International Law and the Israel-Palestine conflict

REPORT
Summer School 2019
1. Introduction

From 25th June – 5th July 2019 a group of 27 international law students and four teachers from Singapore, Australia, Switzerland, Israel and the Netherlands participated in a Summer School on International Law and the Israel-Palestine Conflict in Israel and Palestinian territories.

The Summer School is an initiative of “thinc.” – The Hague Initiative for International Cooperation, a think tank based in The Netherlands dedicated to the study of the application of international law to Israel and the Jewish people.

The goal of the program was to comprehend the complexities and context of the “Israel-Palestine” conflict, and the various approaches to international law taken by the main players. One of the reasons for doing so is a perception that the international institutions often take a one-sided approach to international law, without taking into account the full spectrum of historical, religious, political and military aspects of the conflict.

The central theme of the thinc. Summer School 2019 was: to find a balanced and satisfactory understanding of the broader context of the dispute, that will enable a fair and balanced application of international law to the conflict.

Specifically, the following issues were addressed:

1. What are the various aspects of international law that are relevant to the dispute, and how do these relate to each other?
2. How does the complex historical, political, religious and military context of the dispute impact the application of international law to this dispute?
3. Do the UN institutions take sufficient account of such context when interpreting and applying international law to the dispute?
2. The Summer School program

During ten days, we went on 14 excursions, had personal meetings with a range of Israelis and Palestinians – Jews, Arabs, and others –, visited key religious, historical and strategic sites, heard lectures from and engaged in discussion with leading legal academics, and participated in high level meetings with the PLO leadership in Ramallah as well as representatives of the Israeli Supreme Court and Ministries of Foreign Affairs, Justice and Strategic Affairs.

3. Summary of the content and findings

3.1 What areas of international law are applicable, and how do these interrelate?

On the first day of the Summer School we were introduced to the specific characteristics of and approaches to international law. This introduction served as a useful framework for the discussion of the many relevant and often interrelated aspects of international law that were addressed during the lectures and seminars throughout the program. Among these, in the first place, the issue of statehood. It was important to discuss the emergence of the State of Israel in legal terms as the outcome of the Mandate for Palestine (1922). By this international law device the League of Nations imposed the duty on Britain to establish a national home for the Jewish people in Palestine. Pursuant to Article 80 of the UN Charter, the Mandate is still relevant. Nowadays we would say it is all about the right to self-determination of the Jewish people, that opted in 1948 for the establishment of a Jewish and democratic state, as reflected in the Declaration of Independence, which we studied on the site at which it was adopted in Tel Aviv.
In our debates on the conflict we studied the claim of self-determination of the Palestinian people. We considered whether this claim encompasses a right to statehood, or maybe to one of the two other possible outcomes of self-determination under international law, namely the ‘association with an independent state’ or ‘any other political status freely determined by the people’. The view that there exists already a State of Palestine was subjected to a critical appraisal. Unlike Israel, Palestine does not seem to satisfy the classical criteria of statehood: territory, population and an effective government.

Related to statehood are territorial issues including borders. Common assumptions as to the “borders of 1967” were challenged in the light of the Mandate and the principle of *uti possidetis iuris*. One seminar was devoted to the special case of the status of Jerusalem, not only as the undivided capital of Israel, but also as the location of holy places of three religions. We reflected on the case pending before the International Court of Justice on the location of the US Embassy there.

Considerable time was spent studying the controversial legal aspects of Judea and Samaria (the ‘West Bank’) and Gaza. In general, this takes place in the framework of *international humanitarian law* (IHL), as part of the law of war. We reflected on the question whether these territories are “occupied” in the meaning of the law of belligerent occupation, and whether the establishment of Israeli ‘settlements’ in these areas is contrary to the Fourth Geneva Convention. We concluded that there appear to be good reasons to doubt this. IHL is closely related to the *international human rights law* (IHRL) and international criminal law. The development of these branches of international law has been influenced by the unprecedented suffering during the Holocaust (Shoa). We discussed how it is possible that, notwithstanding its democratic character and its acceptance of the rule of law, Israel is often depicted as a “gross violator of human rights”. We realized that all these various topics of international law are intertwined and that it is not helpful to define the Israeli-Palestine conflict in terms of only one aspect. It became also clear that international law does not dictate just one solution, but that it is useful to clarify the strength of the claims of the parties and to provide for a framework of negotiations.
3.2 How does the context of the dispute impact the application of international law to this dispute?

The Summer School program provided for the possibility to study the international law questions raised by the dispute in the wider historical, political, religious and military context. Various excursions allowed us to delve into the ancient and modern history of the Jewish people, the State of Israel and the Palestinians. We followed in the steps of Abraham approaching Mount Moriah where later the Temple was erected, we visited the City of David and saw the vestiges of the burning of Jerusalem in 70 CE. The visit to Yad Vashem made a deep impression on the group and helped us to understand the enormous impact of the Holocaust (Shoa) on Jewish consciousness. In Tel Aviv we reflected on the Declaration on the Establishment of the State of Israel of 14 May 1948. When we visited the Western Wall (Kotel), the Temple Mount and the Mount of Olives the tremendous importance of Jerusalem for three world religions, Judaism, Islam and Christianity, became tangible. A visit to ‘settler’ families in Samaria (‘West Bank’) helped us to understand their motives.

On our visit to the Supreme Court we were happy to meet one of its most prominent retired judges, who explained the way the Court upholds the values of the Jewish and democratic State in the face of the complexities of a society under threat. In Ramallah at the PLO headquarters we had the opportunity to become familiar with the official Palestinian (PLO) perspective on the conflict and their appreciation of human rights in the “occupied” territories. Later, an Arab Israeli student shared his concerns about the recent Nation State Law and discrimination against non-Jewish population in Israel. During several trips we observed the complicated geographical and demographical situation in many areas near Jerusalem and elsewhere, which helped us to understand the precarious strategic and military context. Inhabitants of a moshav near the border with Gaza shared their experiences under an almost daily threat of missiles launched from the Gaza Strip. All-in-all, the excursions provided us with many insights that contributed to the comprehension of the complexity of the issues and both possibilities and limitations of the application of international law to the conflict.
3.3 Do the UN institutions take sufficient account of the historical and political context of the dispute when interpreting and applying international law?

Meetings with experts on the work of NGO’s and some official representatives of Israeli Ministries helped us to understand the way Israel has been and is approached by UN institutions. These institutions have based and still base their policies on information provided by NGO’s with an agenda that is in many cases anti-Israel and sometimes even anti-Semitic. The role of the NGO Forum at the Durban Conference against Racism in 2001 was mentioned as a notorious example. Moreover, the UN comprises many Member-States that are hostile to the State of Israel. As a result, we observe a standing practice of singling out of Israel by a disproportionate negative attention of the UN bodies. All this makes it not surprising that UN Institutions tend to overlook the real historical, political and religious context of the conflict, as studied during the Summer School, accepting only a one-sided Palestinian narrative. This is reflected in the use of international law by UN institutions, as is exemplified in Resolution 2334 (2016) of the UN Security Council and even by the proceedings leading to the Advisory Opinion of the International Court of Justice on the “Wall” (the Israeli security barrier, partly east of the “Green Line”) of 2004, resulting in some questionable conclusions by that court. Therefore, it seems that the prospects of a successful role of UN institutions in solving the conflict within the framework of international law, are not very promising. We spent some time considering alternative approaches that may be more productive in facilitating a peaceful resolution of the dispute.

4. Feedback from students and lecturers

All students felt it was an excellent program, and the Summer School exceeded their expectations. In the coming months we will process the detailed response via an evaluation form that has been sent to the students.
Based on the response received so far, we should:

- Allow more free time, and more time for reflection/evaluation
- Continue to invite Palestinian lawyers and academics to lecture
- Allow more time in informal setting for interaction with young Arabs and Jews
- Involve the students in a more inter-active way in the wrap-up sessions.

(It should be noted that we had invited Palestinian lawyers but they are difficult to engage i.a. because of political and security reasons.)

Several of the less experienced students needed extra guidance in understanding and interpreting the various legal narratives that were represented.

Feedback from the lecturers and other professionals in Israel indicates that this is a program that is not offered elsewhere or by other institutions. They mentioned the following ‘unique’ aspects of the Summer School:

- High level and variety of speakers;
- Exploring the interrelationship between law, history, culture, politics and religion;
- Clarification of both the limitations of international law, as well as the way(s) in which international law can contribute to solution of the conflict.

Both students and staff members rated the facilities, including: lodging, classrooms and transportation, from ‘adequate’ to ‘very good’.

Near the Gaza border
5. Finances

The costs of the Summer School have been covered by participation fees and grants.

6. Conclusions and Recommendations

There is no doubt that the thinc. Summer School is a unique program filling a ‘gap in the market’. Therefore, we are set to continue the Summer School program in 2020, including:

- contacting universities interested in cooperation to attract top students and graduates from around the globe, and to ensure that students can obtain academic credits for participation.
- investigating if it is feasible to offer two Summer Schools per annum – one for northern hemisphere students (June 2020) and one for southern hemisphere students (Jan 2021).
- planning to extend the program to 14 days, to include:
  - more free time, and more time for reflection and evaluation during the course of the Summer School,
  - more time in informal setting for interaction with young Arabs and Jews.
- incorporating one or more sessions considering the interface between international law and international diplomacy/relations.
- limiting participation to students and graduates who have studied Public International Law.
- establishing a Summer School fund to offer scholarships to qualifying students who cannot afford to pay the full price.

www.thinc.info