court from a technical perspective.

When it comes to accountability in Israel, two of the major problems are that Israeli court decisions are often not followed and implemented in practice by the Israel Defence Forces (IDF) and perhaps even more problematic, the prevalent policy of not opening criminal investigations against soldiers and police in cases of death or bodily injury to Palestinians. What is being done and what can be done to improve that record?

There seems to be a vast array of organisations in Israel, oPt and in Europe that in different ways focus on monitoring compliance with international humanitarian law and that seek to expand the possibilities of accountability for violations of international humanitarian law. However, there is always room for improving the record of criminal investigations and one way is to use abovementioned court cases to highlight the undemocratic policies and practices underpinning Israeli legal practice and to use that as part of campaigning internationally. Legal action may prove more fruitful in cases involving specific military orders, laws and policies, while in regard to house demolitions and arrest operations a more prolific approach could be highlighting these policies in public campaigns. In order to improve the possibility of pursuing such legal action, the conference aimed to strengthen relations between already active NGOs in terms of information sharing and encourage joint efforts in campaigning and especially in developing and expanding the links to lawyers both in Israel and in Europe in order to bring forth cases.

The third group of questions focused on the need for collaboration between lawyers and NGOs in order to reinforce the accountability message in Europe, to gain European civil society support for advocacy and legal initiatives, and the ways in which the two professional groups from Europe and Israel/Palestine can support each other in achieving this goal. The lack of legal redress in Israel, the problem of reinforcing the occupation by playing into the hands of the occupying state and the lack of legal knowledge of foreign jurisdictions are all legitimate concerns and valid reasons to look for legal venues and legal professionals abroad to bring cases from the oPt. How?

By adopting common strategic goals chances of bringing a case to court increase. Participants need to evaluate the value of the legal tools they use and not see tools as an aim in itself. In addition, one must also carefully evaluate case-by-case prospects for universal jurisdiction and redefine the meaning of success in a broader sense. According to the panellists, in order to achieve this, it implies not only applying legal arguments but to allow the law to be part of a larger political strategy. In order to minimise unprofessional complaints that do more harm than good to the cause there is a need to evaluate the potential harm in taking on cases. Human rights organisations most often focus on long-term strategies. For this reason, work relating to organising case work and collecting documentation to make a strong professional case that is politically acceptable and that conforms to European requirements is in line with such long-term strategies. Finally, there is a need to make universal jurisdiction universal, which means taking cases against perpetrators found in both lower and higher ranks in the chain of command. A particular practical concern for future cases concerned the preserving of evidence and the establishment of a common archive for storing evidence for future cases. Such an archive has to be devised in a way that gathered documentation and evidence fulfil the quality criteria to be used in future litigation.

Finally, a number of prominent human rights lawyers who have done substantial work on enforcement of international justice in European courts highlighted pitfalls and potentials of such a course. Suggestions were made in reference to a degree of care when it comes to collecting good photographic evidence, post-mortem/medical evidence, detailed good quality witness statements etc. Lawyers and organisations must 'cherry pick' cases and carry affected clients along with them, managing expectations throughout. To combat the often occurring problem of weakened evidence, an expert database on Israel/Palestine should be developed and accepted in other courts. To be viable, military experts need to prove why certain actions do not amount to military necessity. In each jurisdiction different considerations will apply as to how and when to present evidence files and there is a need to learn about each other's jurisdictions in order to coordinate these cases effectively.

Factors relevant to the success or failure of a case include the presence of the suspect on given territory, the facts of the case and the role of the victim. Cases used to highlight this groundbreaking work include the American cases of *Corry v. Caterpillar* and *Matar v. Dichter*, Dutch cases against Frans van Anraat and Pinochet as it pertains to questions of jurisdiction to prosecute an alleged war criminal and when jurisdiction can be said to have been ascertained.

Aside from strategies relating to universal jurisdiction, the panels discussed additional available remedies, for instance legal action based on corporate liability. There was a consensus that certain government aid project and policies, such as improving certain checkpoints in the West Bank and investing in industrial zones contribute to maintain and strengthen the occupation. There is a need to advise aid agencies how to avoid projects that may end up contributing to uphold and brace the occupation. For instance, charities in Britain actively support settlements by their activities.

In addition, human rights lawyers and NGOs should target financial institutions and banks that are aiding violations of international humanitarian law. Banks do not work with certain charities (for example charities that support Hamas activities), a notion that should be turned upside down in order to make sure that banks take on their financial obligation towards charities that support settlement activities or in general contribute to maintaining the occupation. Banks and aid agencies should not take part in aiding and abetting violations of international humanitarian law. There has been success in this area as both Heineken and Assa-Abloy companies withdrew from the industrial zone of Barkan settlement due to legal pressure from human rights organisations and aid agencies and the French company, Veolia, is the latest company publicly questioned and scrutinised for its activities and projects in occupied Palestinian territory that risk violating international law.

April 2009

ACCOUNTABILITY IN ISRAEL – WHAT EUROPEAN NGOS NEED TO KNOW

Introduction

Jessica Montell, Executive Director, B'Tselem

As a matter of a general framework for the overall panel content, Jessica Montell from B'Tselem gave an introduction where she outlined the basic principle when it comes to accountability: Individual states are responsible for their illegal acts. The right to reparation or remedy is crucial. If there is no remedy for a violation of a right, the right itself is meaningless. In 2005, the UN General Assembly adopted a resolution on the fundamental principles of the right to reparation under human rights law and international humanitarian law.¹ This document is not legally binding; it merely collects and restates accepted norms in international law. Five rights can be derived from the right to reparation:

- Restitution – returning the situation to the previous state, though this is often not possible
- Compensation – in terms of armed conflict, this right is expressly set forth in Article 3 of the Hague Convention of 1907 and in Article 91 of the Protocol, which state, in similar language, that

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. An incident that requires compensation is created when a breach of international humanitarian law causes any damage, whether direct or indirect.²

- Rehabilitation
- Satisfaction – this includes a public apology for state actions and legal action against the persons responsible for the illegal act.³
- Guarantees of non-repetition – this could take the form of a change in law or policy.⁴

Within this framework, all of our accountability efforts are subsumed under the right to satisfaction.

B'Tselem invests a great deal of its resources into promoting domestic legal accountability: ensuring that investigations are opened into alleged wrongdoing and that criminal charges are brought against those responsible. This is Sisyphean work because the military claims it does not have an obligation to open criminal investigations given that it is in a situation of armed conflict. Such investigations are therefore the exception rather than the rule.

According to B'Tselem's research, between October 2000 and December 2007, over 2000 Palestinians who did not participate in hostilities were killed by Israeli security force. However only 270 criminal investigations were opened regarding cases of gunfire, which in turn led to merely 31 indictments.

Cases of death and injury of Palestinians by gunfire pose the most difficulty in terms of pursuing accountability. In cases of security force violence – beatings, harassment at checkpoints – the situation is a bit better. As the army does not define these situations as one of armed conflict, B'Tselem succeeds in getting a criminal investigation opened in most cases of such violence. Over the past eight years, B'Tselem has sent 308 cases of security force violence to Israeli law enforcement officials. Of these, 260 led to criminal investigations. However, only 12 led to criminal indictments. Another five resulted in disciplinary charges. Obviously there is still much room for improvement here. However it is important to note that regarding these kinds of cases, there is no alternative to domestic accountability. There is no possibility of pursuing international accountability of such cases.

Criminal accountability is only one part of the accountability puzzle. In addition to criminal measures against perpetrators, compensation is also an important tool. Civil suits for financial damages not only provide material assistance to the victims but also serve as a punishment and a deterrent against future violations. Palestinians have filed hundreds of such damage suits in Israeli courts, and these efforts are ongoing. However, Israel has legislated a series of measures to make it difficult for Palestinians to pursue such compensation suits.

It is important not to address accountability solely in terms of individual cases. In the occupied territories, most violations of human rights and international humanitarian law are the result of government policy not the actions of a particular individual, so holding the army and the state accountable on a broader level is crucial.

¹ UN General Assembly Resolution 60/147, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (hereafter: UN Principles).

² ICRC, Commentary on the Additional Protocols, footnote 34, para. 3655, p. 1056.

³ UN Principles, Principle 22(e) and (f).

⁴ UN Principles, Principle 18.

When examining efforts to promote accountability through international channels, one must start with the premise that ideally justice should be done at home. Universal jurisdiction can only supplement, it cannot replace domestic efforts to ensure accountability.

The recent Ni'ilin shooting serves as an example of the impact of B'Tselem's new video advocacy as a tool for fostering accountability. In this case, a soldier shot a bound and blind-folded Palestinian in the toe with a rubber-coated metal bullet. Although many soldiers were present at the time, including the commanding officer, a lieutenant colonel, no military policy investigation was opened. A teenage girl filmed the incident and gave it to B'Tselem. This footage resulted in an immediate opening of an investigation, widespread public discussion of the case and an indictment filed against both the soldier and the lieutenant colonel who apparently ordered or encouraged the shooting. Israeli human rights organisations have petitioned the Israeli High Court as the indictment is not severe enough, and the High Court has frozen all proceedings until it hears the case.

In the Israeli case, there is much legitimate criticism of the lack of accountability for many violations of Palestinian human rights. However, it would be wrong to conclude that there is no possibility to promote accountability. Therefore when considering ways to ensure justice abroad, such efforts must strengthen rather than undermine domestic efforts to foster accountability. It is particularly important, for example, to guard against claims of bias in universal jurisdiction efforts.

Lacunae of personal responsibility and systematic impunity

Ishai Menuchin, Executive Director, Public Committee Against Torture

Ishai Menuchin of PCATI addressed the problem of contradictions between state declarations and the state's actual policies and activities. A common contradiction lies between theory and practice, essentially between declarations of law-abiding behaviour and the public authorities' lawless practices and activities. Another common contradiction, according to Menuchin, can be seen when looking at the state's claims of accountability and the actual systematic impunity that protects state agents who regularly abuse human rights. But sometimes all those contradictions and HR abuses are so blatant that it is impossible to fabricate a cover-up. Menuchin stated this reality needs to be combated through finding a new way of merging values and practice.

To illustrate his point, Menuchin referred to the 1984 hijacking of Bus 300 where four Palestinian hijacked Bus 300 and forced the driver to reroute it to Gaza. As a result of an Israeli military operation, two of the Palestinian hijackers were shot dead. A retired General Secret Service agent stepped forward and revealed that he had been ordered to kill the Palestinians, which he did. When investigations took place, the state protected the GSS agents and arranged pardons as well as manipulated the investigations. When the subsequent Landau commission was established to review GSS interrogation procedures, it concluded that "moderate physical pressure" was allowed in certain cases which gave legal justifications to proceed utilising methods of torture. According to Menuchin, not much has changed to date. GSS interrogators are protected by the state that awards them total impunity for actions taken in the service of the state which has resulted in that all actions can essentially be declared legal.

Menuchin listed seven different layers of impunity:

- 1st layer. Refusing to use real name during interrogations.
- 2nd layer. Not recording interrogators while the law requires recordings.
- 3rd layer. Persons held incommunicado.
- 5th layer. The disappearance of medical evidence.
- 6th layer. A semi legal facade of investigations.
- 7th layer. GSS law granting GSS personnel impunity as long as they act reasonable and in good faith.

ACTION:

- Universal jurisdiction shouldn't be ruled out as means to enforce the law against agents of the state that constantly breach it.
- Human rights organisations could do more in terms of bringing complaints forward. To date only 50 cases have been brought.

CONCLUSION:

Some outrageous practices have ceased or are now less common but in terms of the possibilities of holding state agents accountable for crimes this part has not improved.

In captivity: Israeli military courts and Palestinian prisoners and detainees

Smadar Ben-Natan, Partner, Ben-Natan & Lasky Law Office

Israel is holding about 9,000 Palestinian prisoners in custody. The prisoners are one of the most acute issues of Palestinian society, in which most families have at least one member imprisoned. It is also a political tool and a source of power for Israel, to pressure Palestinian society, and to be able to offer prisoners' release. Israel is formally treating the prisoners as criminal prisoners who were convicted with criminal offences, but actually they are, and in some cases treated as, political prisoners; collective conditions in jails – security prisoners; division to cells by organisations, canteen money from the PA, spokespersons, prisoners' releases.

The detention of Hamas ministers after the kidnapping of Gil'ad Shalit is a very good example of the political use of authorities to detain and to judge Palestinians. They are actually all political prisoners. Israel and the Israeli legal system enjoy a large degree of legitimisation as a legitimate legal system, the prisoners held according to principles of the rule of law. Still, Marwan Barguthi was tried in an Israeli civil court.

DESCRIPTION OF DETENTION AND INCRIMINATION PROCESS

Detainees are held, right from the start, almost exclusively in Israeli territory. Apart from few detention centres in Ofer Camp, Hawara, and police stations in settlements, where detainees are being held temporarily, they are detained in detention centres in Ashkelon, Ktziot, Jerusalem, Petakh Tikva (near Tel-Aviv), and Kishon (near Haifa).

Most interrogations are done by the General Security Service (GSS), which is interested in collecting intelligence and activating collaborators and informers. Interrogation concentrates in getting confessions. Most detainees are denied meeting a lawyer for a maximum of three months. Interrogation centres of the GSS are located in the same places: Ashkelon, Jerusalem, Petakh Tikva, Kishon, and Beer Sheva. Extension of detention hearings takes place at the same places of detention and interrogation centres in halls just a few rooms or corridors away. Detainees are taken from their detention cells or interrogation rooms, with their eyes covered, to the 'court' hall. The hall functions as if it was a court. Many times detainees are represented by lawyers, mostly Palestinian Israelis, hired by Palestinian organisations. These lawyers don't normally meet their clients before hearings, and in many cases agree to the extension of detention period. Hearings are not public, family members normally cannot get in and don't even know when the hearings takes place. Normally there is almost no option that a detainee or his family will hire a lawyer of their choice.

Lawyers from the oPt normally can't get inside Israel, and therefore can't visit detainees or represent them in these hearings that take place in Israeli territory. After interrogation is over, indictments or administrative detention orders are being issued. These are submitted to the two main military courts now operating - in Ofer near Ramallah and in Salem near Jenin. The legal procedure takes place according to the military law. Most representation is given by Palestinian lawyers who are not acquainted with the law, precedents, and not at all with Israeli criminal law which infiltrates into the law and procedure, both formally and informally. Indictments, protocols, decisions, are not translated to Arabic.

In court halls translators give poor oral translations – no written text are translated to Arabic. The military prosecution does not have translators of its own, so documents written solely in Arabic and not translated by the police – is handed to the judges (which do not read Arabic) in Arabic only. As a result of the interrogation methods of the GSS – in most cases there is a confession of the defendant, and in fewer cases – confession and incrimination of a partner to the offence. So conviction is very easy. The type of evidence with lack of affective legal representation lead to a system of plea bargains. According to the 'Yesh Din' report, which is compatible with practical experience, about 95 percent of cases are plea bargained. Following conviction, detainees, now as convicted prisoners, again serve their sentence in prisons inside Israel - from north to south, in at least 20 different locations, some of them in compounds consisting of few prisons.

VIOLATIONS OF IHL

Place of courts – 4th Geneva Convention.

- Article 66

Place of detention and arrest – 4th Geneva Convention:

- Article 49 – Transfers in general
- Article 76 – Transfer of detainees and prisoners
- Article 78 – Administrative detainees

Entitlement to POW status – Geneva Conventions, UN Resolution 3103.

Apartheid legal system – Apartheid Convention.

Breach of fair trial rights – Yesh Din report

FAILURE OF DOMESTIC LEGAL SYSTEM – FAILED CASES – ON PLACE OF DETENTION AND COURTS

Place of detention – Supreme court case 253/88, after the outbreak of the first intifada in 1987, Sagadiya and others v. Minister of Defence, rejected the same argument which related then to administrative detainees who were transferred to the newly established Ktziot prison in the Negev. There was a disagreement between the judges Shamgar and Bach, whether the Fourth Geneva Convention prohibits the transfer of administrative detainees from the occupied territories to the occupying state. All three judges agreed that a specific paragraph in domestic Israeli law that allows detention and arrest orders from the occupied territories to be executed in Israel, overrules the convention which is not customary international law and therefore not abiding.

Place of the courts – In Supreme Court case 6504/95 *Wajie v. State of Israel*, detainees from Gaza were detained in Ashkelon and their detention orders were given by a military court which operated in Ashkelon. They argued that the detention order is illegal, since the military court was not authorised to issue it, all since the court is operating in Israeli territory and not in the occupied territory. This argument was based on the territorial jurisdiction of the military courts, which is according to the claim, restricted to the occupied territory. The decision does not mention the Fourth Geneva Convention and its provisions (although it does mention the Sagadiya case which discussed those in length). The court rejected the argument in a very short and laconic decision. It based the decision on a paragraph in the Security Provisions Order (no. 378), stating that a single military court judge (as opposed to a panel of judges) can decide himself on the time and place of the hearings. The decision did not address the relationship between this military order and the Convention, and rested the whole argument on the order itself.

Supreme Court case 2560/96 *Salhab V. the military commander*. After a very strict closure was imposed on the territories in Feb 1996, ACRI petitioned on behalf of four detainees from the oPt challenging the place of hearings inside detention centres in Israel, that as a result:

1. are not public
2. do not allow presence of family members
3. do not allow presence of lawyers from the oPt since their permits were cancelled with the general closure - so they do not allow a free choice of a lawyer.

The petition did not demand that hearings will be in the oPt, it was argued that the only way all this could be realised is if hearings would take place in the oPt, and this issue was discussed. The state argued that:

The detainees are members of dangerous terrorist organisations, being under interrogation, and the distance between the interrogation centres in Israel to the military courts in the OPT is too large, so driving the detainees will be too hard and problematic, also because they will be driven together and this way will see and meet other detainees, and all of this will harm their effective interrogation.

In terms of public hearings and access to family and lawyers – the state committed to inform family and lawyers in advance of the time and place of the hearings and make arrangements so entry permits for them will be issued quickly enough, after security checks. This is not exercised by the state these days and has not been for the past few years and it is not possible practically. Families are not being informed even on primary arrest, which is obligatory by law. The court said that these arrangements should be given a chance to see if it is working and they cannot primarily say it won't work. To my knowledge the argument was not raised again, saying it does not work.

About the place of proceedings, the court said absolutely nothing, and in fact, actually accepted the explanation of the state on how difficult and dangerous it was to travel with detainees from interrogation centres to military courts, or maybe relying on the poor legal reasoning in the Wajieh case.

In June 1997 – Daud Zbeidi – extension of arrest in Petach Tikva – I made the argument of courts acting inside Israel, claiming the court has no jurisdiction. The court rejected the arguments, saying that arguments against the jurisdiction of the courts were raised from time to time in the last 40 years, and rejected, particularly arguments regarding the place of military court hearing, referring to Sagadiya case (place of detention) So this grave and massive violation of International Humanitarian law still awaits real accountability to be imposed on the state of Israel, after all proceedings I described, failed.

Israeli jurisprudence and legal practice regarding accountability

Hassan Jabareen, General Director, Adalah – The Legal Center for Arab Minority Rights in Israel

Hassan Jabareen presented an analysis of Israeli jurisprudence and the Israeli legal culture surrounding accountability. In order to shed light on this culture, Jabareen focused on how Palestinians, both citizens of the State of Israel and residents of the oPt, are perceived by the Israeli legal system, particularly when they encounter the Israeli police and security forces.

OCTOBER 2000 KILLINGS

In October 2000, 13 unarmed Palestinian citizens of Israel were killed and hundreds of others injured during protest demonstrations. After pressure and in response, the government established an official commission of inquiry into the events, which was headed by retired Supreme Court Justice Theodor Or. The Or Commission heard approximately 350 statements and testimonies and subsequently published a report in which it recommended, inter alia, that criminal investigations be opened against police commanders and officers responsible for the 13 deaths and injuries. The Or Commission's report reveals how the Israeli police related to the Palestinian demonstrators as enemies of the state. The police used live ammunition and rubber-coated steel bullets and snipers for the first time in Israeli history against unarmed demonstrators, a measure that is illegal under Israeli law.

However, in contradiction to the recommendations of the Or Commission, in January 2008, the Attorney General decided not to issue any indictments against police officers or commanders responsible for the killings. Firstly, the Attorney General (AG) argued that there was a lack of sufficient evidence to issue criminal indictments. He claimed that given the length of time that had passed since the incident had taken place, witness statements had become less reliable and collecting evidence more difficult. However, it should be emphasised that the AG did file an indictment against an Arab citizen of the state in a case involving the only Jewish citizen of Israel to be killed in the fatal events; he was subsequently acquitted of manslaughter.

Secondly, contrary to the findings of the Or Commission the AG claimed that Arab demonstrators presented serious threats to the lives of police and that their use of excessive force must be viewed within this context. In such a situation, he maintained, police were forced to use operational judgment, and criminal responsibility is negated. Even if it could be proven that police officers fired the fatal bullets, it could be argued that the shootings were justified, without the need to gather evidence from the scene of the events or make judgments in individual cases. This argument contradicts the principle of individual responsibility, which is the foundation of criminal law. It also reveals the AG's perception of Palestinian citizens of Israel as a group as enemies of the state, and of the security forces as the defenders of the state engaged in a battle in which they have wide discretion to open fire. In making this argument, the AG made a connection between Palestinian citizens of Israel and Palestinians in the West Bank and Gaza Strip, by relying on Supreme Court decisions that relate to the wide discretion enjoyed by Israeli soldiers operating in the oPt to employ lethal force.

One can find the roots of the perception of Palestinians as enemies in landmark decisions delivered by the Israeli Supreme Court. Collective punishment against Palestinians in the oPt, for instance, has been justified by the Supreme Court in several major cases in which the court side-stepped intricate legal debates regarding IHL and international human rights law by stating that Palestinians as such are hostile enemies. These cases include the current siege of Gaza, in response to which the court confirmed the state's decision to cut back drastically on fuel and electricity supplies. The court arrived at its judgment despite the fact that the state's decision has no basis in IHL and in the face of extensive evidence brought before it to demonstrate that the cutbacks were likely to have a crippling effect on hospitals, and water and sanitation services. The Supreme Court has also repeatedly rejected petitions challenging punitive home demolitions against entire families for alleged terrorist acts committed by one of their members.

THE BAN ON FAMILY UNIFICATION

In May 2006, a 6-5 majority of the Supreme Court approved the Citizenship and Entry into Israel law, which bans the family unification of Palestinians in the oPt and Palestinian citizens of Israel. The blanket ban on family unification, first initiated in 2002, contradicts IHL and is a further example of collective punishment. The ban allows for no individualised examination of each case, despite the fact that no indictments have been brought against Palestinian applicants for family unification in Israel on terrorism-related charges. The ban was expanded in March 2007 to include citizens from Iran, Iraq, Syria and Lebanon. In issuing this decision, the Supreme Court revealed that it shares the AG's perception of Palestinians as potential enemies of the state who support Palestinian terrorist organisations, either directly or indirectly. In accordance with this perception, there is no need to provide serious evidence to prove that an individual constitutes a threat to state security in order to prevent him from living with his family in Israel. The argument that the potential Palestinian spouses of Palestinian citizens of Israel are prospective terrorists or supporters of terror also hints at how the majority of Supreme Court justices viewed Palestinian citizens of Israel in this decision. Indeed, the view that Palestinian citizens of Israel are a fifth column is deeply entrenched within Israel's political culture.

In both of these cases – the AG’s decision not to issue indictments for the October 2000 killings and the Supreme Court’s decision to uphold the ban on family unification – the dominant trend within Israeli legal thinking is revealed to have supported the collective punishment of Palestinians. Palestinians are viewed as a single group without distinction as regards to age, sex, criminal record, health, education, socio-economic status, etc., one that poses a security threat to the state by virtue of its national belonging. Jabareen concluded by stating that impunity in Israel is ingrained in Israel’s jurisprudence and legal culture, based on a collective perception of Palestinians as security threat.

Q&A and Comments

The panel was followed by additional comments by panellists and Q&As from conference participants. The discussion revolved around enforcement of court decisions, chain of command, how to deal with the Israeli Supreme Court and how to improve monitoring techniques on the ground in order to improve possibilities of getting solid cases in front of the Court

The issue of implementation was discussed in the sense that many Israeli court decisions do not get implemented. For instance, the Supreme Court in 2005 banned the Israeli army’s use of Palestinian civilians as human shields; subsequent allegations against the army for the use of this practice have not led to criminal investigations. Disciplinary charges were brought against one soldier only. Regarding the Beit Surik case, implementation has yet to be realised. The ICJ advisory opinion on the Wall, Jabareen adds, poses a problem since the Israeli Supreme Court has ruled that the Wall is legal and that its application and consequences for Palestinians has to be decided on a case-by-case basis.

Concerning the opening of criminal investigations against commanding officers in addition to soldiers and police, the participants agreed that at present, the possibility of indicting higher up in the chain of command is not possible. Charges do not reach higher than to those present at the scene. However, command responsibility according to international law should be implemented in criminal investigations. Ben-Natan gave the example of the shooting of an Israeli Jewish lawyer in B’ilin where only the soldier who fired their guns were charged with criminal offenses although the commanding officer who gave the order was clearly visible in the footage brought forth as evidence.

According to Jabareen, it is a balance of knowing what cases to bring to the Supreme Court. In the ICJ advisory opinion, Israel did not succeed in convincing the ICJ that building the Wall was legal. The Supreme Court is not amenable to hearing such cases that deal with acts amounting to potential war crimes. As a result, no indictments or any real domestic remedy is at hand. According to Jabareen, it is important to understand the legal reasoning behind the state or the court’s justification to be able to discuss it and counter it. When the Supreme Court justices had to justify the rationale behind the family unification law in its decision on the matter, they could only provide racist reasons. In terms of seeking justice abroad one needs to be able to exhaust domestic remedies and to point out failures locally since international courts will need strong evidence in order to proceed with these matters.

Suggested action

Angela Godfrey-Goldstein at ICAHD stated that during the South African Apartheid regime, anti apartheid activists did a lot of work on judges, which could be a course to take in Israeli as well. Jabareen added that one of the successes in South Africa was to establish that the state of South Africa was not democratic. The perception of Israeli abroad and domestically, on the other hand, is that it is democratic which makes it difficult to fight a majority under such impression. One way of remedying such false perceptions is to address the policies underpinning the Israeli legal system. A way of doing that is to use lost cases to highlight the inherent undemocratic state and use that as part of campaigning internationally. Different issues need different approaches in terms of choosing between taking legal action against committed crimes or address crimes committed from a policies and policy makers’ perspective. Legal action may prove more fruitful in cases involving specific military orders, laws and policies, while in regard to house demolitions and arrest operations a more prolific approach could be highlighting policies as part of campaigning. Montell of B’Tselem added that B’Tselem did a lot of work on torture approaching justices and judges from Europe but added that this course of action is only relevant for judges who are familiar with international law.

NETWORKING – BUILDING RELATIONSHIPS BETWEEN I/P AND EUROPEAN LAWYERS

Summary

The second panel, chaired by Avocats Sans Frontières, discussed issues of networking and building relationships between NGOs and lawyers in Israel and the oPt with European counterparts and how such cooperation would facilitate the quest for accountability for violations of IHL in the Israel/Palestine. The second panel brought together 10 key organisations from Israel, the oPt and Europe, each chosen for their innovative and outstanding work on different aspects of IHL in I/P. The organisations' representatives gave brief descriptions of their respective mandates, objectives, current and future projects, with a view to facilitating setting up collaborations with other conference participants during or after the conference.

Keynote address: Who makes a good case?

Raji Sourani, Director of the Palestinian Centre for Human Rights, Gaza. (Because Mr Sourani was refused permission to leave Gaza by the Israeli army, his speech was read by the PCHR's International Officer)

Universal jurisdiction is an extremely vital professional tool, in order to defend the victims of war crimes and to support the survivors of war crimes, their families and relatives. Universal jurisdiction is also vital in order to assure war criminals that they cannot escape justice, and that sooner or later they will be held fully accountable for their crimes. But universal jurisdiction is not merely a legal theory: it is strong reminder that as human beings we can live according to the rule of justice and law, not the rule of the jungle. It is also a strong reminder that we have the power to make States as well as individuals understand that International Law, including International Humanitarian Law and the Geneva Conventions, are not just legal documents to be discussed by academics in cold dark rooms (or conference halls but laws to live by, and to be applied to real life.

That is why in the Occupied Palestinian Territory, and especially the Gaza Strip, we began meticulously documenting war crimes, or crimes we suspected of being war crimes that were being perpetrated by the Israeli occupation forces. These crimes include extra judicial executions carried out by the State of Israel with the complicity of its judiciary. Since the eruption of the Second Intifada in September 2000 until June 2008, the Israeli Occupation Forces carried out 348 extra-judicial execution operations in the Occupied Palestinian Territory, executing a total of 754 Palestinians, which is 20 percent of the overall number of Palestinians killed by IOF during this period. The victims included 521 targeted persons, and 233 bystanders, including 71 children and 20 women.

BUT – these crimes are not just statistics of 'victims' killed during a long and bloody conflict: we are talking about real flesh and blood people who have witnessed the violent and horrific deaths of those closest to them: their mothers, fathers, husbands, wives and children – the people they love most in the world.

On 9 June 2006, the Ghalia family took a picnic to their local beach in Beit Lahia, in the northern Gaza Strip. Ali Issa Ghalia, his wife Ra'eesa and their five young children were on the beach amidst other local Palestinian families, enjoying the sunshine and sea air, when an Israeli gunboat fired seven artillery shells straight at these picnicking families. Suddenly the scene was carnage: as parents and children fled screaming from the blood-shed that erupted around them, eleven year old Huda Ghalia ran from one torn body to the next, wading through the blood of her parents and brothers and sisters, before collapsing beside the shattered body of her father, where she howled like an animal. Huda Ghalia was the only member of her family to survive the picnic. Thirty two other civilians were injured by the attack on the beach: the sand was, literally, drenched in blood. The Israeli TV channel, Channel 2, subsequently broadcast footage of the Israeli gunboat firing the seven shells at the beach: the footage showed one of the Israeli Navy soldiers scanning the beach with binoculars, which indicted this crime was coldly premeditated with the aim of killing the civilians on the beach. However, a subsequent IOF investigation into the Ghalia family killings concluded that "[t]he likelihood [that the Israeli shell caused the killing] is absolutely zero. There is no chance of this."

This IOF conclusion contradicted the result of PCHR's own investigation, as well as the results of an investigation carried out by Human Rights Watch, which both proved beyond all reasonable doubt that the Ghalia family was executed by shells fired by the Israeli Occupation Forces.

One month later, on Wednesday, 12 July 2006, an IOF fighter jet dropped two bombs on the house of Nabil Abdel Latif Abu Salmeya, a 46 year old Hamas leader who was working as a lecturer at Gaza's Islamic University. The two bombs hit Abu Salmeya's house directly, destroying literally on top of the family living inside it. Abu Salmeya, his wife Salwa and seven of their children were killed. Staff from the Palestinian Centre for Human Rights (PCHR) arrived on the scene almost immediately after the IOF bombs had flattened the house. We spoke to Abu Salmeya's neighbour, Jihad Mohammed El-Saloul, who gave us this testimony:

My name is Jihad Mohammad El-Saloul. I'm 49 years old, and I'm a neighbour of Dr. Nabil Abu Salmeya. Tonight at approximately 2:45 in the morning, I heard an explosion. It also woke my wife and children. I thought it was a sound bomb. About ten minutes later, I heard a second explosion as the windows around us shattered. I left my family in the house and went out to see what had happened. I saw that the explosion had hit Dr. Nabil Abu Salmeya's house. As I went towards the bombed house, smoke and thick dust was pouring out of it. I saw an injured man lying amongst the rubble. His name was El-Ja'bari. We put him in a car, and then I went to help save others.

We found Abu Salmeya's son, Ahmad, an engineering student. His face was injured and he was standing on the balcony that was still standing in the remains of the house. He called to us for help, and we took him to an ambulance. Then I saw a girl, Abu Salmeya's daughter, who was about 17 years old. She was handicapped. Her body had been thrown from the house to the trees in the garden [by the force of the explosion]. Then we found the body of his son, Yehya, who is in fourth grade. The body was headless. We found the head in the hallway of a neighbour's house - the Abass family. I knew both of these children well. Then I found another of Abu Salmeya's sons: He was lying dead and on the ground. When we found the body of his mother, Salwa, Abu Salmeya's wife her leg had been torn off her body. Amongst the trees, we found the severed arms of another man. The house next to Abu Salmeya's house belongs to my neighbour Rajih Abbas. Most of his family was injured by glass and shrapnel. We found his elderly mother with a broken leg, and also a child who was in the same room, buried under rubble. When we took her out of the rubble, she was still breathing. I couldn't believe she was still alive.

Nine people were killed and another 34 injured in this attack.

This is a residential area – said Jihad El-Saloul. – Even if there were one or two wanted (activists) in this area, how can a whole neighbourhood be targeted and bombed by planes, causing all this death and destruction to us, them and neighbours who are civilians. They do not want to kill the wanted, but to destroy civilians, kill them, and terrorize them.

These Israeli extra-judicial execution operations also continued this year. On 16 April, at a village called Juhor Al-Dik in the central Gaza Strip, the Israeli Occupation Forces committed another war crime when they killed 13 unarmed civilians, including eight children, in two separate attacks. The IOF launched a major incursion into the village during the early hours of 16 April, raiding and searching houses, with troops back up by helicopters, tanks and drones.

Thirteen year old Hussein Mahmoud Mohammed, who lives in Juhor Al-Dik, witnessed the 16 April killings in the village. He told PCHR what he had seen.

'I was at home, reading in the garden' he said. 'It was mid afternoon. My elder brother, Hassam, was looking through the gate to see what was happening outside and he told me there were children coming and going. I looked outside the gate too – I saw more than 20 children. Then I saw two [Palestinian] gunmen who walked towards the end of our street. Both of them [the gunmen] quickly came running back down the street. There were drones and helicopters above us, and I saw a helicopter fire a missile at the children outside the gate. When I ran outside [the gate] I saw parts of bodies, and children were running everywhere – they were very frightened. My father had been inside my sister's house which is just behind our house, and he came out of the house and ran towards the gate. He was calling an ambulance on his mobile phone. Then my uncle ran through the gate with four children, and they were all standing inside our garden. I heard a second missile being fired, and the second missile hit inside our garden. It killed my father, my uncle and the four children. I was hit by shrapnel in my chest and [right] leg.

Six children, aged between 13 and 17 were killed by the two IOF missiles. Three other unarmed civilians were also killed in this attack, including the father and uncle of Hussein Mahmoud Mohammed. Hussein Mahmoud Mohammed speaks with a quiet stutter and when I met him just a couple of months ago, this child still looked stunned and unable to fully comprehend the horrors he had witnessed.

Half an hour after these nine civilians had been slaughtered, the Reuters cameraman Fadel Shana'a was killed in the second attack in Juhor Al-Dik, alongside two young children and another unarmed civilian.

On August 12, The Israeli military Advocate General, Brigadier General Avihai Mendelblit, wrote to Reuters. He claimed that the Israeli troops in Juhor Al-Dik could not see whether Fadel Shana'a was operating a camera or brandishing a weapon. His exact words were:

The [Israeli] tank crew was unable to determine the nature of the object mounted on the tripod, and positively identify it as [either] an anti-tank missile, a mortar or a television camera. Mendelblit also wrote that [i]n light of the reasonable conclusion reached by the tank crew and its superiors that the characters were hostile, and were carrying an object most likely to be a weapon, the decision to fire at the target... was sound...

No one has written to the families of the other 12 unarmed civilians who were killed on April 16 in Juhor Al-Dik. In the West Bank and especially the Gaza Strip, there have been too many such horrific crimes; on 7 May this year, 12 year old Samira Majdi El-Daghma and her younger brother and sister all witnessed the violent death of their mother, 33 year old Wafa Shaker El-Daghma, who was decapitated when the Israeli Occupation Forces (IOF) blew up the inner front door of her home in New Abasan village in Gaza, near the eastern border with Israel. Less than a month later, on 5 June, eight year old Aya Hamdan Al-Najjar was executed by a rocket fired from an Israeli helicopter, whilst standing alone outside her home in the village of Khizaa, in the eastern Gaza Strip.

As all these cases graphically illustrate, Palestinians in the oPt have paid a heavy price for the IOF policy of extra-judicial executions, with hundreds of senseless bloody deaths that have torn apart families, and killed and maimed hundreds of civilian bystanders.

The psychological price is also high, especially in Gaza, where the Gaza Community Mental Health Programme published a study earlier this year that identified just over 70 percent of children in the Gaza displaying symptoms of Post Traumatic Stress syndrome.

These horrific crimes demand justice – and when national jurisdiction has either been exhausted, or else is corrupted, then it is universal jurisdiction that offers the possibility of justice.

EXHAUSTING NATIONAL JURISDICTION

- From day one, we at the Palestinian Centre for Human Rights have used our legal experience and expertise to legally document these cases of war crimes and suspected war crimes. We comb through the facts of each case, using maps, tracking and corroborating media reports, and using our expertise of the Israeli legal system to investigate the chain-of-command, in order to pinpoint who is responsible, and therefore accountable, for what actions. Finally, when the investigation and paperwork are both in order, we file the complaint to the relevant Israeli legal advisor.
- But this is only the beginning of the entire legal process. PCHR follows up each complaint with all necessary evidence, data and materials. The organisation knows how to be very stubborn, and patient, as these cases take time. The Israelis are also professionals, and they know the consequences of winning or losing these cases: ethically, financially and politically.
- At this point PCHR goes to the Israeli courts, where they attempt to launch civil cases, in order to obtain compensation for survivors and for the families of victims of these crimes. At this point, and in this respect, they usually lose the case.

PCHR stated that they have never entertained any illusions about their ability to win cases in Israeli courts. Justice cannot be secured under occupation, although sometimes we have managed to minimize the damage that has been done. However, in order to move forward to the second stage of applying universal jurisdiction, we first need to exhaust national jurisdiction. As an aside, PCHR said that during the first Intifada, Israel was sometimes ready to pay compensation in some extremely clear-cut cases: but they would only do so only as part of a deal that always stipulated Israel did not accept any legal responsibility whatsoever for the crimes that had been committed.

UNIVERSAL JURISDICTION

- In order to apply universal jurisdiction, lawyers like Sourani do not have to be experts on the laws of Switzerland, Spain or New Zealand: They only need to be experts of their own national jurisdictions. As the people working at PCHR live under foreign military occupation, at the organisation they are experts on both Palestinian and Israeli jurisdiction.
- However, having excellent contacts with professional and committed human rights lawyers is vital, and so is the need for partners and counterparts who are passionately committed to the universal rule of justice and law. Without expert personal and professional relationships across state boundaries, this is Mission Impossible.

The application of universal jurisdiction needs genuine and committed professionals. These people are found through civil society actors as well as through mutual friends. Sourani considers himself extremely lucky to know a host of these great people - like Marcel Bossnet from Switzerland, Daniel Machover and Kate Maynard of Hickman & Rose - with whom PCHR launched a universal jurisdiction case against the former head of the Israeli Army Southern Command, Doron Almog - and our wonderful Spanish colleagues, Antonio Segura, Gonzalo Boye, Raul Maillo and Juan Moreno, who are working with PCHR now on a landmark case against seven former senior Israeli military officials.

The foundation of universal jurisdiction is based on the theory that the Geneva Conventions have been integrated into national jurisdictions: however, not all states have integrated the Geneva Principles into their national jurisdictions. There is also the important matter of how to apply the Geneva Conventions across national borders, and this is where grounded legal expertise is vital. Universal jurisdiction should in theory be easy to apply to any state, including the US, however, when it comes to the State of Israel, we are talking about a unique case. Human rights lawyers are not only working on universal jurisdiction cases pro bono, but they may also have to pay heavily, not least financially, because of Israel's wide influence and its readiness to use its influence against human rights dissidents.

So, professional relationships are vital: but the most important thing is the open cooperative exchange of expertise, because there is still only a limited number practicing universal jurisdiction. We therefore have to recognise the immense value of the case against Augusto Pinochet and its huge impact on universal jurisdiction, and perceptions of universal jurisdiction. Sourani expressed how very proud he is of his Spanish colleagues who initiated that ground-breaking case that saw Pinochet placed under house arrest in the UK for more than sixteen months. They spoke to truth to power.

To conclude: this conference in Brussels is a unique opportunity, because it is bringing together lawyers from the occupied Palestinian territory, Israel and Europe, so that we can look at the potential for launching more cases of universal jurisdiction together. On behalf of his colleagues under siege in Gaza, who have been working on universal jurisdiction cases for years, Sourani wanted to assure people that PCHR is ready to share their expertise and experiences and to work towards the universal application of the rule of justice and the rule of law. When blood is spilt, whosever blood it is, then justice matters: we can pursue war criminals and begin to undermine their currency of impunity and bloodshed – working together as partners against crime we can continue to make justice work.

Avocat Sans Frontières

Lara Deramaix, Desk Officer Israel/Palestine, Avocats San Frontières

Lara Deramaix, Desk Officer Israel/Palestine, of Avocats sans Frontières proceeded to talk about the role of the lawyer in society and the main focus points of ASF in their work.

AVOCAT SANS FRONTIÈRES: A « LAWYERS FOR LAWYERS » INITIATIVE

ASF started as a lawyers – meaning legal practitioners – organisation. In 1992, a group of European lawyers representing Bar Associations from various countries came together in Brussels and discussed the contribution and role of lawyers to a better world. Inspired by the example of acting on an international scale in humanitarian action of Médecins sans Frontières, 'Avocats sans Frontières' was launched and incorporated on 14 May 1992. The core idea is that lawyers are crucial actors to improve not only the effective protection but also the promotion of fundamental rights and liberties – whether in their own countries or abroad. To ensure this role can be properly achieved and have full impact, the lawyer, as the defender of these rights and liberties, has to be supported, protected, defended, especially when he is if prevented to act as such. The right to defence and to a fair trial was the first main focus. ASF started with punctual interventions on particular situations where defence was at stake: solidarity missions were organised to support lawyers in danger, under pressure or even prosecuted for trying to defend sensitive cases, would they be challenging the establishment, the political system or even economical interests.

ASF TAKES UP THE CHALLENGE IN RWANDA

After a few years of existence ASF was called to support in the judicial processes related to the Genocide in Rwanda, where the local lawyers, for many reasons, could not take the cases. A huge legal assistance program was implemented during more than six years for defendants and victims, mobilising lawyers from other African countries and from Europe. It was the start of a more structured type of intervention: from punctual missions, ASF moved to more permanent ones, establishing offices and launching – in parallel of legal assistance – activities that were aimed at improving the local judicial system: training of judges and lawyers, support in organising the legal profession, selection and publication of relevant Court decision.

ACCESS TO JUSTICE

Realising that access to justice was a real challenge in conflict and post-conflict countries, not only for international or serious crimes but in general, the organisation found itself a larger mandate: making access to justice possible and effective for the vulnerable populations, including by setting up, in partnership with local actors, legal aid systems able to protect these groups – from legal clinics to mobile Courts, legal awareness programs, etc. – but behind a larger spectrum of activities, ASF still strives to promote the respect for fundamental human rights, and, in particular, the right to defence and to a fair trial which are the backbone to installing the rule of law, as well as to encourage the non-violent resolution of disputes. Today, ASF implements a large series of activities towards this objective in Burundi, DRC, East-Timor, Rwanda, Uganda, with nine permanent offices and more than 130 full-time staff.

INTERNATIONAL JUSTICE

International criminal justice is also a growing area of interest, at a local level in the first stage, but also at the international level; in the first case the ICC was investigating ASF made it possible for the very first three victims to participate in the proceedings assisted by a team of a Congolese and a European lawyer; The organisation will pursue its interventions in this field in the view of making access to justice possible for the victims by offering counsel and assistance and by contributing to the development of precedential-jurisprudence on the rights of the victims in such procedures.

ASF IN ISRAEL/PALESTINE

Violations are central in the Israeli-Palestinian conflict, and access to justice is often problematic for the victims. Enforcement of the principles of law is subjected to the political and security context; legislative amendments and judicial evolution trends create new obstacles. The lawyers' work itself is thus particularly challenging, due to a number of legal and practical constraints; but it also happen to be submitted to pressure and intimidations. Within this context, the need to strengthen the capacities of Human Rights lawyers and to support their work is vital. The overall objective of the project currently implemented by ASF is to promote respect for international law – criminal, human rights and humanitarian law in particular – in Israel and the Palestinian occupied territories. Trainings and professional exchange between lawyers working in Gaza, West Bank and Israel are organised to foster the development of global and innovative approaches to improve the work accomplished by the lawyers and, more generally, the effective protection of human rights. How to 'Bring cases abroad' is obviously one of the important topics addressed during the trainings, as the tentative to achieve justice locally is so often frustrated. Apart from the training, solidarity mechanisms and 'Lawyers for Lawyers activities' have been indentified to reinforce the role of the lawyer in this difficult context.

THE ROLE OF THE LAWYER IN SOCIAL CHANGE: GLOBALISATION AND JUSTICE

ASF started recently a vast project to promote the role lawyers can play in the development of justice in a globalised economy, to prevent and tackle the social injustices, inequalities and human rights violation that arise as consequences. The project aims to bring together NGOs and other civil society representatives active in the global south, with lawyers and practitioners, who have legal technical expertise in international trade, business law and corporate responsibility to work on globalisation related issues such as access to essential medicines, fair trade, the exploration of natural resources according to the standards of universal declaration of human rights. The discussions of today are particularly relevant for this project that aims at combining legal advocacy and public advocacy to reinforce each other towards the objective of a fairer world. This project is a call for lawyers worldwide who want to do something, engage themselves and contribute.

Bar Human Rights Committee of England & Wales (BHRC)

Blinne Ní Ghrálaigh, Barrister at Matrix Chambers in London

Blinne Ní Ghrálaigh took the floor and proceeded to inform the participants of the work of the Bar Human Rights Committee, the international human rights arm of the Bar of England and Wales.

The BHRC is an independent body, made up of independent practitioners, legal academics and lawyers in Government service in the United Kingdom, counting over 100 members, and an Executive of thirteen, each with a different country or regional responsibility. The BHRC is primarily concerned with promotion of the rule of law and human rights around the world, and is specifically committed to the protection of persecuted judges, lawyers, human rights defenders and legal organisations under threat.

To fulfil its objectives BHRC carries out a number of activities, including:

- Conducting international fact-finding investigations, trial observations and feasibility studies reporting on human rights situations.
- Implementing capacity building projects through training in advocacy, human rights and humanitarian law.
- Providing legal resources that help strengthen institutions which have a direct impact on the promotion and protection of human rights and the rule of law.

- Monitoring human rights abuses and raising awareness of the plight of victims of human rights violations through the media and public meetings.
- Participating in international litigation, including bringing cases to the European Court of Human Rights, through its International Litigation Unit.

In recent years, it has successfully delivered a variety of programmes or conducted missions to many countries including Syria, Colombia, Turkey, Jamaica, Iran, Armenia, Azerbaijan, Mexico, Belarus, Zimbabwe, Botswana, Uganda, and Sudan. Project funding is achieved on an ad-hoc basis with many of BHRC's projects funded by the Foreign and Commonwealth Office (FCO).

PROJECTS IN ISRAEL AND PALESTINE DURING 2007-2008

The BHRC undertook a fifteen month project in Palestine, providing training to over 120 lawyers and trainee lawyers, and to a number of NGOs and women's organisations throughout the West Bank, on human rights and humanitarian law reviewing procedures for the better identification and documentation of human rights abuses and conducting a legal review of existing Palestinian legislation for human rights compliance on behalf of the PICCR. As part of that programme, the BHRC produced a manual in English and Arabic entitled Human Rights for Palestinian lawyers, setting out the key human rights standards as established in international systems and frameworks and cross-referencing them with provisions of Palestinian legislation. The handbook sets out in detail the United Nations Special Procedure system through which complaints against human rights violations committed with the oPt may be made. It also sets out how to raise internal complaints concerning human rights abuses committed by the Palestinian Authority to the PICCR. The manual is available in English and Arabic on the BHRC's website at: www.barhumanrights.org.uk.

The BHRC would be very interested to hear from lawyers and NGOs as to how they could continue to assist in the region with projects, training, etc.

Lawyers for Palestinian Human Rights

Smita Shah, Barrister at Garden Court Chambers

Presented by Smita Shah, LPHR is a coalition of British lawyers and law students. One of its current projects is an upcoming mission comprising senior lawyers who will visit Israeli military courts and focus on the military court system in general. During this visit, the LPHR mission will meet with Israeli and Palestinian lawyers in those military courts and set out and highlight the failures of military courts.

In addition, LPHR fosters various initiatives in the UK and abroad including:

- Litigation
- Advocacy
- Lobbying
- Co-ordination with other lawyers and activists

When it comes to litigation, LPHR is engaged in various projects some of which touch upon issues of corporate responsibility and settlement products issue. Examples of activities include a project around the Veolia company, the boycott/sanction/divestment project and the provisions of the EU Association Agreement with Israel, particularly in relation to settlement products.

On a larger scale, LPHR is looking at UK obligations in response to the Wall decision. In regard to universal jurisdiction in the UK, there's the question of how to narrow this down to the issue of Palestine and how to make connections with local lawyers to make the best cases and identifying cases. Simultaneously, parallel campaign coordination in different European countries is pivotal and to have an education program coaching UK lawyers and students to use human rights and IHL in relation to the Palestinian issue. As an example, Shah stated that LPHR is linking up a student Palestinian activist organisation with a Palestinian lobbying effort in November 2008.

LPHR is also organising a delegation of lawyers to visit the oPt in March 2009. The focus of the visit will be the Israeli military courts. It is also hoped that the visit will also provide the opportunity for exchanges and workshops on key topics between the visiting lawyers and Israeli and Palestinian lawyers.

Al-Quds Human Rights Clinic

Munir Nuseibah, Coordinator and co-founder of Al-Quds Human Rights Clinic

The Al-Quds Human Rights Clinic was launched in September 2006 in order to give law students at Al-Quds University a chance to study the Question of Palestine within the context of international law, while at the same time receive training in practical human rights advocacy from some of the top human rights lawyers in Palestine. The year-long (two semesters worth 3 credits each for a total of 6 credits) clinical curriculum is comprised of a practical and a theoretical component. The theoretical part of the program consists of weekly sessions with practicing lawyers from all of the main legal NGOs in Palestine (e.g. Al-Haq, Adalah, Addameer, Badil, Mandela Institute) and international organisations such as the United Nations, who, in interactive seminars, deliver not just dry facts & legal analysis, but also explain the methods that they use to combat human rights abuses in Palestine, such as litigation, media work, international advocacy, and others.

For the practical side of the curriculum, the students are divided into two groups – those with Jerusalem identification cards and those without. Students that do not have Jerusalem IDs take part in practical training workshops led by experts from Al-Haq, where they learn, among other things, how to document human rights violations and report on them. Following the training workshops and midway into the semester, each student puts his/her new skills into practice by volunteering with a human rights organisation one day per week, working on projects that these organisations are engaged in. The students are supervised both by the organisations as well as a supervising attorney from the Clinic. The second group of students – those that have Jerusalem IDs, along with their clinical supervisor, set up a weekly legal advice walk-in session at an East Jerusalem community centre, where they advise clients on residency/ID issues, social welfare, etc.

The overall goal of the Clinic is to expose students to the various ways that the law is used to defend and promote respect for human rights. We work to provide students with the legal knowledge and practical skills training to apply international human rights and humanitarian law to the situation in occupied Palestine. The program is designed to challenge students to explore new ways to advocate and to inspire them to play a role in the struggle for change.

Nuseibah stressed that co-operation between universities and human rights organisations is very important. The Al-Quds Human Rights Clinic is currently cooperating with Harvard Law School's Human Rights Clinic and Adalah on a legal challenge of the Jerusalem Master Plan including the planned Eastern Ring Road which cuts through villages in East Jerusalem. The Clinic is welcoming co-operation with more universities and human rights organisations at home and abroad.

Physicians for Human Rights

Hadas Ziv, Executive Director of Physicians for Human Rights

Representing Physicians for Human Rights, Hadas Ziv pointed out that IHL and human rights tools are not the only tools to fight the occupation. Ziv pointed to the Universal Declaration of Human Rights and the third paragraph in its preamble which gives people the right to fight occupation. She added that if human rights don't get revolutionised they in fact are part of the oppression. Ziv then proceeded to present a rationale as to why doctors should take an interest in human rights law and concepts. According to Ziv, doctors should take action but when looking at the Israeli medical committee, it seems like doctors don't feel like taking action and they don't see to medical ethics. Ziv illustrates this by referring to the problems of access of patients from the Gaza Strip. The main obstacles for these patients are the facts that there is no clear status yet of Gaza, Israel control patients' access and medicine and the GSS has complete control of the territory.

Physicians for Human Rights focuses its advocacy on embassies and consulates. They moreover put names and photos of Israeli medical professionals failing to uphold medical ethics in their reports. It's, however, a very sensitive issue to document the identity of people who are in charge of life and death. The Israeli Medical Association is not helpful when it comes to the organisation's work. There are no safeguards or protection in place for, ie. whistle-blowers.

Ziv stated that it's important to utilise the possibilities under Convention against Torture and the Istanbul and Tokyo Protocols. She also stressed that there's an urgent need for the international community to resolve the legal status of Gaza and that it's also the responsibility of the international community to do so.

Israeli Committee against House Demolitions

Angela Godfrey-Goldstein, ICAHD

ICAHD, represented in Brussels by Angela Goldstein, takes a holistic approach. In its activities, ICAHD combines peace, conflict resolution, solidarity, legal assistance, legal research, media strategy, non-violent direct action, human rights case studies and statistics keeping, social entrepreneurship and advocacy from grassroots level up to the highest levels of decision-makers, especially abroad – in the USA and Europe, where they are supported by ICAHD USA, ICAHD UK/Europe and ICAHD Norway. We are also working within the Israeli legal system and in international jurisdiction – for example, with Chilean Judge Juan Guzman in the Spanish courts, bringing a case against three municipal clerks involved in house demolitions.

In Israel, the organisation failed to have a demolition order against its peace centre rescinded – a home ICAHD already rebuilt four times as an act of non-violent civil resistance, so the organisation is very interested in universal jurisdiction. ICAHD sees it as the only way forward. Angela said that ICAHD sees the occupation at the heart of the issue of human rights abuses, so its central area of advocacy is an end to the occupation.

Prof. Jeff Halper, a founder of ICAHD in 1998 when Oslo was unwinding, stated:

I am on the side of Israelis and Palestinians who seek a just peace that addresses Palestinian rights of self-determination as well as Israeli concerns of security and regional integration. I am on the side that stands for equality, human rights, democracy, peaceful co-existence and regional development.

Jeff's advocacy, based on his grounded analysis as an anthropologist, led to 'viability' being specified as a term in the Road Map, and home demolitions were supposed to cease in the 1st phase of that Road Map in 2003. ICAHD works very closely with a wide variety of actors – UN Special Rapporteurs John Dugard and Richard Falk, Amnesty, Human Rights Watch, bishops, unions, and civil society.

HOME DEMOLITIONS

Home demolition policies are a prism for understanding the occupation – a microcosm of the macrocosm. It is almost impossible for Palestinians under occupation to build legally, not least because most of their land is not zoned for their use – it is either frozen or used for settlements. 18,000 demolitions of structures (some of them 7-storey buildings) have taken place since 1967, and ICAHD is currently researching the issue of fines spent by Palestinians (in the millions of shekels per year) and self-demolitions (when people are awarded lower fines in the courts if they demolish their own homes, which then don't factor into the statistics). All of which breed hatred, undermining Israeli security. ICAHD has rebuilt over 150 homes with many other NGOs and groups, including funding them, and especially concentrating on a summer rebuilding with international volunteers and the organisation shares its resources with other organisations such as RCUV, Dukium, ActiveStills, etc. ICAHD advocates together with Breaking the Silence, Taayush and many others, as well as working in a wide network of Israeli and Palestinian and international organisations in the Displacement Working Group, mapping displacement with legal and advocacy strategy.

CAMPAIGN WORK

Angela has been involved in many campaigns and one of those campaigns, networking with OCHA on Wall resource sharing in 2003, led to an invitation to Biddu when the village received its requisition orders (five army jeeps had thrown the papers on the ground) at which time Angela was able to network with peace activists in Mevasseret Zion, who then mounted a campaign which ended up in the Supreme Court with an extremely useful precedent as a ruling and a network developed which included BIMKOM (Planners for Planning Rights), the Council for Peace & Security and others. Moreover, Angela stated that the ICJ Opinion was leaked to her two days prior to it being issued. That way, she managed to get it into the weekend newspapers and diplomats were able to go home for the weekend. The EU Special Report on East Jerusalem was also leaked to ICAHD before it was subsequently buried.

ICAHD gives regular briefings, tours, or attend social functions, with diplomats up to ambassadorial level, including input and editing of some of their reports (for example, the EU Report on East Jerusalem which is ongoing). Angela attended the Presbyterian GA in 2006 to campaign for divestment from Occupation industries (MRTI - for responsible investment). In 2008, Jeff Halper attended their GA. Angela has spoken in the EU Parliament and the UK Parliament, and at many UN conferences, in a civil society capacity.

NETWORKING

As an example of networking, on the day of her presentation, Angela received two phone text messages: One from a Mexican woman stuck in Gaza who wants to get out to have her baby in Mexico and who was put in contact with Physicians for Human Rights and Gisha. The other read:

Sorry to disturb you. For your information, a boy has been stabbed allegedly by a Palestinian in Yizhar tonight. Settlers now came to Asira and set a house on fire and shooting. There are around 200, army is there, village under curfew. Our EAs Simi and Gabriella are there, trying to take pictures from a distance and to mobilize other organisations. Ambulance not allowed in, wounded are being brought down, EAs watching near the ambulance. ICRC, UN and Rabbis informed. TV on the way. Any other suggestions? Pauline

According to Angela, she did a great job, so additional suggestions consisted of contacting Reuters, AP and AFP and contacts for Adv. Michael Sfar and Yesh Din.

FREE GAZA MOVEMENT

Similarly, for her Free Gaza Movement work, Angela went to Cyprus knowing MEP Kyriacos Triantaphyllides and journalists and activists on Cyprus, which led to two press conferences and Paul Larudee who addressed the European Parliament on this issue.

The legal status of Gaza has been specifically highlighted by the Free Gaza Movement. The American National Lawyers' Guild's Middle East Committee has been supportive and in October 2008 they held their AGM, at which Jeff Halper spoke and offered an open invitation to more lawyers to sail into Gaza.

Jeff has an outstanding case now as to his entry into Gaza, being charged with being a public nuisance and breaking a military order. Ironically his bail (only 2000 shekels!) includes a 30-day ban on entering Gaza. Similarly, past arrests have awarded him sentences of community service when in fact by standing in front of bulldozers he was patently involved in community service at the time of his arrest. Due to her work with the Free Gaza Movement, whenever Angela crosses a border, she's isolated or interrogated both at Ben Gurion and in Taba. Jeff's Matrix of Control thesis (available on ICAHD's website and in books) is considered a bible by many journalists who participate on the tours and briefings and whom ICAHD helps with their reporting or film making. For example, Channel 4 TV's film about Jerusalem, or the BBC half hour programme about the Bedouin of Israel, for whom Angela provided contacts and sourced footage of demolitions. Angela has also developed a photo exhibition 'Jerusalem Dispossessed' (which can be seen on the ICAHD website and that of ActiveStills where it can be used as a PowerPoint presentation), to visualise the organisation's guided tours. It's currently being shown around the world, including at the Edinburgh Festival, various universities, the European Social Forum and the Scottish Parliament.

Law Office of Michael Sfar

Emily Schaeffer, Attorney at Law Office of Michael Sfar

Emily Schaeffer explained her office's main project as being the legal counsel to Yesh Din and having a law enforcement and accountability program consisting of:

- Funding projects
- Enforcing law against settlers including tracking complaints and investigations
- Monitoring border police and soldiers
- Military courts for due process violations
- Tracking illegal settlements and outposts on Palestinian land

Schaeffer illustrated her office's activities by the case of Bi'lin, a village in close proximity to Ramallah where the villagers had their lands confiscated by the Wall. The village lost 400 hectares of its agricultural land which was declared Israeli state land. The Wall order issued resulted in leaving 60 percent of the village land on the Israeli side of the Wall. Ever since the decision was handed down, weekly demonstrations take place every Friday for the past 3,5 years.

The village approached Law Office of Michael Sfar for legal assistance but there has been no redress from Israel although even the UN through numerous resolutions, decision and also the Security Council has declared that the Wall has to be moved. At the same time, a settlement was allowed to build on Area A land and a Canadian company was involved. The Law Office instructed lawyers in Canada to file a petition against the two Canadian corporations, facilitated by the fact that Canada has integrated IHL in its domestic legal system in a more progressive manner than most countries.

The Law Office put forth three chief claim demands:

- Injunction relief, meaning to ask the Court to issue a permanent injunction to cease all actions in the neighbourhood.
- Restore land as in a declaratory relief, declaring that the companies violate the law.
- The Law Office also asked for two million dollars in punitive damages (they did not ask for compensatory damages)

The case is, at present in October 2008, before the Court in Canada and the Law Office is expecting the companies to get back with a claim that the case has been filed in the wrong forum. The companies are likely to claim that the acts took place in Israel and not in Canada. The Law Office plans to reply that it already try to seek remedy in Israel whereas the company

will most likely seek to dismiss the case. However, regardless of a potential case loss, it's still a win since it does give press coverage which, according to the Law Office of Michael Sfard, is a small victory.

Badil Resource Centre for Palestinian Residency and Refugees' Rights

Susan Akram, Professor at Boston University Law Clinical Program

Badil, represented here by Susan Akram, works via a legal support network on issues pertaining to Palestinian refugees. When it comes to global accountability, Akram presented three different layers of mapping projects:

1. Direct claims relating to victim and victimiser.
 - The right of return
 - Restitution
 - Compensation

The three rights are contested as a legal matter and the Badil network project works to establish how those rights exist and where to raise those claims.

2. Indirect claims as a conceptual effort. This is targeted against third parties such as corporations and private persons. Universal jurisdiction can be attained by using torts, litigation and suing corporations but it's far more difficult and contains many layers of barriers.
3. Mechanism for future claims. This option is primarily valid within the UN. It has garnered some success. UN treaty bodies make stronger and stronger statements. It has been successful mainly due to the ICJ Wall opinion since many issues were laid to rest in the Advisory Opinion. The Court took treaty bodies' comments and observations into account. These are small steps but an enormous step in terms of establishing what Palestinian rights are.

If one looks to the Caterpillar case, the company's shares dropped but not due to the legal proceeding as much as the grass roots campaign and how these organisations reached press and made an impact.

Defence for Children International Palestine

Khaled Quzmar, Coordinator of Child Justice Program

Defence for Children International-Palestine Section (DCI-Palestine) is dedicated to promoting and protecting the rights of Palestinian children in accordance with the United Nations Convention on the Rights of the Child (UNCRC). DCI-Palestine monitors, documents and focuses its advocacy efforts on three main violations of Palestinian child rights including: the right to life, right to liberty, and the right to be free from torture and other forms of abuse. DCI-Palestine directs its advocacy at UN bodies and EU Member States to pressure Israel to uphold its international legal obligations in the context of its military occupation of Palestinian lands since 1967.

In the Occupied Territory, the rights of Palestinian children are routinely violated by the Israeli military, including the systematic use of torture and ill-treatment of child detainees. Since 2000, over 6,500 Palestinian children have been detained. Currently, 327 children, including five girls are being detained by Israel. Five children, two of whom are girls, are being held in administrative detention without charge or trial. DCI-Palestine lawyers represent about 30 per cent of these children before the Military Courts. Within the Military Court system a Palestinian child is defined as a person under the age of 16, whereas by contrast Israeli domestic laws define an Israeli child as a person under the age of 18. Palestinian children are often tried before the Israeli Military Courts as adults and convicted on the basis of confessions illegally obtained through the use of torture and abuse. DCI-Palestine has documented the Israeli military's repeated use of psychological and physical torture as well as threats of sexual abuse when arresting and interrogating Palestinian children in violation of Israel's legal obligation as a State Party to the UN Convention Against Torture. DCI-Palestine recently re-launched its Freedom Now campaign to mobilize global civil society to put an end to arbitrary detention and abuse of Palestinian children by Israeli authorities through advocacy efforts such as letter-writing, economic boycott, and organising fact-finding missions to the occupied territory.

Please visit: www.dci-pal.org/english/camp/freedomnow/display.cfm?docID=802&categoryid=16 for more information and to get involved.

Quzmar stated that 970 Palestinian children have been killed since the second intifada. DCI documents violations suffered by Palestinian children, including cases of injuries and torture. Moreover, researchers visit prisons and bring cases to court. The problem is that one needs to accept the rules of the military court. Confessions are obtained and drawn without legal counsel present and it's impossible to challenge the military court in the military court. Moreover, cases never got redress in civilian Israeli courts. It's also impossible to obtain justice for Palestinians in the international community or in UN bodies. This is true on the European level as well, where the EU itself gave Israel more than what the Israelis even wanted.

EUROPEAN LAWYERS AND NGOS TAKING UP THE ‘ACCOUNTABILITY CALL’

Summary

The third panel, chaired by Al-Haq, brought together a combination of European and local lawyers and NGO professionals. It focused on the need for collaboration between the two in order to reinforce the accountability message in Europe, to gain European civil society support for advocacy and legal initiatives, and the ways in which the two professional groups from Europe and I/P can support each other in achieving this goal. In its introduction, Al-Haq recounted reasons why it is important to engage European lawyers in taking cases from Palestine. The lack of legal redress in Israel, the problem of reinforcing the occupation by playing into the hands of the occupying state and the lack of legal knowledge of foreign jurisdictions are all legitimate concerns and valid reasons to look for legal venues and legal professionals abroad to bring cases from the oPt.

Introduction: Why Europe needs to take up the ‘Accountability Call’

Grazia Carreccia and Wesam Ahmad, Al-Haq

Grazia Careccia and Wesam Ahmad from Al-Haq opened the third panel by a call to adopt strategies on how to best utilise information on the ground in the oPt in order to create pressure and garner influence among policy makers. Careccia stated that the Israeli legal system cannot provide redress for Palestinians and therefore, one needs to look to legal venues abroad. She added, like others before her, that in order to do that, one must first exhaust local remedies in Israel although it's often a useless process.

Careccia also addressed the obstacles in bringing cases abroad. An essential component in being able to bring cases abroad is collaborative cooperation within the jurisdiction where one is seeking redress. Local Israeli and Palestinian organisations have expertise of the local systems but lack the thorough knowledge of foreign jurisdiction. In order to bring forth cases in other jurisdictions, organisations need local partners outside oPt and Israel. The legal instruments available are moreover difficult to use and Al-Haq has learnt that universal jurisdiction is not the only way to attain the goals, but other legal venues can be sought through other forms of exercise of extraterritorial jurisdiction, such as passive and active jurisdiction. When it comes to using the Israeli legal system, one is faced with the dilemma of possibly reinforcing the occupation and the fact that justice is virtually impossible to attain and the question arises what stance to adopt in regard to the Supreme Court of Israel.

Al-Haq also pointed to why Europe and European lawyers should take up the accountability call. According to Careccia, there is a sense of legal maturity in Europe and the appropriate tools are available. Success is dependent on the political will in the country at hand. She also stated that Europe is an important actor on the international scene and that any change in Europe would put pressure on Israel. Essentially, Careccia said, the only way to end the conflict is to end the occupation and one way of doing that is by putting pressure on Israel and increase the pressure on third state parties as far as their legal responsibility for violations committed by Israel in the oPt are concerned, for example the obligation of the High Contracting Parties to the Geneva Conventions to ensure respect for the provisions of the conventions and the duty of non-recognition of illegal acts.

Preparing European civil society for legal accountability

Ram Rahat, Yesh Gvul

Ram Rahat from Yesh Gvul started off the panel by talking about what effect the doctrine of universal jurisdiction has on perpetrators of war crimes. Not only does the doctrine of universal jurisdiction offer justice and redress for victims but it also acts as a deterrent and make soldiers think before they drop a bomb and just the knowledge of possibly being indicted for a war crime may lead these soldiers to refrain from bombing. According to Rahat, the most important factor of universal jurisdiction is the deterrent factor.

Rahat pointed to a court decision from 1956 (known as the Kafr Qassem case) where the court stated that soldiers have an obligation not to follow certain orders making it illegal for Israeli soldiers to commit flagrantly illegal acts and imposed a legal obligation to refuse to carry out such orders. However, in practice, this is not happening at present. The situation on the ground makes it difficult to refuse to follow illegal orders. Yesh Gvul therefore supports these soldiers and convinces soldiers not to take part in the occupation and not to commit war crimes. Yesh Gvul does that by distributing leaflets to soldiers about war crimes. Ultimately, the goal is to end impunity of war crimes and Yesh Gvul views legal recourse as one tool. Rahat recounts a case that took place on midnight, July 22, 2002 regarding an extrajudicial execution in Gaza City where a bomb was dropped in a densely populated area to execute the commander of Hamas' military wing. This was a clear example of a flagrant violation of not only IHL but also domestic Israeli law. For Yesh Gvul, it presented a perfect test case since the entire chain of command was clear and the organisation placed ads in newspaper advocating it was a war crime. The Israeli Advocate General was approached to open an investigation into the case but it refused. The Supreme Court was subsequently asked to open criminal investigations into the incident but until to date, no decision has been reached, which, according to Rahat, is a usual tactic by the Supreme Court when it doesn't want to review cases.

Essentially, when cases like this surface, which they do all too often, if the Israeli legal system simply won't prosecute war crimes or even open investigations, then one needs to utilise the international legal system available to pursue redress abroad. Although, this is not entirely uncomplicated.

CASE STUDY - MOSHE YA'ALON

To illustrate his point, Rahat drew attention to a case in November 2006 when the Auckland District Court issued an arrest warrant against the former Israeli Chief-of-Staff, Moshe Ya'alon, for his part in authorising the Shehade assassination. The case against Ya'alon was never pursued, as a politician stopped a court decision to arrest a suspected war criminal. The Ya'alon case in New Zealand was by no means exceptional. General Doron Almog had an arrest warrant issued against him in London in September, 2005. Unfortunately, Almog was advised to stay on the plane at Heathrow airport and the police never carried out the arrest order. Two civil suits filed in the United States against Ya'alon for his role in the 1996 shelling of Kafar Qana in Lebanon and against former GSS head Avi Dichter for his role in the Shehade bombing were also dismissed. The complaints in Belgium against Ariel Sharon and General Amos Yaron for their part in the Sabra and Shatilla massacres were also dismissed. An attempt to claim damages was made in a New York court but the court accepted state immunity as the accused was a state agent.

Since the Almog case, Israel has brought a great deal of pressure on the British government to modify its laws in the same way that Belgium has. But in light of the non-arrest of Almog, these seemingly ceremonial interchanges do in fact have ramifications towards the obstruction of such prosecutions:

- These pressures provide a counterbalance to the efforts to strengthen universal jurisdiction legislation and enforcement in order to make these more effective.
- They reinforce executive branch efforts to obstruct universal jurisdiction proceedings against Israeli (and presumably American etc.) officials.

This scenario is by no means unique. We have now seen a similar procedure take place between Israel and Spain regarding the complaint to Audiencia Nacional against some of the perpetrators of the Shehade bombing.

UNIVERSAL JURISDICTION REGIME CONCENTRATES ON WEAK AND FAILED STATES

What, de facto, has come about is a universal jurisdiction regime which concentrates on weak and failed states. By all means you can prosecute the former Serbian or Rwanda regime for crimes against humanity. However, the actions of the Russian federation in Chechnya are given impunity. French courts are commendable for their willingness to put Congolese or Nazi criminals on trial, but have blocked similar attempts to prosecute the widespread gross violations that French forces committed in Algeria. US civil courts award damages for torts against 'so-called' terrorist acts attributed to the Palestinian Authority while dismissing similar actions against Israelis as contrary to the interests of the United States. The Tokyo and Nuremberg trials marked out the post World War II era as one of 'Victor's Justice'. The political pressures applied from then till the present day have maintained that reality, despite appearances to the contrary.

In order to make the use of universal jurisdiction more realistic it is imperative for us to relate to it politically. This demands a well thought out strategy which is capable of making universal jurisdiction applicable in all cases, and not just as a tool that will be used by powerful states against weaker or failed ones.

BUILDING POLITICAL COALITIONS

This needs to be done both on the international and the national level. It is imperative that organisations such as Amnesty International and Human Rights Watch take a leading role in the campaign to call on governments that have accepted universal jurisdiction to fulfil their obligations, and to put pressure on the 'rogue states' to accept universal jurisdiction. On the national and local levels there is a need for organisations which will make universal jurisdiction into a public issue, and to create pressure on politicians and legal systems to implement it.

MAKING UNIVERSAL JURISDICTION UNIVERSAL

One of the major objections to the implementation of universal jurisdiction is of 'politicisation'. That is to say that the process is directed against states such as the US and Israel for political goals, and not in the interest of justice. As I have already demonstrated, the actual situation is the opposite of this – politicisation has been directed against failed regimes. However, in order to combat these objections, it is necessary that our actions be completely fair and balanced. Not only must we call for the end of impunity for grave violations committed by Israel, but also by those committed by Hezbollah and others against Israeli citizens. It would also serve justice better if Palestinians that commit grave violations be judged not by Israeli military courts, but under universal jurisdiction.

In any event, it is imperative that we concern ourselves and direct our efforts against all grave violations regardless of the national or political origin of the perpetrators of such acts. It is especially important that we are certain that those nations that do implement universal jurisdiction apply the same standards to themselves, otherwise they will be rightfully accused (and therefore rightfully cautious) of a double-standard regarding universal jurisdiction implementation.

Can the UK judge Israeli torture if it has not first judged its own violations in Northern Ireland? Can France continue to ignore its violations in Algeria, while holding Congolese responsible? Finally, it would be best if all grave violations were tried by the ICC, thus eliminating the objections to application of universal jurisdiction at that the national level. Only when this is made impossible should the use of national courts be made.

The need for a pan-European focus on international justice issues

Jürgen Schurr, Redress

Jürgen Schurr from Redress addressed the issue of using universal jurisdiction in a wider sense. Redress started a project in 2003 as a response to the fact that Belgium had to revoke universal jurisdiction and to change legislation due to outside pressure.

According to Schurr, the EU is a good venue for fighting against impunity because the EU is in a good position to oblige member states to commit to international law and to pursue international crimes. The EU also has the potential to offer and enhance cooperation on cross-border crimes. Redress provides funding for projects dedicated to universal justice. The organisation also serves to raise awareness against impunity through the European Parliament and dialogue with member states and organises conferences on international justice.

THE EUROPEAN APPROACH AND THE EU AS AN INSTITUTION AND THE POSSIBILITIES

1. There's a strong commitment of the EU towards international justice on an external level, in the context of its Foreign Policy, with support to the establishment and working of the ICC as well as the international tribunals.
2. At the same time, the EU started to develop a "common area of justice, freedom and security"- while this development bears some serious human rights and civil liberties concerns in itself, it also presents an opportunity to include the fight against impunity on the agenda of the EU's Justice and Home Affairs policy so that it complements the commitment of the EU to the ICC on an external level.
3. The EU is in a position to encourage or even oblige Member States (MS) to adopt a more committed approach to universal jurisdiction:
 - The COUNCIL of the EU has the competence to adopt an action plan on how to fight impunity within the EU – similar to the action plan on the ICC and which would strengthen cooperation and ultimately lead to the approximation of MS legislation on serious international crimes. While this is clearly a very long term target, we work closely with Presidencies of the EU with a view to ensure that the fight against impunity forms part of the EU's Justice and Home Affairs policy. The Council has already adopted a Framework Decision on Victims Rights in criminal proceedings, which is currently being updated and which can become a useful tool for victims of serious international crimes.
 - Via the Council and the European Commission, the EU can enhance cooperation/ set up cooperation mechanisms designed to support MS' authorities in cross border investigations and prosecutions - in 2002 and 2003, the Council adopted two decisions on serious international crimes, which resulted in the establishment of the EU Network of Contact Points in respect of persons responsible for genocide, war crimes and crimes against humanity. The EU Network to date is the most important component of the EU's fight against impunity within the EU and has real practical benefits as it considerably strengthens the cooperation among police investigators, prosecutors and investigative judges. The Network has so far met five times, discussing issues related to witness protection, extraterritorial investigations, taking witness testimonies abroad and enable practitioners to share information on ongoing cases to speed up investigations.
 - The European Commission has funds which can be applied to training of national investigators, prosecutors and judges in international criminal law.
 - The European Commission also finances projects dedicated to international justice within the EU.
 - The European Parliament, which unfortunately does not have any decision making powers within this area of law, can serve to raise awareness of certain issues related to impunity by adopting resolutions, holding debates and organising conferences. The EP adopted resolutions on the case against Charles Taylor, Hissene Habre and the Spanish 'Guatemala' cases.

A EUROPEAN FOCUS JUSTIFIED AMONG MEMBER STATES

1. All Member States ratified the relevant Conventions – Torture, Geneva Conventions, Rome Statute (except Croatia).
2. Europe is an attractive 'safe haven' for suspects / perpetrators from all over the world, so the majority of Member States will or are faced with the same issues when it comes to the enforcement of international law.

3. At the same time, the gaps between MS legislations as well as different approaches and varying degrees of political willingness lead to safe havens in Europe for perpetrators and to an unequal access to justice for victims.

WHERE DOES UNIVERSAL JURISDICTION IN EUROPE STAND TODAY?

Since 2004, at least 10 cases based on universal jurisdiction resulted in the prosecution and conviction of the perpetrator for crimes such as genocide, crimes against humanity, torture and war crimes committed in countries such as Afghanistan, Rwanda, Uganda, the DRC, Argentina and Mauritania. Several investigations based on universal jurisdiction are currently ongoing in countries such as Italy, Denmark, Germany, The Netherlands, France, the United Kingdom, Norway, Finland, Sweden, Spain and Belgium. That indicates clearly that universal jurisdiction is no longer a theoretical concept but reality that States need to address.

STRUCTURAL APPROACH TO THE FIGHT AGAINST IMPUNITY

An investigation and prosecution of serious international crimes confronts national authorities, in particular police and prosecution services with particular challenges, starting already with the notification of such crimes – as opposed to domestic crimes, genocide or war crimes are not usually reported to the local police station.

The majority of past cases that resulted in convictions involved perpetrators who entered the country as asylum seekers in the aftermath of an armed conflict and often using a false name and different identity. National authorities in some countries, in particular the UK, Norway, the Netherlands, Denmark, Belgium and only recently Switzerland therefore intensified cooperation with immigration authorities which play a key role in alerting national authorities to the presence of suspects on their territory. The authorities apply specific screening procedures in order to identify who was potentially involved in committing a war crime or torture. Criteria may include the former position of the visa applicant or asylum seeker and procedures check the name against Interpol's Red Notice list or lists issued by international tribunals and courts.

Another challenge, according to Schurr, is that police and prosecutors lack the knowledge and familiarity with the crimes to be investigated. In order to facilitate work, specialised units in police and prosecution departments have been set up in certain countries like Sweden, Denmark, Belgium, Norway and the Netherlands.

Yet even if no prosecution ensues as a consequence of the complaint, preliminary investigations by national authorities and the taking of testimonies of victims who managed to survive a conflict or attack and could escape abroad can be vital in preserving the evidence and potentially lay the foundation for future criminal investigations. Preliminary investigations based on universal jurisdiction also send an important signal that impunity will not be tolerated. The effectiveness of units speaks for itself. Of all cases that have been successfully brought to trial since 2001, only two cases came from countries where specialised units don't exist, France and Spain, countries where civil parties play a crucial role in initiating cases and taking cases to court.

CONCLUSION

There are a number of components that stand in strong opposition to universal jurisdiction even within European jurisdictions:

- Inaccurate phrasing of laws
- Amnesty/impunity/statutory limitation
- Israel: presence requirement

But valuable experiences have been made on how to use the principle in practice - by NGOs filing complaints, but also by states that take their commitment to international justice seriously. It appears from past cases, that persistence on behalf of NGOs and victims filing complaints is vital, that complaints filed need to be as detailed as possible, as is close cooperation with national authorities such as police and prosecution services.

Very positive developments have been made, specialised units are slowly but increasingly established and universal jurisdiction starts to be applied also outside Europe, in Africa, Latin America and the US, Canada and New Zealand. The experiences made by/ in some European countries provide for valuable lessons learned that can be taken into account by countries outside Europe.

However, although it is an acknowledged principle of international law, universal jurisdiction is still not truly 'universal' in the sense that it is applied everywhere and against everyone. Opposition to universal jurisdiction is strong and misconceptions about its 'raison d'être' are widespread, requiring a careful analysis of the use of universal jurisdiction to fight impunity – again, the experiences made in Europe may help to develop such a universal approach to universal jurisdiction.

Mapping out strategy in Europe at national and regional levels

Wolfgang Kaleck, European Centre for Constitutional and Human Rights

Wolfgang Kaleck stated that universal jurisdiction is a reality. A large amount of procedural complaints have been brought; although the juridical outcome has been much less progressive. There has still been a tangible effect however when it comes to the complaints, arrests and judgments.

Taking into account the lack of experience and resources of human rights organisations it is still a considerable achievement. Kaleck did also stress that universal jurisdiction does not solve human rights and political problems. Even so, Kaleck is of the opinion that universal jurisdiction is an important tool to use.

Kaleck then proceeded to evaluate the pros and cons of universal jurisdiction. He stated that universal jurisdiction cases should aid in the process of gaining public (and political) condemnation of the acts and circumstances the cases are about. This is why as lawyers we need to strive for a redefinition of success and to look at the structure of legal procedures. Even if all we are able to do is to bring complaints or issue arrest warrants, this may have as big an effect as actually getting to the judgment stage. Thus it is important to include both a legal and political basis for future litigation.

To use universal jurisdiction on its own is not enough, Kaleck said. A broader view needs to be adopted, not only a pure focus on universal jurisdiction. For instance we should consider domestic criminal cases based on passive and active capacity. Good examples of the use of domestic criminal law in 'international' issues are the prosecutions in Italy of the U.S. CIA agents and Italian Secret Service agents, who are accused of kidnapping an Egyptian cleric for 'extraordinary rendition'. Kaleck also suggested looking at individuals who are complicit, through aiding principal perpetrators, such as those who allow CIA agents to operate in other states. Kaleck also pointed to the effects of the Pinochet and Videla cases in Europe, which led to many prosecutions in Chile and Argentina as a result of good collaboration between European and Argentinean human rights organisations.

FACING OBSTACLES IN UNIVERSAL JURISDICTION CASES

Many legal cases are viewed as politically motivated and there is unwillingness on part of law enforcement authorities to touch such cases. Spain is one country where thus far it has gone well, but the rest of Europe does not reach that standard. However, there is a serious concern that Spain will face the same problem as Belgium, which makes it even more essential to achieve a unified European approach in universal jurisdiction cases.

CONCLUSION

- We need to evaluate the value of the legal tools we use and not see the tool as an aim in itself.
- There's also a need to carefully evaluate case-by-case prospects for universal jurisdiction.
- We need a redefinition of success in a broader sense. To not only employ legal arguments but to allow the legal to be part of a larger political strategy.
- There are a lot of unprofessional complaints that do more harm than good to the cause. This means that there is a need to evaluate the potential harm in taking on cases. For instance, Israeli cases are not currently feasible in Germany.
- Seeing that human rights organisations focus on long-term strategies, organising case work and collecting documentation in order to make action more professional, politically acceptable and conforming to European requirements is in line with such strategies.
- Make universal jurisdiction universal meaning taking cases against perpetrators both lower and higher up in the chain of command.

Q&A and comments

A question was posed to Rahat at Yesh Gvul on what the political tools are that can be used parallel to legal instruments. Rahat replied that there is a difficult political climate ever since 9/11 and the proclaimed war on terror. The Israeli government has been successful in linking the Palestinian freedom fight to the war on terror. When it comes to ending impunity for Israeli war crimes, the issue needs to be put in a larger framework of general universal jurisdiction. No one should be immune and accountability should apply to everyone. It's essential to work together and see how efforts affect each other's work. Obviously, in an ideal world all cases would go to the ICC but since we are still not there, there is a need to tie legal and political aspects together in achieving our goals. Someone added that strong cases are needed for the courts; however, this alone is not enough. It's also essential that the societal environment where the case is brought is optimal. Therefore it's essential to keep eye on what's going on in government, NGOs and also in the international network. A positive societal environment allows for top people being charged and vice versa.

Gonzalo Boye and Antonio Segura commented on how we should learn from mistakes committed in previous cases in order not to repeat them. The problem is how to preserve evidence. There is a need to create an archive for all evidence to be used in future cases, such as a centre for file evidence and it should be unique and recognised by a court. It's essential because evidence loses weight over time. This, Gonzalo Boye said, is a common task that we can all do. He continued to illustrate with the Al-Deraj case where all legal requirements were fulfilled in order to bring it before a court. It could be done due to collaboration between the state where the crime took place and the state where the case was eventually brought to court. Wael Abu Nemej at Diakonia, added that Diakonia has discussed the creation of an archive of the sort that Boye mentioned and it's an ongoing project.

Badil continued on the archive theme by stating that such an archive requires unison evidence gathering. It also added that a push is need for international investigations not only universal jurisdiction and not only focussing on the oPt but also on discrimination within Israel. It emphasised the need to coordinate all work in order to be able to advance and suggested setting on workshops on various issues.

Liesbeth Zegveld addressed Schurr at Redress and wanted to know what European institutions actually achieved. Liesbeth also commented on Kaleck's presentation saying that one should only bring factually and legally sound cases before court, essentially implying that if you have such a case, then it should be submitted. Kaleck replied that there is a distinction between lawyers and human rights organisations. As part of the human rights movement organisations need to apply small strategies. A good case entails a legal requirements and technical aspects as well as considering the social and political context in the country where the case emanates from.

Daniel Machover turned to Schurr, and others, and reiterated parts of Zegveld's question as to how Redress is pushing universal jurisdiction advocacy on the EU level. Machover added that we need to have cross-European cooperation, including, ie, screenings, arrest orders and evidence archives and to establish a system on how to better connect with prosecutors. He stated that NGOs can't go too far in bringing cases in the UK as NGOs are not prosecutors but should rather target prosecutors with their findings. Phil Shiner added that UK courts are ready to take on cases as they have ventured into areas they wouldn't go a few years back. But one still needs to have carefully thought-out strategies. Schurr responded by saying that it's vital to create a political environment suitable for universal jurisdiction, a task that is very difficult in his opinion. Schurr doesn't see the possibilities of discussing Israeli crimes on an EU level. The EU itself won't find support for screenings of Israel. Rather, he suggests encouraging the EU to set up specialised units and establishing EU networks as important tools to progress universal jurisdiction and it will have an impact on investigations. He also added that a framework on good cases should be established and that the victim's perspective would always be taken into account when pursuing cases.

Charles Shamas pointed to the object and purpose of redress. Shamas said that deterrence through bringing evidence and cases into the wider public sphere would implicate many actors and that moving the process forward is political. Archived evidence is part of the struggle to enforce compliance with IHL and a concrete way of pursuing convictions. Shamas added that dealing with legal action should be done judicially in order to build a system of deterrence.

Some worries were raised from the grassroots, activist community when Karen MacKenzie addressed the issue of the quality and knowledge among conference panellists and participants being very high but that this is also worried her from an advocacy perspective. If everybody leaves the conference with the ways forward consisting of evidence archives and workshops, that won't help activists and advocacy efforts. MacKenzie did call for lawyers being part of advocacy tools in order for activists to promote issues based on legal language. She suggested splitting the work into two groups:

- One dealing with technical legal issues
- The other dealing with mixing cross-vocalisation for grassroots organisations

Careccia from Al-Haq ended the third panel by saying that it is very important to adopt a shared strategy for litigation and to bring forth creative methods in moving forward. She added that judgments and legal action are not a goal in itself but that the consequential effects on the victims are key objectives. She urged participants to be careful when considering cooperation and instead encouraged organisations to focus on individual resources first. She also addressed the issue of strength in collecting information: documentation human rights organisation style versus evidence legal style. It's difficult for small organisations to document for human rights purposes, not to mention for litigation purposes. Careccia stated that all organisations need to assess their documentation and resources first and then to develop from that into something sound and viable first.

LEGAL ACCOUNTABILITY IN EUROPE

Summary

The panellists discussed what strategies that should be adopted and endorsed when it comes to legal accountability in Europe. Issues such as the pivotal need of civil society being involved when bringing cases to Europe, a need for standardised methods in collecting and storing evidence in order to strengthen present and future cases and a facility to store such evidence in, and possibilities of working outside the framework of universal jurisdiction and look the third state responsibility and corporate responsibility.

Introduction: Approaches and strategies for legal accountability

Daniel Machover, Hickman & Rose Solicitors

In his introductory speech, Daniel Machover addressed what European lawyers should bear in mind before taking legal action and what strategies that need to be in place for success in pursuing such legal cases. According to Machover, to succeed in bringing litigation (or raising effectively the legal issues of concern), lawyers outside the region need to build strong organic links with local lawyers and legal organisations in the region - this is not easy. It takes time and commitment and is something both parties need to work at, to build trust and a strategic approach. In theory, it sounds easy but in practice it's not.

CIVIL SOCIETY NEEDED

Furthermore, the support of civil society organisations in the region and across Europe for a litigation strategy, including the invocation of universal jurisdiction, is a vital part of building an enduring and successful series of legal actions to achieve legal accountability. How to deepen and widen this work requires planning and co-ordination. There needs to be a broader movement on impunity which should be part of the networking initiative and that also implies that universal jurisdiction should be pushed on every country. This is what needs to be built on and there has to be a civil society consensus with universal justice as the key theme.

PREPARING CASES

In order to successfully build cases meticulous and detailed documentation of cases is required. It should be of a standard not collected purely to document human rights abuses. That is, a degree of care needs to be taken to collect good photographic evidence, post-mortem/medical evidence, detailed good quality witness statements etc. Lawyers and organisations must 'cherry pick' cases and carry affected clients along with them, managing expectations throughout.

Machover illustrated the difficulties with a torture case. In such cases, high quality of photographs is essential and one needs to bear the time line in mind, meaning that evidence must be collected early if possible since often, prisoners are released long after torture took place and if evidence has not been collected in close proximity, the case is difficult to prove using physical evidence such as photographs. Often, other disparate issues arise when, for example, prisoners talk to three different organisations giving three contradictory statements. Different individuals take down statements differently; they ask different questions. This means that strong cases can be weakened from the very beginning.

To combat this problem, an expert database on Israel/Palestine should be developed and accepted in other courts. To be viable, military experts need to prove why certain actions do not amount to military necessity. In each jurisdiction different considerations will apply as to how and when to present evidence files and there's a need to learn about each other's jurisdictions in order to coordinate these cases effectively.

UNIVERSAL JURISDICTION NOT THE ONLY WAY

Universal jurisdiction is not the only avenue: need strategic thinking regarding remedies in U.K., for example against Veolia, currently in hand, and other companies involved in relations with settlements and the construction of the illegal wall. Machover suggested ways to rethink strategies:

- Acquire a legal opinion from a leading barrister on Israel/Palestine
- Corporate liability in U.K.
- Focus on settlement property sales
- Labelling of settlement products

All methods contribute in pushing the public discourse forward on these issues. When an opinion comes from the barristers' chamber, there's a good chance newspapers will pick up on it. This is of course focussed on U.K. jurisdiction but it may be helpful for other jurisdictions as well. In essence, the approach above could be used as a successful campaigning tool-frame for debating legal issues in the public.

When looking across Europe, there is consensus in that settlement building is a certain war crime and this has had a ripple effect on both a state and corporate level. Both these levels should be subject to U.K. jurisdiction and other countries' jurisdictions. Issues of concern are sale of settlement land in the U.K. and food labelling issues amongst others. There is certainly room for this strategy. The OECD has developed a cross-Europe coordinated approach to every single OECD national contact point raising breaches of corporate guidance. It's a soft law tool but it forces people to think about actions and possible repercussions. In the U.K. companies that have relationships with settlements will end up on a list and this is a project for lawyers and campaigners alike.

International crimes in domestic courts - comparative analysis and practical tips

Liesbeth Zegveld, BKFV and professor at University of Leiden

Prof. Liesbeth Zegveld spoke about domestic courts taking on the responsibility of ruling on, and dealing with, international crimes with a special focus on the Netherlands.

EXAMPLES OF DUTCH CASES

On 14 October 2005, The Hague District Court sentenced two Afghan generals for their role in torture in Afghanistan in the eighties. The Afghans had come to the Netherlands in the beginning of the 80-ties as asylum seekers. During the communist regime in Afghanistan they had been the director of the military intelligence service (KhAD) and an interrogator of the KhAD. They were sentenced in appeal to 12 and 9 years detention. On 9 May 2007, Frans Van Anraat, a Dutch businessman, was convicted for the delivery of chemicals to Saddam Hussein in the 80-ies. He was sentenced to 17 years imprisonment. 10 March 2008, the Court of Appeal in The Hague acquitted Guus Kouwenhoven of all charges and sharply criticised the work of the prosecution. Guus Kouwenhoven is a Dutch national who worked in Liberia during the presidency of Charles Taylor. He was charged with illegal arms trade and war crimes.

In October 2008, Dutch court will try a Rwandan man, a case transferred to Dutch authorities by the Rwanda Tribunal. His brother has been convicted by the Rwanda Tribunal for genocide. As we lack jurisdiction for genocide committed in 1994, he will stand trial for war crimes and torture. This seems an impressive list. And in terms of the complexities of the cases it is an impressive list. Still the international crimes cases tried in Dutch jurisdiction can be counted on two hands. All these cases were initiated in 2004 and later. In 2002, the Dutch War Crimes Act (WOS) existed for 50 years. No one had been convicted under this Act at its 50th anniversary, in 2002.

CHANGES

Pursuant to the establishment of the ICC in 1998, things changed. It was then believed – at least in Parliament – that we could not on the one hand host international criminal tribunals (not only the ICC, but also the ICTY, the Lockerbie Tribunal and soon the Harare tribunal pm) and on the other hand carry out no prosecutions for international crimes at the national level. The most important change in 2004 and onwards though was the new prosecutor put on these cases: Fred Teeven. As prosecutor, Teeven was known as a crime fighter, since he had led many investigations into organised crime. This crime fighter approach also appeared fruitful in international crimes cases. He successfully prosecuted the Afghan generals and Frans Van Anraat. The new focus on international crimes in the Netherlands has led to the establishment of justice departments that are specifically charged with international crimes. So we have since a couple of years a separate department for the prosecution of international crimes, in Rotterdam. And the court of The Hague is appointed in law as the only court responsible for trial of international crimes.

WHAT MAKES A SUCCESSFUL CASE?

Liesbeth then proceeded to discuss some relevant features of the international crimes cases that have been tried in the Netherlands with a focus on questions of strategy: which cases are likely to be successful, which cases not, and why? The total number of Dutch cases is too small to categorise them along sharp lines. But they are enough to say some sensible things. Liesbeth has played a role in all these cases either as defence lawyer of the suspect, as counsel to NGOs who were called to testify, but mainly as counsel for the victims who filed claims for damages. Looking back, factors relevant to the success or failure of a case are: presence of a suspect on Dutch territory, the facts and the role of the victims.

PRESENCE OF THE SUSPECT ON DUTCH TERRITORY

All successful prosecutions concerned suspects who lived at the time of the start of the criminal investigation in the Netherlands. Some of them were Dutch, some were not. All of them had their habitat in the Netherlands. Presence on home territory is a condition for jurisdiction of Dutch courts, if neither the suspect nor the victims are Dutch. So one could wonder whether we have true universal jurisdiction in the Netherlands as a link to the state is always required. The key words in the definition are 'presence' and 'jurisdiction'. How long time is required to fulfil the 'presence' requisite and for what kind of jurisdiction presence is a precondition.

On 27 May 1994, former dictator of Chile, Pinochet, was spotted in a hotel in Amsterdam. Chile Committee Netherlands filed a complaint for torture against him. The prosecutor (before Fred Teeven) dismissed the complaint. One of his arguments was that the Netherlands should focus on Dutch war criminal and that prosecution of Pinochet would be 'arrogant'. Thus, Pinochet was allowed to leave the country. When the Chile Committee filed a complaint against the prosecutor's refusal to come into action, Pinochet was no longer on Dutch territory and so jurisdiction to prosecute was said to be lacking. On what basis is it claimed, that jurisdiction to prosecute is lacking? The Pinochet case raises the question whether it is arguable that Pinochet's presence, however brief, provided the Dutch prosecutor with jurisdiction to investigate the case. Were the Dutch authorities – despite his brief presence – competent to prepare the case and ask for extradition or issue an international arrest warrant?

Considerable confusion surrounds this topic, not helped by the fact that legislators, courts and writers alike frequently fail to specify the precise temporal moment at which any requirement of jurisdiction is said to be in play. Is the presence of the accused within the jurisdiction said to be required at the time the complaint is issued? Or at the time of the decision to prosecute is taken? Or at the time of the actual prosecution? Or at the time of the actual trial? In order not to try some one in absentia; so requiring that a person must be within the jurisdiction at the time of the trial itself, is in Liesbeth's view a prudent guarantee for the right of fair trial. But it has little to do with bases of jurisdiction recognised under international law.

It seems that the only prohibitive rule is that criminal jurisdiction should not be exercised, without permission, within the territory of another State. So in order to be able to arrest someone, he has to be on the prosecuting state's territory. But in order to be able to arrest someone, there must be a reasonable suspicion against him. That suspicion must be based on previous investigation. And it should be possible that such investigation is already carried out if someone has been present in the Netherlands, be it for a short while, and has left again. This would in principle seem to violate no existing prohibiting rule of international law.

A conservative interpretation of the law is that a suspect needs to be in Dutch territory when the prosecutor takes the decision to prosecute and start the investigation. A flexible interpretation is that presence only when a criminal complaint is filed against the person, for example by victims, is sufficient legal basis for the prosecutor to start the prosecution. Liesbeth said that she would favour a flexible interpretation of the requirement of presence for jurisdiction. Presence in the Netherlands is fulfilled even during a stopover during a flight or a brief visit. This brief presence provides the Dutch authorities with jurisdiction to start investigation of the case, for example pursuant by a complaint of the victims. If otherwise, it would be an incentive for unwilling prosecutors to allow a suspect, against whom a complaint has been filed by victims, to leave Dutch territory, so to be able to then claim that we lack jurisdiction.

Another manner to force the prosecutor to come into action even during brief presence of the suspect is to set a time limit on the prosecution's decision to start an investigation. For example when the prosecutor is informed about a suspect's presence in the Netherlands, he/she had to decide whether the case warrants in investigation and the arrest of the suspect, within 24 hours. Perpetrators over whom Dutch jurisdiction is in place and who stay in the Netherlands 24 hours or longer, can be arrested. Liesbeth and her colleagues will ask the court of appeal to clarify the unclear rules and practice on presence of perpetrators on Dutch territory. They will do so in a case concerning a Minister from Israel and former head to Sin Beth. He visited the Netherlands for four days but was allowed to leave despite a request from a victim to the prosecutor to arrest him.

TAKE FACTS MORE SERIOUSLY

Liesbeth has a standard advice which she gives in all individual cases:

- Do take the 'facts' of a case more serious. After the facts, the procedure comes.
- Subsequently, the for academics so interesting 'substantive law' steps in with particular focus on human rights law, international humanitarian law and international and domestic criminal law.

Academic lawyers love the law rather than the facts. Basically because they have no experience with the strategic role of the facts and the ways they are collected, identified, weighed, disputed, verified, advocated, and determined. But in law suits, the facts tend to be decisive.

ROLE OF THE VICTIMS

Liesbeth illustrated the above by giving examples when it comes to the role of victims in criminal proceedings. It is the victims who establish the facts and who essentially are the facts. Their role can be decisive to get the case going, and during the actual trial, as a witness and a claimant of compensation for suffered damages.

To illustrate the role victims can play in these cases, Liesbeth recounted the story of the victims of Frans van Anraat. In 2003, prosecutor Fred Teeven got interested in Frans van Anraat. The immediate cause of this interest was an interview Van Anraat gave on Dutch television on 6 November 2006, telling about his past - two decades ago - when he sold huge quantities of chemicals to Saddam Hussein. The chemicals were crucial for the production of mustard gas. This gas was used by the Ba'athists in the war against Iran and in their attacks on Kurds in '87 and '88. At the same time, while the prosecutor was watching the

interview on TV, so were the victims of Van Anraat. Urged by his presence in the Netherlands, Kurdish victims of the chemical warfare who fled to the Netherlands in the 80s came to Liesbeth's office with a request to file a complaint against van Anraat for war crimes. She then contacted the prosecutor and learnt that he had already started an investigation into the case. The interest of the victims to participate was more than welcomed by him. The case was politically sensitive in the Netherlands and he was not sure he would be able to convince his superior that this case should be pursued. Van Anraat appeared to have close ties with the Dutch Secret Service. He had been an informant of the AIVD and received protection from them.

The role of Iran in this case also formed an obstacle for the prosecutor. Out of the 120.000 victims of chemical warfare, 100.000 were Iranians. The evidence and all the facts were in Iran. Cooperation from and with Iran was therefore crucial for the prosecutor. But for well-known reasons, Dutch authorities were not too eager to deal with Iran. The pressure exerted by the victims in the Netherlands was important to get the case going. It was used by the prosecutor to convince opponents that he had little choice than to prosecute as he would otherwise be forced to do so by the victims, if necessary through a complaint to the court of appeal.

But also in court the victims made a difference. Sixteen victims of chemical attacks, both from Iran and Iraq, joined in the criminal case against Van Anraat. These victims submitted a claim for compensation to the Dutch Court for damages they had suffered. They were themselves evidence of the crimes. Many of them still had visible scars of the chemical bombs. While representing the victims is also the responsibility of the prosecutor, the active participation of the victims in court clearly helped in presenting his case. In court, the victims told their stories in a way the prosecutor would never have been able to do. They showed videos. In its verdict, the court of appeal said it was impressed by the victims' stories. Regret has been expressed that the victims were not represented in the other criminal cases, most importantly the case against Guus Kouwenhoven.

Kouwenhoven was charged with arms smuggling and war crimes in Liberia in the 90s, for which the Dutch public prosecutors sought a 20-year jail sentence and a fine of €450,000 against Kouwenhoven. On June 7, 2006 Kouwenhoven was sentenced to eight years in jail for arms smuggling. The court did not find him guilty of war crimes. In appeal he was released of all charges. It was felt by several participants in the case, that if victims of war crimes would have made their appearance in court, they may have been able to give a face to the war crimes. In Dutch criminal cases, victims may also file claims for damages. This is a totally different matter. Their chances to get compensation are still extremely difficult for reasons of statutes of limitation, applicable foreign law etc.

THOUGHTS ON POLITICAL ASPECTS

To sum up, Liesbeth stated that there is one more common aspect of the international crimes cases tried in the Netherlands and that is that they all concern suspects who are nationals from politically weak and poor states. The four cases brought to court dealt with crimes committed in the Democratic Republic of Congo, Liberia, Rwanda, Iraq before the 2003, and Afghanistan. It is an interesting list of states. Clearly the political and economic interests of the Netherlands in these states are limited or even non-existent. To that, observation should be added that complaints by victims against nationals from politically stronger states have commonly been rejected. Israel, China, Argentina. From this, one may conclude that the Dutch prosecution policy regarding international crimes has much to do with a 'not in my backyard' policy than with a no-safe haven-policy.

Having said this, the question remains whether we should as lawyers continue bringing cases with low chances due to their political sensitivity. That may be because either the suspect is a head of state, or because the suspect comes from a friendly nation or any other reason. Some say: bad cases make bad law.

Liesbeth is of the opinion that if the law leaves room for a positive outcome action should be taken. Political considerations should not be deterrents. If we let ourselves be frightened, we are taking on the roles of the prosecutors and judges. It is our role to keep bringing cases. You lose many, you win some. Law is not being driven by grand theories but by aims and a lawyer's aim is to represent the victims' aims.

Learning from the US Alien Tort Claims Act – experiences

Maria LaHood, Center for Constitutional Rights

Maria LaHood from the Center for Constitutional Rights (CCR) shared some of her experiences in invoking the American Alien Tort Statute (ATS) to try to hold foreign officials and corporations accountable for violations of customary international law. Maria emphasised that this litigation is one tool in a broader strategy, which must encompass organising, education and outreach, and media work, especially in the United States where there is not an open debate on these issues. She briefly discussed the parameters of bringing civil cases under the ATS and the Torture Victims Protection Act, and specifically discussed two cases CCR brought against Israeli officials.

Matar v. Dichter is a class action brought with PCHR against Avi Dichter, the former Director of Israel's General Security Service (GSS) for dropping a one-ton bomb on Al-Daraj, a residential neighborhood in Gaza City around midnight on July 22, 2002, killing 15 and injuring over 150 people. The District Court dismissed the case, finding that Dichter was immune under the Foreign Sovereign Immunities Act because he was acting in his official capacity at the time of the attack, relying on a letter from the Israeli Ambassador. The court also dismissed the case on political question grounds, relying on a Statement of Interest submitted by the U.S. Government arguing that litigation would conflict with U.S. foreign policy. Plaintiffs appealed to the appellate court, and are waiting for an oral argument date.

In another class action, *Belbas v. Ya'alon*, CCR sued Moshe Ya'alon for the April 18, 1996 shelling of the UN compound in Qana, southern Lebanon, which killed over 100 people and injured hundreds more. The district and appellate courts found that Ya'alon was immune under the FSIA as he was acting in his official capacity, relying on the same Israeli Ambassador letter.

CATERPILLAR CASE

The case against Caterpillar was brought by Palestinians who were injured or had family members killed when their homes were demolished on top of them, and by Rachel Corrie's parents. The case alleges that Caterpillar sold D9 bulldozers to the IDF knowing they would be used to unlawfully demolish homes in the oPt. The District Court dismissed the case on various grounds, and the appellate court affirmed the dismissal, finding that U.S. financing of the bulldozer sales rendered the claims political questions, because adjudication would interfere with U.S. foreign policy that Israel should buy Caterpillar bulldozers. Plaintiffs have asked the full appellate court to rehear the case, and are still waiting for a decision. The case did, however, help revitalise the grassroots campaign against Caterpillar.

Creative litigation: It's not just about universal jurisdiction

Phil Shiner, Public Interest Lawyers

The last panellist concluded the conference by addressing the topic on how to employ methods of creative litigation in enforcing accountability for war crimes. Phil Shiner from Public Interest Lawyers shared new angles and approaches on pursuing cases of international crimes.

USING THE ICJ ADVISORY OPINION IN NEW WAYS

One aspect Shiner raised was to find ways to get more out of the ICJ's Advisory Opinion on the Legality of the Construction of a Wall in the oPt. If one looks at the International Law Commission's commentaries on the Articles on State Responsibility, one finds support for states breaching the obligations enunciated in the ICJ opinion – in particular the U.K. Moreover the ILC commentaries also suggest that a case based on the U.K. being in violation of its obligations under the state responsibility doctrine is justiciable in U.K. courts.

There are domestic implications arising from international obligations. The Advisory Opinion addresses and identifies serious breaches of the Geneva Conventions and it refers not only to jus cogens rules but also to 11 special provisions. The advisory opinion mentions seven obligations placed upon third states and two other erga omnes and jus cogens norms. Moreover, it enumerates two negative obligations, and such obligations come with a lower burden of proof and are thus easier to establish.

Shiner proceeded to cite some of the specific articles from the ICJ's Articles on State Responsibility, in particular Articles 40 and 41 relating to the obligation of states to cooperate in order to bring an end to violence and the obligation not to render aid or assistance to states who are involved in international wrongful acts. Article 41, paragraph 2, is an example of a negative obligation.

JUSTICIABILITY

In order to make cases justiciable, the issues in question need to be brought to the attention of key persons. One way is to write letters about affected Palestinians to the U.K. government as nothing is unjusticiable in respect of human rights. There is also the question of applicable law that must be decided. At the core lie breaches of absolute norms and unless the government responds in a satisfactory way it may be eligible for scrutiny by a U.K. court.

Q & A and comments

Richard Stanforth said that aid policies reinforce the occupation. Government projects, such as checkpoints for tourists, industrial zones contribute to maintain and strengthen the occupation. We need to give advice to aid agencies how to avoid projects that may end up contributing to uphold and brace the occupation. For instance, charities in the U.K. actively support settlements by their activities. We should target financial institutions and banks. Banks don't work with certain charities (for example charities that support Hamas activities). What we need to do is to turn that around and make sure that banks take on their financial obligation towards charities that support settlement activities or in general contribute to maintaining

the occupation. A tool available to push this is the EU Guidelines on Promoting Compliance with International Humanitarian Law. It is better to focus on the financial area as governments are not concerned with IHL but are instead focussed on politics and therefore there's a substantial lack of respect for IHL in governments.

Grietje Baars responded and stated that Diakonia is currently researching third state responsibility and there is a forthcoming position paper on IHL and industrial zones in the making. Heineken withdrew from Barkan settlement thanks to whoprofits.org. Phil Shiner said that banks and charities should not take part in aiding and abetting breaches of IHL. Gonzalo Boye stressed the importance of victims in a court process. To move forward one cannot have a case without victims. There are limits to the actions we have available and the action should always be in the interest of the victim. In terms of choosing a suitable time for filing a case, that should be up to the NGOs and not the lawyers. Lawyers have merely the duty to present the case. A good case is one that we can prove. Universal jurisdiction can be close to universal justice and victims are looking for justice within universal jurisdiction.

Liesbeth Zegveld added that victims are usually not interested in damage claims but always want lawyers to bring a criminal case. Shiner added that damages are only a small part of the quest for reparation. Regarding victims, Daniel Machover stated that different witnesses have different voices and that it's all individual. In some cases, with NGOs, they take great risks bringing facts into light and cases can get closed down. NGOs need to cherry pick the cases they know they are going to win. Another option is to set an exit strategy for families in place when cases get publicised in order to protect the victims.

It is important to consider who is speaking on behalf of the victims and how one assesses what victims want. How does one ensure witness protection under universal jurisdiction? Is there a possibility of confidentiality on documents? Many information providers do not disclose sources and how does one deal with this fact before a court. Zegveld concurred and stated that many cases do not come out because that very fact. Witnesses in cases against Liberia received death threats and there is no guarantee for protection. This is a matter for the courts and prosecutors. Schurr said in regard to protection issues that in some cases, witnesses are provided with mobile phones and they can participate in proceedings via video or phone. Zegveld replied that victims are covered by legal aid except air fares also if they are covered from abroad and if they are not able to travel a video link is a good option.

Lieven A Denys added to the financial dimension. Ever since 9/11 international financial legislation has been applied to cease money flowing to perpetrators of crimes. NGOs and lawyers should look at this as it can also work as a deterrent. The entire financial sector would then be liable and the banking sector has a special standing in this instance.

Closing remarks and future action

Lieven A. Denys

In his closing remarks, Denys summed up the issues and proposals of future actions in order to end impunity and push for the application of universal jurisdiction and to enforce accountability for perpetrators of war crimes. Denys invited the organisers of the conference to work on follow-up meetings of this conference focussing on the further strategic development of legal practices and new legal techniques. Exchanges are needed on strategic litigation, for example a forum to discuss progress in turning the failures of the judiciary (caught in a political context) to safeguard human rights into more successful outcomes by expanding the strategy to the private sector where some of the obstacles can be overcome, such as sovereignty and impunity (although this has its limits), evidence (not restricted by criminal procedural rules), physical presence (of globally operating companies) and also the (indirect) responsibility and complicity of banks, corporations and charities can be challenged. Global jurisdiction should be added to the issue of 'universal jurisdiction'.

There is a need for operational lists on Universal Jurisdiction and participation and networking are encouraged, with the aim to enlarge the group. A broadening of the exchanges to Global Jurisdiction including private litigation is encouraged.

There is a need to launch two working groups to encourage and organise the structural dialogue and to exchange mutual understanding is recommended:

- Working Group on Strategic Litigation and Technical Exchanges
- Working Group on Cross Fertilisation of NGO's to integrate mainstream advocacy and legal credibility

There is a need to build a strong network of legal practitioners fuelled by academics and legal contact persons in NGOs. There is a need for guidance on gathering evidence and the establishment of facts.

Two mid-term/long-term ambitions were formulated:

- An International Centre for securing evidence.
- The set up of Coordinated or International Investigations.

PANELLISTS

Prof. Susan Akram

Professor Akram teaches in the Boston University Law's Clinical Program and prior to joining the faculty in 1993, she worked for many years as an immigration lawyer. She has served as executive director of Boston's Political Asylum/Immigration Representation Project and as directing attorney of the immigration project at Public Counsel, a public interest law firm in Los Angeles. In 1992, she was interim director of the agency overseeing the resettlement of Gulf War Iraqi refugees in Saudi Arabia. At Boston University, Professor Akram teaches in the Civil Litigation Clinic, where she supervises law students in their representation of indigent clients in immigration and refugee cases. She also teaches Immigration Law and Policy and Comparative Refugee Law. Her distinguished research was recognised with a Fulbright Senior Scholar Teaching and Research Award for the 1999-2000 academic year. She used the grant to research and write recommendations for a durable solution for Palestinian refugees in light of the 1993 Oslo Talks, and to teach at the Palestine School of Law at Al-Quds University in East Jerusalem.

Smadar Ben-Natan

Smadar Ben-Natan has been a leading Israeli human rights lawyer for the past 12 years, and a partner at Ben Natan, Lasky law office. She specialises in human rights and criminal law, and deals with Palestinians', prisoners', women's and migrants' rights. She was involved in some of the most important cases in Israel, regarding false confessions, torture by the security service, pornography and domestic violence. She represents and consults human rights organisations, such as Machsom Watch, the Public Committee against Torture in Israel, Gush Shalom, and the Palestinian Prisoners ministry, and acting on behalf of the Israeli public defender's office. Recently, she created a training project for Palestinian Lawyers appearing in Israeli military courts, and published a source book of the applicable law in these courts.

Grazia Carreccia

Grazia Carreccia is the Coordinator of the Accountability Project and a legal researcher with Al-Haq, a Palestinian human rights organisation based in Ramallah, Occupied Palestinian Territory. She holds an LLM in International Human Rights Law from the University of Essex and a University Degree in Political Science from the University of Pisa. She has worked at the International Criminal Tribunal for the former Yugoslavia, Redress and Human Rights Watch.

Lara Deramaix

Ms. Deramaix was a practising Lawyer at the Brussels Bar Association before joining ASF (1997-2002). She was also a member in Lawyers for Lawyers Missions in Turkey (1999 and 2000) and went on field missions for more than 2 years in Rwanda, Burundi, and DR Congo (2002-2005). Since 2005, Ms Deramaix is the Desk Officer in charge of East Timor and Israel Palestine.

Angela Godfrey-Goldstein

Ms. Godfrey-Goldstein has a long background in peace and human rights movements. With a past as a paralegal, Ms. Godfrey-Goldstein is currently committed to her work with ICAHD and the Free Gaza Movement.

Hassan Jabareen

Mr. Jabareen is the founder of Adalah: The Legal Center for Arab Minority Rights in Israel. He is a lawyer and has served as the General and Legal Director of Adalah since its establishment in 1996. He has litigated tens of constitutional law cases before the Israeli Supreme Court on issues of discrimination, political rights, land rights, and economic and social rights on behalf of Palestinian citizens of Israel as well as humanitarian cases involving the protection of Palestinian civilians under occupation in the Occupied Palestinian Territory. He has also published articles on citizenship, minority rights, cause-lawyering and constitutionalism in academic law reviews. He is an Adjunct Lecturer for a course on Arab rights and Israeli law in the Faculty of Law at Tel Aviv University. Hassan was appointed by Yale University as a Yale World Fellow (2005-2006).

Wolfgang Kaleck

Mr. Kaleck is the General Secretary of the European Center for Constitutional and Human Rights e.V. (ECCHR), Berlin. He is the lawyer in the German cases against the Argentine military for murder and torture, and against the then U.S. Defense Secretary, Donald Rumsfeld and others for torture.

Maria LaHood

Maria LaHood is a lawyer in New York specialising in international human rights litigation, seeking to hold government officials and corporations accountable for torture, extrajudicial killings and war crimes abroad. Her cases have included *Matar v. Dichter*, against an Israeli official responsible for a 'targeted assassination' in Gaza that killed eight children and seven adults and injured over 150 people; *Belhas v. Ya'alon*, against a former Israeli official responsible for the 1996 shelling of a U.N.

compound in Qana, Lebanon that killed over 100 civilians and injured even more; Corrie v. Caterpillar, on behalf of Palestinians killed and injured in home demolitions, and Rachel Corrie, an American human rights defender who was killed to protect a home from being demolished; Arar v. Ashcroft, against U.S. officials for sending Canadian citizen Maher Arar to Syria where he was tortured and detained for a year; and Wiwa v. Royal Dutch/Shell, for the torture, detention and execution of Ken Saro-Wiwa and other human rights activists and protestors in Nigeria. After graduating from the University of Michigan Law School in 1995, Maria advocated on behalf of affordable housing rights and did police misconduct and employment discrimination litigation.

Daniel Machover

Daniel Machover heads the civil litigation department at Hickman and Rose Solicitors, London. He specialises in international human rights law, civil actions against the police and Ministry of Justice. In 2001, Daniel received the Margery Fry Award from the Howard League for Penal Reform for 'ensuring the protection of prisoners through tenacious pursuit of legal remedies'. He was born in Israel and co-founded Lawyers for Palestinian Human Rights in 1988. Daniel and Kate Maynard of his firm work as a team to bring international criminal cases to the attention of the British prosecuting authorities on behalf of victims, where a suspect is in the UK or thought to be likely to travel there. They work closely with local lawyers and NGOs, which in the case of Gaza has involved close collaboration with PCHR. In September 2005, that work resulted in the near arrest of Israeli General Doron Almog in London. Daniel and Kate continue to actively pursue potential legal remedies in the UK and EU for Palestinian victims of alleged Israeli human rights abuses.

Dr. Ishai Menuchin

Dr Menuchin was awarded the 2003 Laurent of the Rothko Chapel 'Oscar Romero Award for Commitment to Truth and Freedom'. He lectures in the department of political science at the Hebrew University of Jerusalem. He is the editor of Occupation and Refusal (Jerusalem: November Books: 2006: in Hebrew); Who is Afraid of Freedom (of Information)? (Jerusalem: Shatil, 1998, in Hebrew), On Democracy and Obedience (Tel-Aviv: Siman Kriah Books, 1990, in Hebrew), co-editor of Can Tolerance Prevail? Moral Education in a Diverse World (Jerusalem: The Hebrew University Magnes Press, 2005, in Hebrew) and The Limits of Obedience (Tel-Aviv: Siman Kriah Books, 1985, in Hebrew). Dr. Menuchin has been a human rights activist since 1981 and currently serves as the Executive Director of The Public Committee Against Torture in Israel. He is one of the first 'Refusniks' of the first Lebanon war, 1982 and was also the spokesperson of Yesh Gvul (There is a limit) – a soldiers' refusal movement - for more than two decades.

Jessica Montell

Jessica Montell is the Executive Director of B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories. She is the author of B'Tselem's comprehensive report Prisoners of Peace: Administrative Detention in the Oslo Process and numerous articles on human rights, international humanitarian law and counter-terror policies. Prior to joining B'Tselem, Ms. Montell worked at HaMoked: Center for the Defence of the Individual, another Israeli human rights organization. Ms. Montell has also served as a consultant to the U.S.-based Lawyers Committee for Human Rights (now Human Rights First), and is a council member of the International Council for Human Rights Policy. Ms. Montell has a Masters in International Affairs from Columbia University, and is a native of California, USA.

Blinne Ní Ghrálaigh

Ms. Ní Ghrálaigh is a practicing barrister at Matrix Chambers in London where she specialises in criminal, international and human rights law and actions against the police and detaining authorities. She is a contributing author to the seminal English text on prison law and to Sweet & Maxwell's Human Rights and Criminal Justice. She is an active member of Lawyers for Palestinian Human Rights and an executive committee member of the Bar Human Rights Committee of England and Wales, on which she has particular responsibility for the occupied Palestinian Territory. She spent three months in the oPT in 2007 on a Bar Human Rights Committee project, training Palestinian lawyers in human rights and humanitarian law. Prior to coming to the Bar, she worked, inter alia, on the Bloody Sunday Inquiry for the families of those killed and injured on Bloody Sunday in the North of Ireland.

Munir Nuseibah

Mr Nuseibah is the coordinator and a co-founder of Al-Quds Human Rights Clinic, the first clinical legal education program in the Arab World, based at Al-Quds University's faculty of Law. He received his B.A. degree in Law from Al-Quds University, and his LL.M from Washington College of Law at the American University in Washington DC, after being granted a scholarship from the Open Society Institute. During his studies, Mr. Nuseibah concentrated on Human Rights and International Humanitarian Law, and volunteered for Amnesty International, Adalah, and other human rights organisations. He participated in the Jenin and Nablus inquiries in 2002, and since he worked in the clinic, he supervised several human rights advocacy projects that aim at serving Human Rights goals and teaching the students through theory and practice. Mr. Nuseibah is also a qualified trainer in Regulatory Best Practice and Regulatory Impact Assessment (RIA). After he received advanced RIA training, he participated in conferences and training workshops in the Middle East region.

Khaled Quzmar

Mr. Quzmar is the coordinator of DCI-Pal chiljustice program. He hold an LL.M. in international human rights law from the Irish Centre for Human Rights at the University of Galway, Ireland. Since 1995, Mr. Quzmar also represents Palestinian children in Israeli military courts.

Emily Schaeffer

Ms. Schaeffer is an American attorney working with Attorney Michael Sfard in Tel Aviv, Israel. She received her Bachelor's degree in Political Science from Goucher College in Maryland, her law degree from the University of California, Berkeley School of Law, and is a member of the California Bar. For 10 years, Emily has been active in the fields of social justice and human rights, including gender-based rights, poverty and housing law, with a particular focus on Palestine and Israel. In Israel, Emily has worked with Palestinian human rights NGOs HaMoked: Center for the Defence of the Individual and the Israeli Committee Against House Demolitions, Dr. Yousef Jabareen, Arab civil rights professor and founder of Dirasat: The Arab Center for Law and Policy, and now for over three years with Attorney Sfard and human rights NGO, Yesh Din. Together with Sfard and Canadian counsel, Emily represents the Palestinian village, Bil'in, in its lawsuit against the Greenpark and Greenmount corporations for violating international law by building Israeli settlements on the village's land.

Jürgen Schurr

Jürgen Schurr joined REDRESS in 2006 and is responsible for issues related to universal jurisdiction. In that capacity, he was coordinating a joint project with Kigali based human rights organisation African Rights on the accountability of Rwandan genocide suspects living abroad. Since this project was completed in August 2008, he is in charge of a project with the Fédération Internationale des ligues des Droits de l'Homme (FIDH) on universal jurisdiction within the European Union. Prior to joining REDRESS, he worked as a legal consultant for Human Rights Watch. He holds a LLB from the University of East Anglia and a LL.M. from the University of Trier.

Smita Shah

Ms. Shah is working as a barrister at the Garden Court Chambers and is the education officer for Lawyers for Palestinian Human Rights.

Phil Shiner

Phil Shiner leads the team at Public Interest Lawyers. He is a lawyer with an international and national reputation for his work on issues concerning international, environmental and human rights law. He has been practicing as a solicitor in the UK since 1981. He has written and spoken at international and national conferences on all the areas of law covered PIL's present work. Shiner is a visiting professor at London Metropolitan University and a visiting fellow at LSE. He was made 'Human Rights Lawyer of the Year' by the Joint Liberty and Justice Awards in 2004. Mr. Shiner appears for his Palestinian clients in Saleh Hassan v Secretary of State and Industry, the case challenging the UK's arms sales to Israel.

Raji Sourani

Raji Sourani is the Director of the Palestinian Centre for Human Rights in Gaza. Mr. Sourani has been dedicated to the promotion and protection of human rights throughout his professional career despite the personal and professional sacrifices he has been forced to make in adhering to the fundamental principles of human rights. He has been an active lawyer since his qualification in 1977 representing a wide variety of victims of human rights abuses. His profession, particularly his professional success and commitment, earned him early on the hostility of the Israeli military and State, a hostility that has continued and increased throughout his career.

Prof. Liesbeth Zegveld

Prof. Dr. Liesbeth Zegveld is partner at Böhler Franken Koppe Wijnngaarden, a renowned law firm in Amsterdam. As head of the international law and human rights department, she has worked on numerous high-profile cases. In a civil law suit against the Dutch State, she represents victims from Srebrenica. In the criminal case against the Dutch businessman Frans van Anraat, concerning his trade with Iraq in chemical material in the 80ties, she represents the Iraqi victims of the chemical attacks. Moreover, she acts as counsel for Afghan civilians who were victimised by Dutch air attacks undertaken in Afghanistan. Earlier this year, she filed a complaint against Libya with the Human Rights Committee on behalf of the Palestinian doctor who, together with five Bulgarian nurses, was tortured to confess that he deliberately infected hundreds of Libyan children with HIV. More recently, she has been working on a corporate responsibility case against Royal Dutch Shell for damage from oil leaks, which devastated crops and fish farms in the Niger Delta in Nigeria. In September 2006, she was appointed Professor in International Humanitarian Law at Leiden University. In particular, she focuses on the rights of woman and children in armed conflicts, a topic on which she has written several articles and contributions to books. Furthermore, she is a member of the Committee on Compensation for War Victims of the International Law Association. In her capacity as both lawyer and professor, she intends to fundamentally re-think the procedures for war victim compensation. Without proper implementation of these procedures, war victims are often deprived of their right to redress.

Hadas Ziv

Hadas Ziv is the Executive Director for Physicians for Human Rights in Israel. She holds a BA in English literature and a Theatre MA in Communications. Ms. Ziv has published several books and essays, including, "Exception as the Norm and the Fiction of Sovereignty: The Lack of the Right to Health Care in the Occupied Territories", in Parry J. (ed). Law, Evil and the State, Rodopi Publishers, 2005, and "The State of Exception and Palestinian's Access to Health Care Services", in Madeyra J. Probing the Boundaries, ebook, 2005, Occupied Palestinian Territory: Linking Health to Human Rights - Health and Human Rights: An International Journal Vol. 8 No. 1 published by the Francois-Xavier Bagnoud Center for Health and Human Rights at Harvard University.

Issam Younis

Mr. Younis is the co-founder and General Director of Al Mezan Center for Human Rights in Gaza. Mr Younis has actively protected and promoted human rights and provided assistance for victims of abuses in the Gaza Strip. Mr. Younis holds an MA in the Theory and Practice of Human Rights and a BA in Sociology. Mr. Younis, as the first Palestinian activist, was recently awarded the Weimar Human Rights Award for outstanding achievements in promoting tolerance and human relations.

CONTACTS

Adalah

www.adalah.org

Al-Haq

www.alhaq.org

Al-Mezan Centre for Human Rights

www.mezan.org

Al-Quds Human Rights Clinic

www.alquds.edu/centers_institutes/hrclinic/

Avocats sans Frontières

www.asf.be

B'Tselem

www.btselem.org

Badil – Resource Center for Palestinian and Residency and Refugees' Rights

www.badil.org

Bar Human Rights Committee

www.barhumanrights.org.uk/

Böhler Franken Koppe Wijngaarden

www.bfkwnl/english.html

Center for Constitutional Rights

ccrjustice.org

Defence for Children International Palestine

www.dci-pal.org

European Center for Constitutional and Human Rights

www.ecchr.org

Hickman and Rose Solicitors

www.hickmanandrose.co.uk

Israeli Commission Against House Demolitions

www.icahd.org

Lawyers for Palestinian Human Rights

lphr.org.uk/

Palestinian Center for Human Rights

www.pchr.org

Physicians for Human Rights

physiciansforhumanrights.org

Public Committee Against Torture in Israel

www.stoptorture.org.il

Public Interest Lawyers

www.publicinterestlawyers.co.uk

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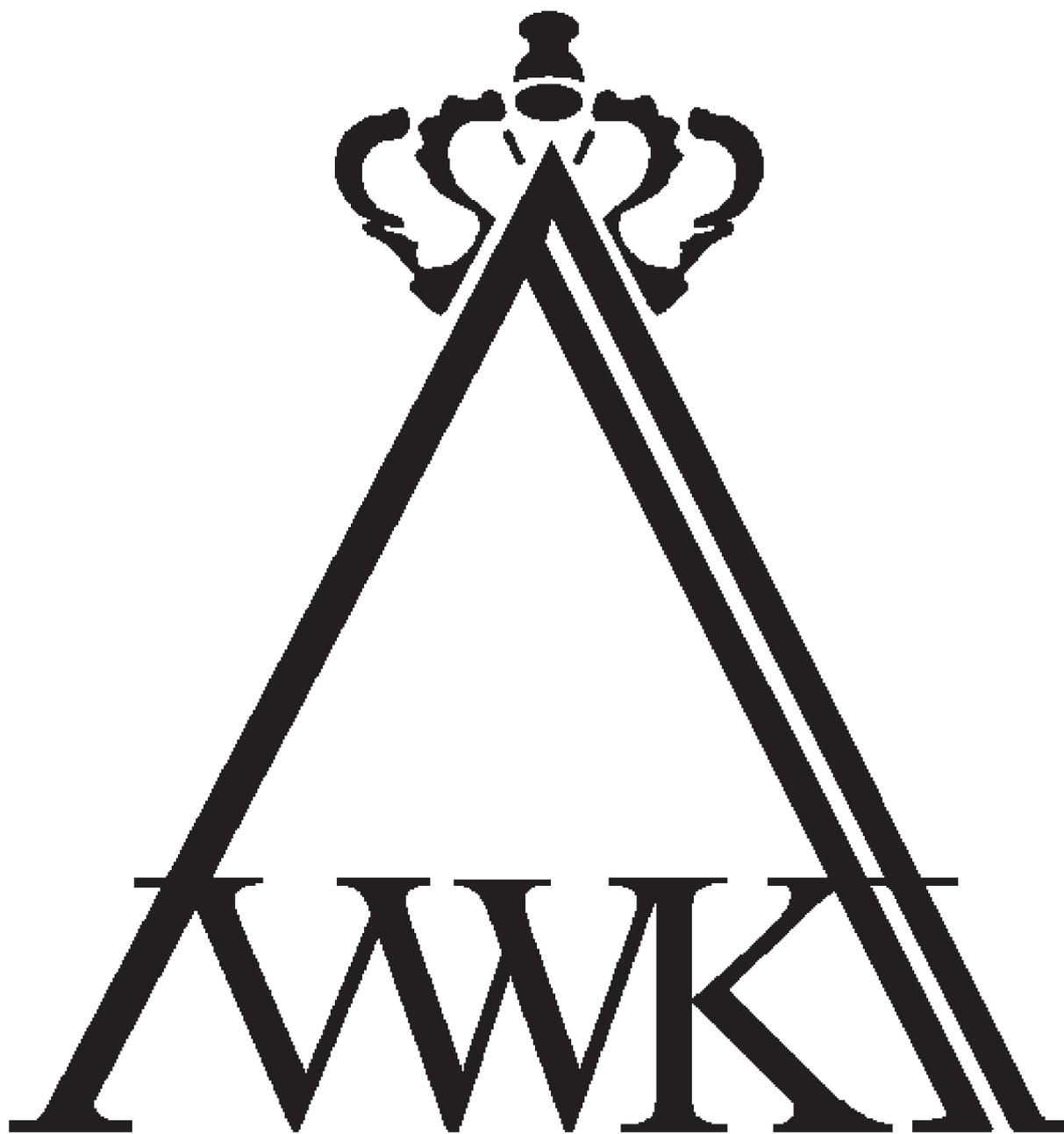
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