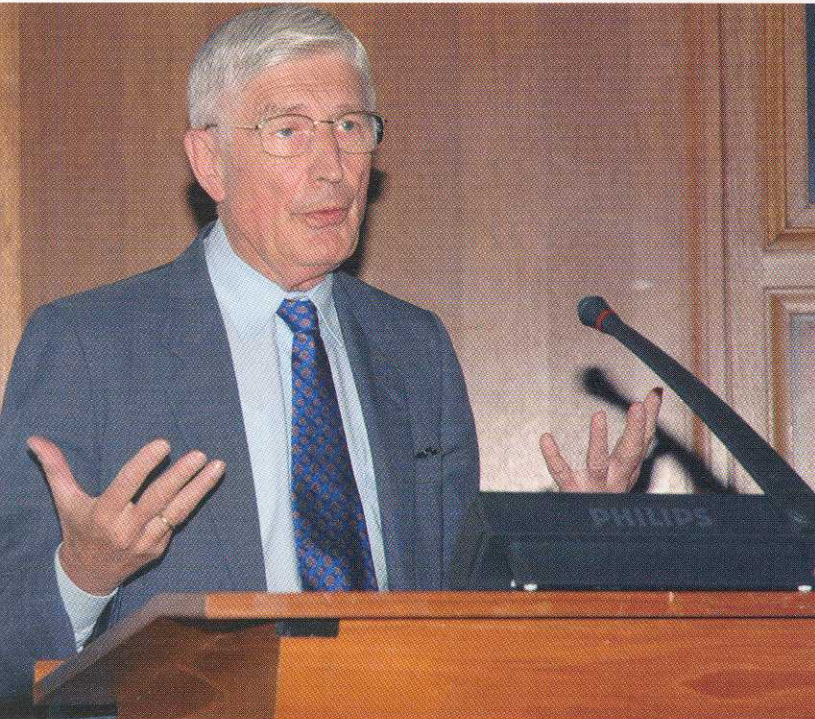


Hague Conference Considers Ways to Implement ICJ Ruling on Israel's Wall

By Janet McMahon

Special Report



Former Dutch Prime Minister Andreas van Agt described the ICJ ruling on Israel's wall, though "couched in refined terms," as "essentially scathing of Israel."

Days after George W. Bush was re-elected president of the United States, and British Prime Minister Tony Blair reiterated the importance of "pursuing...peace in the Middle East between Israel and Palestine," and as Yasser Arafat lay dying in a Paris hospital of unknown causes, politicians and diplomats from four continents gathered in The Netherlands. They met to consider ways of implementing the July 9 ruling by the International Court of Justice (ICJ) that Israel's construction of its separation wall on Palestinian land violates international law. Held Nov. 5 and 6, the International Conference on Middle East Policies was organized by the International Forum for Justice and Peace, the International Dialogues Foundation, and United Civilians for Peace. Appropriately, the conference venue was The Hague's Peace Palace, known as "the shrine of international law"—and where the ICJ actually convenes.

Not surprisingly, the participants recognized and appreciated the symbolism of their meeting place. All, however, hoped their efforts would transcend mere symbolism and galvanize their governments into

Janet McMahon is managing editor of the Washington Report on Middle East Affairs.

action. Toward that end, there was very little mincing of words.

In his welcoming remarks, Paul Aarts, senior lecturer in international relations at the University of Amsterdam, noted that Israel's occupation of Palestine is "the longest military occupation in modern history—37 years to date, with no end in sight." He described the ICJ ruling as the "silver lining" in a "future [that] looks very dark."

Prof. Andreas van Agt, former prime minister and minister of

foreign affairs of The Netherlands, characterized the Sharon government's response to the ICJ ruling as "the latest chapter in the serial story of Israel rejecting international law." Adding that "this vast and sad story could not have developed without U.S. support," he argued, however, that "it's not fair or wise to put all the blame on Washington. What was the EU doing?" he asked.

While European nations cannot neutralize American vetoes on the Security Council, Van Agt acknowledged, as co-signatories to the road map they could "deploy diplomatic actions. But Europeans don't raise their voice in protest," he lamented. Instead they let Washington "tear the road map to pieces."

Unaccustomed, to put it mildly, to such straight speaking on the part of politicians, retired or otherwise, this writer later asked the former European Community ambassador how he became so passionate on the issue of Palestine. Like a majority of Dutchmen, Van Agt explained, he, too, had been "under the spell of Israel and its [fiction of] 'making the desert bloom.'" A decade or so ago, however, he "by chance was chosen to become a regent for Bethlehem University. Now," he said, "I am at a point of nearly exploding!"

The conference's first panel provided a brief historical review of the Middle East. Dr. Abdel Salam Majali of Jordan, a former prime minister who currently serves in the Senate, noted that the issue of Israel and Palestine "has always been international in nature," and described it as "the most multifaceted clash between West and East since the Crusades."

Dr. Hajo G. Meyer, who fled from Germany to the Netherlands in 1939, at the age of 14, then survived 10 months in Auschwitz, discussed the use of anti-Semitism to frustrate open debate on the Israeli-Palestinian issue. Citing Henry Kissinger's definition of terror—"any violence against civilians with the intent of breaking down society"—he described Israel's wall as a form of terror, saying it was not comparable to, but worse than, apartheid.

Asking why, in the face of the ICJ decision, "the world does nothing," Meyer cited the threat of the label of anti-Semitism, which "has the smell of the poison of Auschwitz." Jews and Gentiles alike so fear this charge, he noted, that they easily can be manipulated. However, noted the author of *The End of Judaism*, inactivity now may yield to co-responsibility between the blackmailer and the blackmailed.

"What went wrong 85 and 90 years ago is haunting us today," stated Dutch freelance journalist Radi Suudi, whose father is a Palestinian from Jerusalem. He summarized what can only be described as a history of betrayals by the West since World War I by citing Lord Balfour, he of the infamous declaration: "In Palestine we do not propose even to go through the form of consulting the wishes of the present population," Balfour said. "The Great Powers are committed to Zionism."

Under Arafat, noted Suudi, Palestinians accepted the principle of partition, leaving unresolved two basic wrongs: refugees and Israel's occupation since 1967. He proposed as possible solutions seeking an ICJ ruling on the right of return prior to final status negotiations, and ending the Israeli occupation pursuant to U.N. Resolution 242 and the recent ICJ ruling.

B'Tselem board member Dr. Menachem Klein, a senior lecturer in political science at Israel's Bar-Ilan University and a signatory to the October 2003 Geneva Initiative, argued that, rather than downgrading the road map to a "street map," it should be upgraded to a "highway map."



Considering "The Present Middle East Policy of the Powers That Be," panelists (l-r) Sir Harold Walker, Dr. As'ad Abdul Rahman, Naoto Amaki, and retired U.S. ambassadors Carleton Coon and Edward Peck listen as Canadian MP Carolyn Parrish describes the changing political environment in her country. Under the new government, she cautioned, Canada "no longer is acting as a bit of a buffer" to U.S. policies.

Dr. Vladimir Petrovsky, former Soviet deputy foreign minister and Russian representative to NATO who also served as the U.N. Secretary-General's special representative to Libya and as under secretary-general for political affairs, agreed that the best solution is spelled out in the Quartet's road map. The greatest need, however, he concluded, is to emphasize *action*.

Next to speak was Gerben Meihuizen, former Netherlands ambassador to Syria, Jordan, Saudi Arabia and Algeria—and one of the few non-Americans to sign the May 2004 letter sent to President Bush by retired U.S. diplomats. The Israeli-Palestinian conflict, he pointed out, has always been related to international issues, e.g., the Cold War, 9/11, and now the war on Iraq. Both the EU and the Arab League, he stated, "should and could" be speaking out much louder on a return to the road map. Meihuizen proposed enlarging the Quartet—adding, for example Saudi Arabia, Jordan and/or Egypt—"if only to avoid the perception that [only] non-Arab countries are involved in deciding the fate of the region."

In his introduction to the panel on Jerusalem, its status, and the wall, Klein described Israel's barrier as not just a wall, but a system, including mobile checkpoints. Its goal, according to the Israeli academic and activist, is not security, but to impose the annexation of Palestinian land and rule its community.

According to international law professor Mohamed Gomaa, who represented the Arab League at the ICJ hearing on Israel's wall, while the ICJ recommendations were not binding, its legal determinations are. He cited as the most important the findings that Israeli settlements on occupied Palestinian territory violate international law; the Palestinians have been deprived of their right of self-determination; and that Israel is the responsible party for the territory it occupies. Moreover, said Gomaa, because the American justice dissented on technical points alone, the court's decision on the merits of the question was, in effect, unanimous.

Canadian MP Carolyn Parrish, who has been to the West Bank and Gaza three times since 1995, vividly described Israel's "degradation" of Palestinians over the years, and also the "strength and fiber" of the Palestinian people. Describing the wall as "the most insidious, evil thing that has ever been built," she pointed out that, while one can argue and plead with soldiers at Israeli checkpoints, "there is no discussion with a wall."

Describing the main problem as the West's "unilateral attitude," Dr. As'ad Abdul Rahman warned that "we really, literally, don't have the time" for long-term solutions. The executive chairman of the Palestine International Institute and former member of the Palestine National Council and the PLO Executive Committee recommended seizing on the British prime minister's statement following the U.S. election and "putting our faith in Europe." Europeans should not direct their efforts toward Israel, he recommended, but toward their own governments.

Sir Harold "Hooky" Walker, who served as British ambassador to Iraq during the first Gulf war, was one of 52 retired British diplomats who signed the April 2004 letter to Tony Blair which inspired their American counterparts. Making a "plea for the role of international law in world affairs," he cited the ICJ's finding that all states are obliged to ensure Israel's compliance with international law.

In his introduction to the second day's session, Dr. Paul de Waart, emeritus professor of international law at the Vrije Universiteit Amsterdam, argued that the Israeli-Palestinian issue is not a political issue, but a legal one. That issue was not resolved in 1947, he noted, and when Israel became powerful it no longer was interested in further discussions.

Discussing "The Present Middle East Policy of the Powers That Be," was former U.S. Ambassador Carleton Coon—invited, along with former Ambassador Edward Peck, as signatories to the aforementioned

letter to President Bush and as members of the July 2004 delegation to Palestine (see October 2004 *Washington Report*, pp. 42-61). Coon took it upon himself to explain the "nature of the American public's refusal to accept a fair view" on the issue. Alluding to the "moral element of American misperception"—that getting rid of anti-Semitism was seen as part of supporting civil rights for minorities—he pointed to the ensuing dilemma: that opposing anti-Semitism translated into support for Israel. Coon identified three groups "perpetuating the wall of misinformation" in the U.S.: the Jewish lobby; neoconservatives; and Christian fundamentalists.

Coon recommended that, on the official level, Europeans insist that, in return for helping the U.S. in Iraq, Washington must apply pressure on Sharon. He concluded by asking the rest of the world to help "bring around the American public" and understand that it is ignorant and misinformed.

Ambassador Peck was even more blunt: describing "groups such as this" as "fuzzy puppies," he took particular issue with the term "Israeli-Palestinian conflict." "It's not a conflict," he asserted. "It's occupation."

It's important to respect the views of others, Peck acknowledged, "but not when they're wrong, or illegal. We must be a little more fierce," he insisted.

Naoto Amaki, who was effectively fired from the Ministry of Foreign Affairs after criticizing Prime Minister Junichiro Koizumi's support for the U.S. war on Iraq, described Israel's occupation of Palestine as "the most serious issue in the world." Today's terrorism, he argued, is the result of failing to solve the Palestinian issue—which he learned about while serving as ambassador of Japan to Lebanon.

By sending troops to Iraq, Amaki explained, the government violated Article 9 of Japan's constitution, which prohibits any use of military force—and which, ironically, was imposed by the U.S. when it occupied Japan following World War II.

The former diplomat's remarks perhaps

best illustrated the underlying thesis of the conference: the importance of international law to all the countries of the world, which, even if observers, are affected by the violations of a few.

The final panel of the conference featured Dr. Pieter H.F. Bekker of the International Arbitration Group, who served for three years as a staff lawyer at the ICJ and who, in his personal capacity, was senior counsel to Palestine in the case against Israel's wall. As he spoke, slides used as evidence in the case flashed on the screen behind him.

The ICJ case represented many firsts, Bekker said. It was the first time the U.N.'s judicial body—rather than its political organs, the Security Council and General Assembly—issued a ruling based on objective facts; that a non-state entity, Palestine, was allowed to participate; and that the international court ruled on the status of the territories, finding them “occupied” rather than “disputed.” The ICJ, moreover, explicitly condemned Israeli settlements, Bekker pointed out. “Settlements being illegal,” he explained, “no wall can legally protect them.”

The court also confirmed that the Geneva Conventions, as well as international humanitarian and human rights laws are binding on Israel. While explicitly recognizing Israel's right, indeed, duty, to respond to attacks on civilians, Bekker said, those responses must conform to international law. “Israel can no longer claim that it is the only democracy in the Middle East,” he added, “if it violates the ICJ decision and international law.”

In Bekker's opinion, Palestinians would be “ill-advised” to declare statehood at this point, as that would cut them off from the protection of the court's advisory opinion.

Following a summary of the conference proceedings by Dr. Peter Idenburg, executive chairman of the International Dialogues Foundation, former Prime Minister van Agt delivered closing remarks. Lamenting the “almost ubiquitous disrespect for international law” and undermining of the authority of the U.N. as a world body, he also acknowledged that the U.S. is “indispensable to making peace.” However, he urged the rest of the world not to wait and “sit on its hands for Washington to turn around 180 degrees.” The EU should take “bolder initiatives,” he said, such as raising the “intolerable situation” of Palestine at the Security Council, and demanding that the ICJ ruling be implemented by U.N. member states.

Expressing the hope that the conference would serve as “a starting point for further action,” Van Agt concluded by saying to participants and audience members alike: “Let us decide to jointly take a stand against this degradation of international law.” □

Statement by 14 Former and Current Politicians and Diplomats Regarding International Responsibilities in the Israel/Palestine Conflict

The Peace Palace, The Hague Nov. 6, 2004

We, the undersigned former and current politicians and diplomats, call on our governments to bring their policies regarding the Israel/Palestine conflict into accordance with International Law—both in theory and practice. Currently, applied policies frequently contradict the declared positions of our governments and seriously hurt the chances for peace in the Middle East. The way our governments have dealt with the “Wall” that Israel is building on occupied Palestinian land is a case in point.

On 9 July, 2004, the International Court of Justice (ICJ) in The Hague concluded in its Advisory Opinion that the Wall that Israel is building on occupied Palestinian land is illegal and must be dismantled, while Palestinians who have suffered damages as a result of the construction of the Wall must be compensated by Israel. In addition, the ICJ confirmed the illegality of all settlements that Israel has built on occupied Palestinian land, including East Jerusalem.

Moreover, the ICJ explicitly reminded the international community of its obligation to ensure Israel's compliance with basic and binding rules under International Humanitarian Law, which is violated by the Wall and other Israeli policies. States were called upon not to assist in any way in the construction of the Wall and to uphold International Humanitarian Law as a framework for the resolution of the conflict.

On 20 July, an overwhelming majority (150-6) of the U.N. General Assembly, including all EU member states, accepted the ICJ Opinion and demanded that Israel and all U.N. member states comply with the legal obligations spelled out in the Opinion.

In view of the reaffirmation of the legal framework to the conflict provided by the ICJ, we deeply regret that our governments have taken no visible, let alone effective measures so far to ensure Israel's compliance with its obligations as the occupying power. Hence, Israel has been given a free hand to continue conducting its illegal policies, including the construction of the Wall on occupied land at an accelerated pace. This is leading to further infringements on International Humanitarian Law and Human Rights Law, for which hundreds of thousands of Palestinians pay a terrible price every day, reinforcing the existing state of lawlessness and impunity.

The fact that the ICJ Opinion was originally issued in the form of a non-binding decision does not relieve the international community of its obligation to act. The fact that the judicial opinion is based on rules of International Law that bind all states and that the U.N. General Assembly overwhelmingly accepted the ICJ ruling subsequently transformed the non-binding opinion into International Law at large and U.N. Law in par-

ticular. Therefore, the fundamental obligations spelled out in the ICJ Opinion must be implemented, including the obligations referring to third-party responsibilities.

Moreover, the international community is obliged to act in the interest of a comprehensive peace. All prospects for a just and viable two-state solution are existentially threatened by the Wall, due to its deep intrusion into occupied territory, the de facto annexation of fertile land and water sources and the complexity of its structure, creating physical facts on the ground with implications for the long-term.

We urge our governments to take measures that ensure that Israel exercises its right to security and self-defense within the limits set by International Law. We do so in the interest of all people seeking a peaceful resolution to the conflict.

We call upon our governments to move beyond simple declarations embracing rules and principles enshrined in International Humanitarian Law and Human Rights Law. Positions that are in accordance with International Law need to be followed up with actions that confirm and strengthen the rule of law, and not the “law of the jungle.”

Actions taken by the international community can indeed prevent or sanction illegal Israeli policies. Only if such actions are taken through a process be established that will lead to a negotiated, just and lasting peace in the Middle East.

Signatories:

- The Netherlands: **Andreas van Agt**, former prime minister and former minister of foreign affairs; **Gerben Meihuizen**, former Netherlands ambassador to Syria, Jordan, Saudi Arabia and Algeria; **Jan J. Wijenberg**, former Netherlands ambassador in Yemen and Saudi Arabia; **Theodore van der Pluijm**, former director, Near East and North Africa Division, International Fund for Agricultural Development; **Hans Bemmelen**, former Netherlands ambassador in Karachi, Pakistan; **Meulenbelt**, senator.
- United States: Ambassador **Edward Peck**, former chief of U.S. Mission to Iraq and Mauritania; Ambassador **Robert Coon**, former chief of U.S. Mission in Nepal.
- Canada: **Carolyn Parrish**, member of Parliament
- France: Ambassadeur **Stéphane Hess**
- United Kingdom: **Sir Harold Walker**, former UK ambassador in Iraq
- Japan: **Noboru Minowa**, former minister of post & telecommunication and former deputy minister of defense; **Nobuyuki Amaki**, former Japanese ambassador to Lebanon.
- Palestinian National Authority: **As'ad Arafat**, **Rahman**, former PNA minister of refugees