

Israel and the International Criminal Court: Notes from the Inter Disciplinary Center (IDC), Herzliya conference.

13 March 2003

As the title indicates, the conference focused on the Israeli standpoint towards the ICC and the question of ratification.

The conference was assembled by the IDC's law school and its purpose was to present and confront diverse views on the subject presented by government representative and academia members.

The first spokesman from the government was Elyakim Rubinstein, the government legal adviser. He expressed the basic approach, common to the government representative. The Israeli government welcomes the idea of a permanent international criminal court. This is a realization of the Jewish aspirations after the Second World War and the Holocaust. Israel took an important role in the establishment of the ICC and in the drafting of the Rome statute. It would have been glad to sign and ratify the Rome Statute. A few issues prevented Israel from doing so. The first and main obstacle is Article 8(2)(B)(viii), "The transfer... by the Occupying Power of parts of its own civilian population into the territory it occupying...". This Article, says Rubinstein, was initiated by the Arab countries in relation to the settlement issue which is a part of the Palestinian Israeli conflict. This is a political issue that has been discussed and should be resolved in the peace talks. The use of the ICC to turn hundreds of thousands of Israeli civilians into war criminals is something that Israel can not and should not be part of.

The second concern of the Israeli government is the internationalization of the Israeli Palestinian conflict and what is seemed as a global pro-Palestinian approach. The danger in politicization of the court is a risk that the Israel can not allow itself to take. The intention of Belgium to try Israel Prime Minister, Ariel Sharon, was presented as an example of this dangerous trend.

The other Israeli representatives, the IDF attorney general and the foreign office legal adviser, added that the unconventional fighting methods in the conflict with the Palestinian terrorism and the need to protect the Israeli soldiers and officials obligates Israel to wait and assess the development of the ICC with the hope of ratification in the future.

The academic members were more diverse in their approach. Amnon Rubinstein, the Law School Dean, and Uriel Reichmann, the president of the IDC, suggested that due to the current approach of the U.S.A towards the ICC and latest decisions of the EU towards Israel and especially those of Belgium, Israel should hold its decision to the coming future. Nevertheless, they acknowledge the importance of the ICC especially from the Jewish-Israeli point of view.

Prof. Yoram Schahar and Prof. Natan Lerner from the IDC were more decisive in their positive approach towards the ICC. They suggested that Israel must ratify despite the genuine concerns. The ICC and its development is such an important, unique and fascinating evolution that Israel can not afford not to be apart of it.

Schahar also pointed that Israel has more to gain from a stop of violence in the area. The high costs of prosecution in the ad-hoc tribunals predicts that the ICC will deal with the most serious offenders, therefore, there should be no concern of large scale prosecutions of Israeli soldiers.

The final comment was that after all the politics and interests the court member are professionals and they should be trusted to perform their duties as such.