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“La raison du plus fort est toujours la meilleure” – “The argument of the strongest is always the best.” – Jean de la Fontaine

PHOTO

Caption: Pleasantly surprised: Adv. Irit Kohn, President of the Association of Jewish Jurists

## **Pursuing or Justice?**

Does Israel have reason to fear the international courts? Is Israel treated fairly, from a legal perspective, in the world? And does the American Army also fear a report à la Goldstone? Our reporter flew to the conference of the Association of Jewish Jurists, which was held in The Hague and which addressed exactly those questions.

Moshe Ronen, Hague | Photo: Zvika Tishler

The sessions were conducted with the ultimate in decorum, and in a genial atmosphere, but the statements from the stage were sometimes pointed. Does Israel get treated fairly in the international courts? This loaded question was a key issue at the conference held by the International Association of Jewish Lawyers and Jurists. It was not by chance that The Hague, in Holland, where three international courts are based, was selected as the venue for this event. The criticism of the fairness of the international institutions was, as one may surmise, harsh – at least from most of the Israeli speakers.

On stage stood Colonel (Res.) Adv. Daniel Reisner. The United Nations Security Council had determined that the Israel Air Force attack on Iraq’s nuclear reactor was a breach of international law, so he argued. The International Criminal Tribunal for the former Yugoslavia judged the losers of that war – so his line of argument continued – but said nothing about NATO’s bombings. The commanders of the United States Air Force had decided that those bombings would be carried out from a high altitude, so as to avoid risk to the pilots. The outcome was that many of the bombs missed their targets, killing hundreds of innocent civilians. The International Tribunal said not a word about this decision – but when Israel attacked Gaza, and inadvertently killed civilians, the outcome was the Goldstone Report.

## **Where to draw the line**

Three international courts operate in The Hague. Veteran among them is the International Court of Justice, established in 1945, at the end of the Second World War, and whose seat is the Peace Palace. The conference of Jewish jurists was held in this impressive palace.

The ICJ is a civil court, which rules on disputes between countries. In addition to economic disputes, such as that between the United States and Canada on the location of their maritime border, or the dispute between Romania and Ukraine on maritime navigation rights in the Black Sea, the Court's cases touch on more complex issues. One of these was the Court's opinion on Israel's construction of the Separation Fence. The International Court of Justice has no police force or enforcement powers, and so it is only effective if the countries involved in the dispute accept its judgments upon themselves from the outset, or if the United Nations Security Council decides to mobilize United Nations forces to implement the Court's rulings.

The largest international court in The Hague is the International Criminal Tribunal for the former Yugoslavia (ICTY). Established by a resolution of the Security Council in 1993, it has since then tried close on two hundred war criminals. The ICTY is housed in a large, gray building, located opposite the round building that is the headquarters of the Organisation for the Prohibition of Chemical Weapons, winner of the 2013 Nobel Peace Prize.

President of the Tribunal is Prof. Theodor Meron, a former Israeli who had held the positions of legal counsel to the Ministry of Foreign Affairs and Ambassador to Canada, until he decided to abandon his Israeli citizenship and identify himself as an American. Prof. Meron was recently reappointed to a further term in his current position. He also participated in the conference – but was careful to only speak in English, and not utter a word in Hebrew.

The youngest of the courts in The Hague is the International Criminal Court (ICC), which was established about ten years ago. The first president of this court, Canadian jurist Philippe Kirsch, took part in the conference and was also a speaker. The ICC officially came into existence in 2002, and 122 countries have become parties to it – Israel and the United States not being among them. "The International Criminal Court was set up as a last resort for judging war criminals and offenders against international law," Kirsch said at the conference. "If a country judges the offenders itself, the International Criminal Court will not act."

Israel is concerned about the International Criminal Court; should Palestine be recognized as a state, and join the court's mechanism, then it will be possible to try Israeli for incidents taking place in Judea and Samaria. In general, under international conventions, a state that settles its citizens in the territory of another state is in breach of international law.

The Americans, too, are suspicious of it. Colonel (Ret.) Fred Borch III, of the American Judge-Advocate General's Corps, lectured at the conference on the influence of the international courts on the American army. Borch's comments suggest a surprising similarity in the way in which the Israeli Army and the United States Army are dealing with the concern of being tried under international law.

According to him, in the United States there are today thousands of attorneys providing advice to every commander. At any given moment, each division has two lawyers, and eight more legal staffers, advising the commander what he may or may not do.

## **Welcoming the Shabbat**

The conference in The Hague was attended by about 150 lawyers and jurists from some twenty countries. About half the participants were Israelis, but the conference also attracted a justice of the [New South Wales] Supreme Court, in Australia, who is Jewish, as well as jurists from the United States, England, India, France, Italy, Latvia, Holland, Belgium, Chile, Argentina, Switzerland, South Africa, Uganda, and elsewhere.

The vast majority of the Association's members are Jewish lawyers and jurists but, in keeping with a tradition of non-discrimination, the Association accepts into its ranks jurists who are not Jewish, but who wish to join. And so, at the Shabbat evening meal, one could see non-Jewish members of the Association, humming along with the traditional Shabbat songs.

The organization's president, Tel Aviv attorney Irit Kohn, was surprised by the friendly reception given to the Association's members by the city and the courts. The heads of the international courts were pleased to participate in the conference, and to meet with the Jewish lawyers and jurists. "We expected a certain measure of criticism, in light of the atmosphere in The Hague in recent years – but we were pleasantly surprised," said Adv. Kohn.

**Moshe Ronen was a guest of the International Association of Jewish Lawyers and Jurists**