

Promoting Peace Through Law: The WJA's 2008 Jerusalem Conference

The World Jurist Association proudly hosted over 120 delegates from nearly a dozen different nations at its 2008 Jerusalem Conference. The Conference, under the theme **The Pursuit of Peace Through the Rule of Law at Times of Violence** was held June 12 – 17, 2008 in Jerusalem, Israel. The mission of the WJA since its inception has been to promote peace through law – as described in this report, the Jerusalem Conference highlighted these efforts and furthered the dialogue toward this goal.

Opening Ceremony

The Israel Bar Association hosted the Welcoming Reception and Opening Ceremony on Thursday, June 12, 2008. Upon arrival at the beautiful home of the Bar Association, their counterparts from the local Israeli legal and judicial community welcomed delegates. A reception was followed by entertainment and greetings.

The Master of Ceremonies was Ethia Simha, WJA National President for Israel and a member of the Host Committee. She quoted the Book of Sages (Ethics of Our Fathers): The world exists on three things: Truth, Law, and Peace. Atty. Simha noted that a conference in Jerusalem, which is the City of Peace, is the perfect setting for the topic at hand – We know terror exists as a reality around the world. President George W. Bush, during his recent visit to Israel, said that the fight against terrorism is the defining challenge of our time. This struggle, he said, is greater than just a clash of arms; it is a clash of visions, of ideologies. The struggle is between justice and reason on one hand and a narrow vision based on cruelty, violence, murder, and fear and lies on the other hand. Atty. Simha defined this challenge as the focus of the theme of this conference. At this conference, the WJA will discuss, deliberate, and articulate ideas to counter these methods of violence and help humanity. She then reminded delegates that we have to take this opportunity to admire the way this organization elaborates on ideas of peace and law over violence. Mrs. Simha expressed confidence that this conference will further our efforts and wished the delegates a fruitful meeting.

The Honorary President of the Host Committee was Justice Meir Shamgar, President (ret.), Supreme Court of Israel. Justice Shamgar officially opened the 2008 Jerusalem Conference on the Pursuit of Peace Through the Rule of Law At Times of Violence. Quoting Sir Francis Bacon, Justice Shamgar noted that “Knowledge itself is power” and that this is the work of the WJA – promoting knowledge, ideas and dialogue amongst its members and delegates.

Justice Eliezer Rivlin, Deputy President, Supreme Court (Israel), noted that in times of conflict, democracies face a challenge of balancing the fight against terrorism and the protection of human rights. He emphasized that guarding human rights does not always justify diminishing security measures. The Israeli Supreme Court has faced this challenge through administrative and legal decisions. Justice Rivlin emphasized that the rule of law is a necessary foundation for peace.

Mr. Asher Axelrod, President of the Jerusalem Bar (Israel), welcomed the delegates and speakers and introduced the WJA as an organization of jurists – a jurist is a guard of the law everywhere, a guard of public order, and a guard of human rights. He contrasted jurists to those who wreck the public order. He then called for further cooperation between the Israeli Bar and the WJA, because the WJA represents the best of human values.

Mr. Ronald Greenberg, President of the WJA and Of Counsel, Berkes Crane Robinson & Seal, LLP (USA), welcomed the delegates and speakers. He noted the importance of discussing the links between rule of law and achieving peace. In the spirit of the conference's Jerusalem location, Mr. Greenberg provided an evocative image of the Patriarch Abraham, father of Judaism, Islam and Christianity, weeping at how his children use God's name to promote and justify violence.

Session 1: Legal Aspects of Terrorism

Professor Eunice Gibson (USA) discussed Private Armies: A challenge to the Rule of Law stating that the modern growth of privately run security forces and the general privatization of military training since the end of the Cold War presents great problems to the rule of law in the fields of human rights and civilian oversight of "military" actions and personnel.

For example, in the fighting that ensued after the breakup of Yugoslavia, Croatia hired MPRI, a private security firm based in the U.S., to assist Croatia's own military forces – the involvement of U.S. mercenaries "changed the balance of power over the use of force in that country. It strengthened the executive and weakened the parliament." Moreover, the contract between the U.S. firm and the Croatian government was not approved by Croatia's parliament as required by law. Likewise, MPRI's involvement in Bosnia ran counter to official American policy in Bosnia to strengthen domestic institutions "to control the Bosnian military." MPRI viewed civilian institutions as an encumbrance on MPRI's freedom and would lead to loss of time and money for the firm.

Furthermore, human rights violations and war crimes committed by private armies in several nations – including Haiti, Angola, Sierra Leone, Bosnia, Croatia, and Papua New Guinea – have generally not be prosecuted. In Iraq, killings of civilians and reports of human trafficking and mistreatment of migrant workers by private firms have raised controversy as to which law and jurisdiction should be applied in prosecuting such abuses.

Moreover, private corporate armies may hinder the development of rule of law in third-world countries. In states rich with natural resources, private security forces have been hired to protect companies' investments in those resources – which means that the state does not have to tax its citizens or persuade them of the value of law and order and the need to pay for it." Furthermore, "if the corporation's private army violates the rights of the citizens, the state is motivated to tolerate that in return for the benefits of the industry's investment."

Professor Gibson suggested that as far as the U.S. is concerned Congress should craft legislation which: 1) provides "clear jurisdiction to punish crimes committed by private armies"; 2) applies civil regulations in the fields of torts, and labor practices to private security firms; 3) requires transparency in contracting; 4) provides for penalties on corporations for criminal and civil violations committed by their personnel during the period of the contract; 5) ensures private armies do not act in a way which contradicts declared foreign policy goals; and 6) enables the government to oversee contract performance and allow "termination and debarment proceedings when contract nonperformance merits those measures." Finally, Congress should "investigate thoroughly the proposal to place all military contracts under authority of the Defense Department and to remove such authority from the State

Department.”

Judge Dr. Menahem Finkelstein (Israel) discussed the Legal Rules in Israeli Counterterrorist Operations. He noted that regular law enforcement may not be a feasible option in dealing with terror groups and that military force often must be used which gives rise to certain legal quandaries. For example: Is the leader of a terror group a combatant or a civilian? Is the house where a terrorist resides a military target or a private home? Are targeted assassinations of terror leaders justified?

Every major operation by the Israel Defense Forces (IDF) against terrorist targets has been subject to judicial review by Israeli courts. This judicial review is highly important for the rule of law because in times of war laws are generally sidestepped in favor of security.

Judge Finkelstein then discussed Israel’s views on terrorists’ legal status. He explained that the IDF’s judicial branch considers terrorists as enemy combatants and therefore legitimate targets. When dealing with terrorists, Judge Finkelstein said Israel abides by the principles of the laws of war –it acts proportionally, distinguishes between military and civilian, and tries to act humanely.

Moreover, Judge Finkelstein explained that Israel takes military, rather than police actions, only when suspected terrorists cannot feasibly be arrested because they operate from densely populated areas under the control of the Palestinian Authority. He also discussed the controversy over Israel’s policy of targeted assassinations of terrorist leaders. Because Israel is in a state of armed conflict with terrorist groups (i.e. enemy combatants) they are legitimate military targets. When they pose a clear and present danger and it is not otherwise possible to capture them, targeted assassinations are appropriate.

Judge Finkelstein concluded by noting how the traditional laws of armed conflict are not readily applicable in the struggle against terrorism and that therefore the role of military lawyers is challenging and it also requires the military to use careful foresight in conducting counterterrorism operations.

Professor Karel Klíma (Czech Republic) discussed The Constitution and Democracy in Emergency Situations Caused by Terrorism. Professor Klíma posed several questions: (1) What possible measures can be taken and under what conditions would the substance of human nature, such as life, dignity, and subsistence not be violated? (2) How is the legitimacy of taking emergency measures established?; and (3) what is the evaluation system of the adequacy of emergency measures and how does a state respond to damage and incompetence in general?

The role of the State in dealing with terrorism includes the implementation and organization of services in the public interest. Further, Constitutional Law can recommend public administrative action, human rights protection, and incorporate them into a wide framework of state communities. Constitutions can establish emergency measures and define the allowable interference into human rights. Professor Klíma cautioned that legal limits must be put into place to curtail the executive from infringing on civil liberties.

Professor Klíma argued that constitutions must guarantee the inalterability of fundamental human rights including: prohibition of torture and inhumane treatment; prohibition of the conscription of wealth, legality of the death penalty or detentions; and freedom of conscience and cult.

Professor Klíma then used Spain and France as examples of constitutional structures to deal with emergency situations. In Spain, certain rights can be repealed for persons in connection with an investigation of a terrorist group. In France, legislative and regulatory power can be temporarily conferred on the President.

Prof. Klíma concluded by calling for the constitutional establishment of: recognition of international obligations, reasonability of the measures, legality of the measures, proportionality of the measure, time limitations, maintenance of equality, prohibition of discrimination, and justice and supervision.

Mr. Ronald Greenberg (USA), President of the World Jurist Association and of Counsel at Berkes Crane Robinson & Seal, LLP, spoke on the Legal Aspects of Terrorism- A Play on Words observing that terrorists are criminals in one part of the world and martyrs in another part. This may be true even within a country; in the U.S., abolitionist John Brown was considered a hero by many for killing slave owners, to others, he was a criminal – should he also be considered a terrorist? Mr. Greenberg then attempted to cull a legal definition of “terrorism” from those offered up by dictionaries, American governmental agencies, and foreign governmental agencies. Finding that every definition included reference to the act, the intent, and/or the cause, Mr. Greenberg stated that the inability to agree upon a definition of terrorism stems from an inability to agree upon whether certain causes justify the act and the intent.

Mr. Greenberg proposed the creation of legal norms for conducting terrorism - just as conventional war has certain types of conduct that are prohibited by the Geneva Convention – in which globally accepted rules would prohibit certain conduct. He urged the using or killing of children by terrorists and the intentional targeting of unarmed civilians should be prohibited. Terrorists acting outside of these norms would be considered murderers. Mr. Greenberg concluded by posing the question: can a cause ever be used to justify an act no matter how horrific?

Session 2: International Criminal Law and Terrorism

Professor George Fletcher (Israel), of Columbia University and Hebrew University, focused on the interplay between international criminal law and terrorism asking whether terrorism is an act of war or a criminal act. The answer to this question determines how the offending party will be prosecuted. If it is a criminal act, those involved must be arrested and given a trial, on the other hand, if it is an act of war; the attacked country has a right to military reprisal. Furthermore, according to international law, military combatants may (generally) shoot and destroy property without any legal consequences. “Soldiers” also have certain legal rights that governments do not want to extend to terrorists. Professor Fletcher explained that this is because a non-soldier engaging in combat can be criminally prosecuted.

Speaking about the legality of suicide bombing, Professor Fletcher stated that while violence itself cannot be banned – and that sometimes violence may even be justifiable – a convention against the use of suicide bombings could be plausible.

Session 3: The Role of the UN in Combating International Terrorism and Promoting World Peace

Session 3, moderated by Ambassador Dr. Ovadia Soffer (Israel), focused on the role of the UN in Combating Terrorism and Promoting World Peace. The Israeli speakers view the UN as a highly political organization that has failed to bring peace. For example, the UN has failed to stop genocide in Darfur and the Balkans.

Daniel Taub (Israel), Deputy Legal Advisor to the Israeli Ministry of Foreign Affairs, spoke about the UN's role in battling terrorism. Israel has a unique and complex relationship that Israel has with UN. Many Israelis view the UN as a wonderful institution but a disappointing organization. As an institution, it reflects values and aspirations that we deeply share, but as an organization it has a number of shortcomings – some of which we feel very acutely. Israel is still the only country in the world that cannot be a full member of any of the UN's regional working groups, a fact that deprives Israel of the opportunity to have elected representatives and participate in consultations in many areas.

Another problem is that the UN is a political organization based on the principle of "one state – one vote". It is a simple fact that on Middle East matters, the coalition of Arab, Moslem and Non-aligned states creates an automatic majority for any initiative directed against Israel. This has become important to the legal community because over the last few decades we can see that the circle of influence of this automatic majority has been expanding – from the General Assembly, through the human rights and humanitarian bodies of the UN, to the legal and juridical organs of the international community. Any lawyer must be concerned at the phenomenon of politicization that we have witnessed in relation to the International Court of Justice, the statute of the International Criminal Court, the principle of Universal Jurisdiction, and so on.

The politicization of these legal institutions creates acute dilemmas for Israel. For example, it can prevent Israel from taking a position of principle with which it agrees. The ICC, in Israel's eyes, is an important worthy institution and Israelis have been in the forefront of the campaign for a permanent war crimes tribunal. And yet by the time that the ICC Statute was adopted in 1998, it had undergone a process of politicization, some of it deliberately directed against Israel, which meant that Israel could not ratify it.

A different kind of dilemma was presented by the referral of the issue of Israel's security barrier to the ICJ by the General Assembly of the United Nations. In the face of such clearly political moves, we are forced to weigh a difficult balance – should we participate in such a proceeding, possibly influencing the result, but at the same time risking giving it legitimacy it should not have.

Even with these dilemmas, it is clear to Israel that it cannot ignore the importance of the UN, and its increasingly crucial role on issues that concern us such as Iranian nuclearization, Lebanon, the peace process, etc. How then do we navigate in this environment?

In recent years Israel has tried to limit and contain the areas of friction with the UN, and to identify and enhance potential areas of cooperation. With this approach in mind, Israel has managed to actually initiate and draft UN resolutions, which have been adopted, and to host UN sponsored conferences in Israel. Israel is also trying to raise the profile of Israelis within the UN system and has conducted "model united nations" events to raise the profile of the UN among Israeli youngsters.

The way in which the UN has dealt with the issue of terrorism reflects many of the strengths and weaknesses of the organization. In particular, the definition of terrorism has been a major issue of debate. Earliest attempts to reach a definition of terrorism for the purposes of drafting a convention followed the Munich massacre of Israeli Olympians. But continual debates between the developed and developing states over the definition, and in particular the issues of "rights to resistance" and "state terrorism" led to an approach in which the General Assembly worked around the definition issue, by drafting 13 criminally-oriented conventions which criminalize specific terrorist activities. These conventions read like a history of the terrorist tactics, starting with hijacks and terrorist activity at sea, through hostage-taking and terrorist bombings, until nuclear terrorism and terrorism financing. The latest conventions have come somewhat closer to a general definition, but the fundamental debate has still frustrated a general convention.

The fundamental shift caused by the 9/11 attacks moved the center of gravity from the GA to Security Council, notably with UNSCR 1373 which created binding obligations to freeze terrorism assets, address incitement etc, and also established a new body – the counter-terrorism committee, which in Israel's view has yet to fulfill its potential.

A final comment about defining terrorism: while the UN hasn't succeeded in reaching a definition, there is in fact an agreed definition between Israelis and Palestinians. Both sides accepted the findings of the Sharm el-Sheikh fact-finding committee, which contained the following definition: "Terrorism involves the deliberate killing and injuring of randomly selected noncombatants for political ends. It seeks to promote a political outcome by spreading terror and demoralization throughout a population. It is immoral and ultimately self defeating."

Ambassador Dr. Robbie Sabel (Israel) then spoke of the positives and negatives of the UN as an organization. When for example, the Security Council decides to act it has had some success – Apartheid era South Africa and Iraq in the first Gulf War. The UN is also a forum for discussion of global concerns and has established certain norms regarding human rights. Nevertheless, Ambassador Sabel pointed out the UN does not have the power to create international law.

When asked how the UN may be reformed, Ambassador Sabel seemed pessimistic, noting that because of politics; past efforts of reform have failed. Ambassador Soffer had a similar view, arguing that politics and subsequent lack of will and agreement on important issues, makes the UN weak at tackling important issues to global security and human rights like the Iranian threat and the genocide in Darfur.

Session 4: Role of the Judiciary in a Democratic Country in Combating Terrorism While Preserving Human Dignity

The WJA was privileged to be able to host Sessions 4 & 5 at the Knesset (Israeli Parliament). M. K. Professor Menahem Ben Sasson, (Israel) Chairman, Constitutional Law and Justice Committee, Israeli Knesset facilitated opening this venue to the delegates and thereby provided a unique insight into Israeli legal institutions.

M.K. Professor Ben-Sasson, (Israel), Chairman of the Constitutional Law and Justice Committee in the

Israeli Knesset, welcomed all to the Knesset - Israel's parliament. He opened the panel by expressing his opinion that Israel needs a fully written constitution. He further asked the WJA's support in addressing Israel's need for a written constitution.

Professor Aharon Barak, Former President of the Israeli Supreme Court, spoke on the Role of the Judiciary in a Democratic Country in Combating Terrorism While Preserving Human Dignity. Prof. Barak said that the main role of courts is to protect constitutional freedom from terrorist threats to democracy. If the courts fail to preserve freedom in times of violence it will also fail to do so in times of peace. A judicial mistake is much harder to overturn than a legislative mistake. Democracy ensures judicial neutrality for the individual during violent conflict. Professor Barak stated that protecting human rights is not justification for national suicide. However, not all security means are acceptable, for example part of the security fence in the West Bank was deemed illegal. Although sometimes it seems that democracies fight with one hand tied behind their backs, this handicap is also democracies' greatest strength. The balancing test must always be one of proportionality. The Israeli Supreme Court meets this challenge as the court of first instance when human rights are implicated. Everyone has standing. Judgment is based on International Law. The Court uses such benchmarks as proportionality and necessity to test security measures.

Adv. Enrica Ghia, Attorney at Studio Legale Ghia (Italy), spoke of the Italian response to terror attacks on its soil. In Italy, terrorists are tried in a criminal court with a normal judge. The result of this is that cases with similar facts often have very different outcomes. For example, different judges have issued opposing rulings on whether physical harm is needed for liability or whether liability can result solely from creating fear. Italian law does not specifically define terrorism but a common definition is needed to give judges the tools to make appropriate decisions.

Session 5: Hate Speech and State Sanctioned Incitement – A Danger to World Peace

Judge (ret.) Hadassah Ben Itto (Israel); spoke about "hate speech" as a danger to peace, using Nazi publications, such as Mein Kampf as illustrations. Nazi propaganda has reappeared and been adopted by radical groups in the Arab World to undermine peace and political stability in the Middle East.

Next to speak was M.P. Professor Irwin Cotler, Former Minister of Justice (Canada). He spoke of the enduring lesson of genocide – that it does not occur solely because of the industry of death but also because of state sanctioned permission to hate. In Canada, a constitutional democracy, the Supreme Court has held that promoting hate was not protected and is in fact an assault on freedom of speech. He noted that some limits on speech exist in all democracies.

He explained that hate speech can be controlled in countries where the capacity for more open speech already exists; this is very different in regimes without democracy where speech is restricted already and state-sanctioned hate is committed.

He drew on the lessons of Nuremberg, Rwanda, and the Balkans as places where hatred was incited and looked at the dangers of state sanctioned hate speech and of indifference and inaction.

Professor Cotler then listed the available remedies: states have responsibility under genocide

convention; states can refer threats to the U.N. Security Council; any party to the genocide convention can initiate a complaint. He concluded with an example of a complaint issued by Argentina against Iran for directing Hezbollah to bomb a Jewish community center in Buenos Aires. The complaint resulted in an Argentine judge issuing arrest warrants for former Iranian President Rafsanjani and other Iranian officials.

Luncheon

A special luncheon was held for the WJA delegates, hosted by their colleagues from the Republic of Georgia, on Sunday, June 15th. Justice Meir Shamgar opened the luncheon and warmly introduced the Guest of Honor and keynote speaker, The Hon. M.K. Benjamin Netanyahu, Head of Opposition, Former Prime Minister (Israel). Prime Minister Netanyahu spoke on market driven rule of law. More freedom leads to greater social good and rapid economic growth that can eradicate poverty and the problems that arise from it. While Israel has successfully been adopting free market economics, it does not have laws to deal with monopolies; the result is that a few companies control large swaths of the Israeli economy, creating a large disparity in the distribution of wealth and capital.

Prime Minister Netanyahu then focused on two international flashpoints where rapid economic growth resulted in greater political peace and stability: Northern Ireland and Cyprus. Northern Ireland changed because the people there saw the example of economic growth in the Republic of Ireland, which had adopted free market economics.

In Cyprus, a free market economy seeped in from the Greek side of the island to the Turkish part, and now the two sides are talking.

The former Prime Minister stated his belief that these case studies can be examples for the Palestinians. Currently, the Palestinian Authority is split between Hamas in Gaza and Fatah in the West Bank. Rapid economic growth would provide Fatah with the strength and legitimacy to conduct peace talks with Israel. Economic prosperity creates conditions for peace and allows for political freedoms – in short, it allows for the rule of law.

Session 6: Some Reflections on Jerusalem – Problems and Solutions

Adv. Dr. Shmuel Berkovitz (Israel) spoke of the importance of Jerusalem and her holy sites to the three monotheistic religions (Judaism, Christianity and Islam). He focuses particularly on the Temple Mount and its role in the failure of the Second Camp David Conference (2000) was the status of the Temple Mount.

The Temple Mount is the holiest site in Judaism. It is where the two Holy Temples once stood; it is where God told Abraham to sacrifice his son Isaac. It is the center of the world and the starting point for God's creation of the world.

According to Islamic tradition it was from the Temple Mount that Muhammad ascended to Heaven with the Angel Gabriel and received the instruction from God that Muslims must pray times a day.

Although Dr. Berkovitz expressed his opinion that this was only a legend he respects the Muslim beliefs and said he hoped the Muslims would respect Jewish beliefs and history in Jerusalem. He mentioned that in the past few years, some Palestinians have denied the existence of a Jewish presence on the Temple Mount – this contradicts earlier Muslim opinion and the evidence of modern archaeology.

Dr. Berkovitz also mentioned that Israel is not enforcing its sovereignty over the Temple Mount. The Muslim Waqf (trust) – without Israeli permission – is building another Mosque on the Temple Mount. The worry is that this construction will destroy archeological remnants of Jewish history in Jerusalem. The Second Camp David Conference offered Palestinians control on the surface of the Temple Mount and Israeli sovereignty underneath it – neither side could agree to this because the Jewish temples were on the surface and the Muslims have concerns about the Jews digging underneath the Mount.

Next, Professor Ruth Lapidot (Israel) of Hebrew University spoke about the national aspirations of the Israelis and of the Palestinians to control Jerusalem, the status of the holy sites, and Jerusalem's role in Judaism and Islam. She further spoke about the problems of running a city home to three major religions and 40 different ethnic groups.

Professor Lapidot suggested solving the problem by sidestepping the issue of “sovereignty.” Israelis and Palestinians would then make agreements on division of powers and responsibilities in parts of Jerusalem without discussion of who is “sovereign.” As for municipal administration – it would be helpful to give the various neighborhoods a certain amount of cultural autonomy, which in fact, already exists to a certain extent. There should also be special arrangements for those who commute to Jerusalem from outside its municipal borders. Finally, she noted compromise is necessary in order to achieve certain important goals.

Session 7: Creating a Culture of Peace in the Face of Violence

Session 7 was titled “Creating a Culture of Peace in the Face of Violence.” Justice (ret.) Gabriel Bach (Israel) moderated the panel. Justice Bach began by focusing on the need for more balance in the media's portrayal of the Arab-Israeli conflict. One overlooked example he gave was in the first Gulf War when fearing that Saddam's scud missiles would be tipped with chemical warheads, the Israeli Army, which did not have enough gas masks for all Israel and the Palestinian territories (West Bank and Gaza), first would distribute gas masks within Israeli territory – because they were sure Saddam would not bomb Palestinian areas – the Israeli courts ruled against the army's plans on the basis that it was the responsibility of the Israeli government to ensure for the welfare of all persons under its jurisdiction.

Next, Professor Shimon Shetreet (Israel) of Hebrew University, outlined the foundations for a culture of peace: 1) Political Peace – where a treaty formally ends violence, establishes normalization, resolves disputes about borders, and diplomatic relations; 2) Economic Peace – including economic cooperation, tourism, trade, and labor; 3) Cultural Peace – commitment to democracy, human rights, rule of law, and judicial independence; and; 4) Religious Peace – including respect and tolerance.

Professor Shetreet also spoke about corporate social responsibility, government, international economic

aide, and multinational corporations. Social responsibility must be considered part of the economic peace between nations and between multinational corporations.

Next, Prof. Shetreet focused on the Israeli-Egyptian peace agreement – which just barely touched upon economic cooperation between the two nations; today, there is no meaningful cooperation between Israel and Egypt, though there are natural gas agreements between them, so the foundation for economic cooperation is there. With Jordan, industrial zones, which now Egypt has sought to join, get favored treatment under American law – Jordan itself exports \$1.2 billion worth of goods to the U.S. There are other projects, such as the Dead Sea Canal, which provide a promising example of the possibilities of establishing true peace and cooperation.

The spectre of suicide bombings, fueled by religious fanaticism must be addressed in creating a culture of peace. The 2002 Alexandria gathering, condemned acts of violence against civilians done in God's name and that violence in the Holy Land is an evil which must be stopped.

The final panelist, Donald Goodrich (USA), Chairman, Families of September 11 spoke on Creating a Culture of Peace in the Face of Violence. Mr. Goodrich discussed the relationship between peace and the rule of law, culture and education. In a culture that accepts the rule of law, people have to impose upon themselves constraints on their behavior. In countries that lack the rule of law, Mr. Goodrich noted Afghanistan in particular, those that engage in violence escape punishment, such lawlessness causes the most intelligent and capable Afghans, those capable of rebuilding the country, to leave it for greener pastures.

To create a culture of lasting peace one must start from the bottom up. This means providing food, clean water and better infrastructure to regions greatly lacking in them – poverty breeds desperation and desperate people are easy prey for those who can channel that desperation into hate and violence. Furthermore, it is important that the global community, in assisting poorer nations and peoples not give off a sense of cultural arrogance that asks poorer peoples to emulate in every way more developed ones. Often they do not want to change their native ways – nor should they. What is needed is mutual assistance and mutual understanding of cultural diversity so as to build trust between peoples. This need to build trust is why those in the developed world must put more emphasis on learning foreign cultures, languages and religions. Finally, if one looks at the United Nations Declaration of Human Rights and adds “duty” to the rights inscribed in that document and embed in the minds of young people that there is a social responsibility to protect and fulfill those essential human rights and help others achieve those rights, a more peaceful and responsible society can be created.

Session 8: The Way to Achieve Economic Stability

Session eight focused on The Way to Achieve Economic Stability. The first speaker, Professor Monica Grill (Argentina), Environmental Director of Foreign Affairs and Professor of Private International Law at Buenos Aires University (Argentina), discussed Terrorism and Civil Rights Crises: A Different Perspective to the Conflict. She narrowed in on mystic fanaticism – a phenomenon in which religion is the ideological foundation for a social and political system.

Building on the assumption that no one (presidents and kings included) is exempt from following the

law, Professor Grill reminded the audience, that for the sovereign power, peace is not always the supreme value, but one amongst others like liberty, honor and general welfare. Restrictions to liberty have to be carried out with strict observation of constitutional prescriptions and access to the judiciary has to be guaranteed. Moreover, dialogue between cultures will help against terrorism. International cooperation is vital in developing plans to face the new terrorist threat. In South America for example, the Organization of American States and the South American Common Trade Agreement have established an anti-terrorism committee.

Professor Grill opined that democracy is the only system vulnerable to terrorism because of its pluralist and tolerant character that may drift towards intellectual passivism.

The second panelist, Adv. Lucio Ghia (Italy), past president of the World Jurist Association and from the law firm Studio Legale Ghia (Italy), spoke about financial institutions and their role in constructing a better and more peaceful society.

Adv. Ghia translated from the Latin, an inscription found on a monument in New York's Central Park. The inscription reads "It is necessary that you live for another if you want to live for yourself." American bankruptcy law, reflecting this Roman wisdom has its cultural and legal roots in England and the Calvinism of the early American colonists, allows the debtor to conclude his unsuccessful business by dissolving his or her uncharged debt without the need to go through bankruptcy proceedings. This offers the insolvent the possibility of returning to the market and putting skills to good use, having learnt from past mistakes.

In contrast, until very recently, Italy's bankruptcy laws were far less forgiving of insolvency. However, Italy's new bankruptcy laws provide that after the bankruptcy liquidation, the insolvent cannot be further prosecuted for any unsatisfied debt. The debtor can then re-enter the market because he or she is no longer afraid of seeing any new enterprise being taken away to satisfy a previous debt. The new law gives debtors breathing space to resume economic activity, create new jobs, etc. and at the same time protects creditors through the establishment of a more stable and economic legal system. Subsequently, the World Bank upgraded Italy's ranking as a safe country for foreign investment.

Economic growth and stability is an instrument of peace and a tool for political stability. Building a free and stable market gives those in a weaker socio-economic position the prospect of a better life. As evidenced by American and Italian insolvency laws, allowing those in a weaker position to stabilize and improve their current situation by accessing the market economy brings significant moral and economic value to the entire society.

Concluding the session, moderator Kim Quarles (USA), Senior Vice President with Willis of New York (USA), spoke about how insurance, in coordination with other financial mechanisms, can provide economic stability against terrorism. Insurance stabilized economies by transferring risk. If businesses are destroyed in a terror attack, insurance allows those enterprises to be quickly reestablished.

Ms. Quarles discussed alternative mechanisms for maintaining financial security. One such mechanism is reinsurance. Reinsurance is insurance for insurance carriers. However, this alone may not be enough to address the catastrophic situations arising out of massive terror attacks. One alternative is "catastrophe bonds" (CAT bonds). These bonds allow an investor to transfer the financial risks to

another investor in the event of a terrorist attack. [Editors note: A CAT bond is “A high-yield debt instrument that is usually insurance linked and meant to raise money in case of a catastrophe such as a hurricane or earthquake. It has a special condition that states that if the issuer (insurance or reinsurance company) suffers a loss from a particular pre-defined catastrophe, then the issuer's obligation to pay interest and/or repay the principal is either deferred or completely forgiven.” Source: <http://www.investopedia.com/terms/c/catastrophebond.asp>]

The panel further discussed the importance of economics in creating peaceful and stable societies. Ms. Quarles noted that Israel already has a financial system that pools money and uses it to reimburse their citizens after a terrorist attack (similar to the United States’ Terrorism Risk Insurance Act – TRIA). These governmental responses provide comfort to insurance companies who know that their maximum losses will be capped and that there is a reserve of money to help industries get back on their feet after an attack. Adv. Ghia then spoke of the importance of the middle class in democratic development. His fear was that because of the growing disparity of income between middle class wage earners and the wealthier strata of society, the middle class is being lost in the West

Session 9: The Role of Governments in Combating Terrorism and Protecting the Rule of Law and Peace

The panel on The Role of Governments in Combating Terrorism and Protecting the Rule of Law and Peace was moderated by Adv. Irit Kahn of Bar Ilan University and formerly of the Ministry of Justice (Israel). She began the discussion by sharing some of her experiences at Israel’s Ministry of Justice. States all over the world are wrestling with the question of how far they can go in defending their citizens; an even more critical question faced with the threat of terrorism.

Adv. Kahn referenced an article by Chief Justice Aharon Barak addressing these issues in which he argued that the struggle against terrorism is not conducted outside of the law but within it using the tools that the law makes available to a democratic state. This power of society is based on the recognition that certain values – such as the rule of law – are worthy of protection.

Adv. Kahn explained how decisions were made in Israel in the attorney general’s office before military actions were sanctioned. The aim was to find a balance in the actions of the army between trying not to harm Palestinian civilians and its obligation to protect Israeli citizens. She raised the question of what to do when bombs are coming out of a population from terrorists hiding in the middle of that population. It is very easy to sit at the Geneva Convention and discuss situations. But, how is a government supposed to answer? If you bomb the civil population where the bombs are coming from, a lot of civilians will be hurt. But according to international law, governments have to answer in a way that will minimize the suffering of this population.

Mr. Benjamin Griffith, (USA) the National President of the World Jurist Association spoke on The Role of National Governments in Providing Models for Continuity and Sustainable Growth: Terrorism’s Challenges to the Rule of Law. Mr. Griffith discussed the need a continuity of government policy to continue government services in the wake of an extraordinary emergency such as a terrorist attack or major natural disaster.

Mr. Griffith emphasized the fundamental right to participate in regularly scheduled elections as one of the many governmental services and constitutionally protected rights. He reminded the conference that 9/11 occurred when New York was having mayoral elections and that the 2004 Madrid bombings preceded the national elections in Spain by just a few days.

The term continuity of government was defined as a coordinated effort within each branch of government to ensure the capability to continue its essential responsibilities in a catastrophic emergency. Some instances require the plan to have a provision for relocation to alternate sites for essential government operations. A plan for sustainment of minimum essential functions such as health, safety, welfare, and law enforcement is also necessary.

The question then is how can a constitutional democracy respond to major disasters and still adhere to the rule of law? Or alternatively, how can a national government maintain continuity and deliver essential services, perform its core functions, hold regularly scheduled elections which are not optional, and carry out essential responsibilities in the aftermath of a natural disaster or terrorist attack?

Mr. Griffith spoke of the need for essential planning and policy-making before a catastrophic event. The one overriding requirement of a continuity of government plan is that governments do not get into disaster management during the disaster. He cited Hurricane Katrina as an example of planning and intergovernmental operations that were not fully ready. New Orleans was a model for disaster, but the lesson learned is now being used to plan for disasters in both the United States and elsewhere.

There must be a triggering mechanism, an on-off switch, for the continuity plan. There has to come, at some point, an end to the exercise of emergency powers and the state of emergency under which the government has operated.

Mr. Griffith listed the core elements that can and should be incorporated into a continuity of government plan: mitigation, preparedness, response, and recovery. Mitigation is the reduction of the effects of the disaster. Preparedness refers to preparing the procedures, plan of action, and equipment for when the disaster strikes. Preparedness requires having communications plans, multi-agency communication, emergency services, training for the emergency itself, emergency population warning methods, alternatives to electronic communication (a nuclear bomb and other disasters will render many of today's electronic and computer driven communication methods absolutely useless), and alternative methods of generating power and electricity. In responding, basic humanitarian needs of the affected population must be met and the necessary emergency services such as firefighters, police, medical assets, and ambulance crews must be mobilized. Recovery occurs once the immediate threat to human life has subsided, the area must be returned to a state of normalcy.

The bottom line, according to Mr. Griffith, is that effective emergency management planning is the result of information sharing among States. Between Canada and the United States there has been a sharing of technological information and information in the bioterrorism field. Sharing has also occurred between the U.S. and the European Union.

The U.S. in Presidential Directive 51 makes it clear that future national emergencies will largely be those that come without warning. So, continuity of government plans must be able to anticipate the unforeseeable.

Mr. Griffith turned to the problems that are unique to the electronic age and critical service delivery. He noted that it's tough enough today to keep your Microsoft XP 2007 system free of all of the viruses out there. Add to that radiation. Add to that twelve feet of water. Add to that hurricane winds that blow the roofs off of houses. So there must be some planning and some policy and some knowledge for how to provide for computer security.

Returning to elections, Mr. Griffith commended the job done in the Louisiana elections following Katrina. He thinks that it is a possible model for how to fairly, properly, and pursuant to the rule of law conduct regularly scheduled elections in the face of disruption of a major magnitude.

Next to speak was Edward Sullivan of Garvey, Schubert & Barer (USA) on Emergency Planning and Sustainability. His thesis was that just as we react to the last incident of a natural disaster or violence on a daily basis we ought to do the same for our physical planning. To internalize the problems we must predict resolutions to future crises so that those solutions do not contradict each other nor result in any unacceptable interference in our core values. Using the same analytical and predictive thinking with which we react to disasters, we must look to threats that are less immediate but are predictable. Although, Mr. Sullivan, noted the 2004 tsunami, Katrina, and the recent Myanmar cyclone could not be stopped, a lot more could have been done to calculate the risks, to fortify the natural and man-made responses to those risks, and to bring disaster planning into play in order to relocate people away from known risk areas. We have adequate responses for the forces of nature when they occur. We need to turn our responses into predictive mode and be as quick and smart in the mitigation of future disaster as we are in our response to terrorism.

One example occurs on American university campuses that have visible emergency communications stations all around campus that students can use to contact real security personnel if threatened. Some universities now have a system of alerting people by cell phone of any danger on campus.

Now these efforts to secure public spaces must be translated into dealing with security in private spaces. In the U.S. this is done through design review such as defensible space which creates a sense of community, includes sophisticated systems of both fencing and lighting and eliminates dead zone areas (areas in which commercial activity stop at night, creating an opportunity for crime to occur).

Mr. Sullivan then looked at private security and disaster maintenance and the need for hazard avoidance building in areas in which there are known physical risks. These areas need to be mapped and building must be prohibited unless there is adequate memory of what can be done in those areas to prevent disaster.

Mr. Sullivan then spoke about sustainability as a means to anticipate future challenges. Mr. Sullivan then listed several areas of sustainability necessary to meet and mitigate natural disasters: (1) solid waste and the need to reduce waste at the source by reducing the need to put waste into landfills; (2) waste prevention; (3) alternative methods of transportation; (4) diversifying energy and using wind, solar, and even nuclear energy; (5) treating waste water and using it for agricultural irrigation; (6) constructing and designing buildings that can be used more efficiently and lessen the required energy consumption; (7) using more efficient government vehicles; (8) landscaping public areas to meet local water requirements; and (9) using public gardens as a source for local produce. And

finally, Mr. Sullivan spoke to the importance of designing both public and private sites to reduce energy consumption including retrofitting current sites to be more energy efficient as an alternative to demolishing building and reconstructing them and thus expending further energies and also using building and construction codes for efficiency of energy to assure lighting and water is used more efficiently.

Mr. Sullivan defined rule of law in the context of disaster and emergency management as “a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power.” Mr. Sullivan then noted that negligent relocation of citizens after a volcanic eruption or flood is an absolute tragedy because of the likelihood of recurrence. For example, the rebuilding in New Orleans’ lower 9th ward that was destroyed by Katrina is a travesty.

Session 10: Religious Fundamentalism and its Implications

Session 10, moderated by Prof. Joseph Shenker (Israel), focused on Religious Fundamentalism and Its Implications. The first speaker was Dr. Muhammad Essawi, (Israel) President, Islamic Academy of Aksmi (Israel). Dr. Essawi gave a short history of how the Islamic college he founded has grown from a small institution concentrating only in religion, to one of the best colleges in Israel, with a staff consisting of both Muslims and Jews and several departments such as computer science, English, etc. When thinking about his own role as a religious leader and educator, Dr. Essawi asked how we can move from tradition to modernity and how we can reconcile dogmatic faith with liberal thinking and how to tackle the problems of terrorism and lack of human rights. Dr. Essawi said that leadership and unwavering commitment to human rights is needed.

Dr. Essawi was followed by Elias Shcour (Israel), Greek Catholic Archbishop of Haifa, Acre, Nazareth and the Galilee. Archbishop Schour focused on the plight of Christians of the Holy Land. The Christians of the area have several identities – they belong to various Christian denominations – Greek Catholic, Latin Rite (Roman) Catholic, Greek Orthodox, Maronite, and Protestant, they consider themselves also Arabs, Palestinians and Israeli citizens.

Archbishop Shcour views the Christian community as a voice of moderation and tolerance in Israel/Palestine. The Christian community and leadership condemn and reject all forms of violence and terrorism. Archbishop Shcour also called for more respect for diversity and that Israeli Arab-Palestinian Christians seek to work with Israeli Jews to build a better society, where both cultural diversity and the value of the individual are uplifted.

The final presentation was by Dr. David Rosen (Israel), former Chief Rabbi of Ireland and Chairman of the International Jewish Committee on Inter-Religious Consultations. Rabbi Dr. Rosen spoke of the three types of religious fundamentalism – the first, seeks to isolate itself from society (like the Amish or certain ultra-Orthodox Jewish communities) and poses no threat to anyone. The second, while claiming they have the absolute truth, work within the democratic system and does not seek to force everyone to submit to their “truth.” It is the third variety of religious fundamentalism that threatens global peace – those who seek to impose by force and by terror their particular religious viewpoints on others.

Rabbi Dr. Rosen said that what motivated this third group of fundamentalists to commit acts of violence was not necessarily their economic condition, but a general feeling of alienation and the desire to avenge perceived humiliations. This is especially true in the Arab World. These feelings get tied up with religion, which is and will always be an essential part of people's identity, even if the conflicts themselves are not inherently about religion.

Rabbi Dr. Rosen then asked – if religion is often part of the problem regarding violent conflict, how might it also be part of the solution? Religion cannot and should not be eliminated from the public stage because politics abhors a vacuum and gives extremists the opportunity to occupy center stage. Therefore, political initiatives must take religion more seriously and must express that the peace process is not inimical to religious interests.

During question and answers, the clergymen spoke further on how to increase the profile of religious leaders for peace. Rabbi Dr. Rosen mentioned that there already exists a dialogue between the Vatican and the Chief Rabbinate of Israel and a new council of religious institutions of the Holy Land which is made up of the Shariah courts of the Palestinian Authority, the Christian Patriarchs and Bishops of Israel and Palestine and the Israeli Chief Rabbinate – members from this council have met with several prominent world dignitaries such as Condoleeza Rice, Tony Blair, etc. Dr. Essawi said changing the education curriculum is important for peace – critical thinking, women in religion, teaching peace, etc. is an antidote to religious extremism.

Session 11: The Role of the Lawyer in the Peacemaking Process

The first speaker, Natia Kintsurashvili (Georgia), Deputy-Chairman, Georgian Lawyer's Association, addressed The Role of the Lawyer in Settlement of Societal Conflict – a theme chosen because of its connection to global terrorism.

She underlined the problem that the terms 'lawyers,' 'judge,' 'prosecutors,' and 'policemen' are not perceived in the same manner in all countries. In developed countries, a 'judge' is the right person to deliberate on cases and is trusted to make the right decisions. In other places, one cannot imagine that a judge or a prosecutor makes any decision without money passing from one hand to another.

In the modern world, the struggle for freedom and equality cannot be separated from an independent legal profession that is able to play its role in all events related to law in people's lives. The lawyer's role is very much intertwined with the very concept of citizenship and all essential notions of human rights.

Ms. Kintsurashvili noted the need for international solidarity. World jurists should work to ensure that justice matters more than politics.

It is the role of lawyers to protect and defend human dignity. A recurring problem has been that judges who do not yield to requirements and who do not yield to political pressure are dismissed. Countries facing such problems cannot be left alone to solve their own problems if they hope to be ruled by law and not by force.

Justice Eliakim Rubinstein of the Supreme Court of Israel then spoke on The Role of the Lawyers in the Peacemaking Process. He began with an overview of Israel's many treaty negotiations with neighboring countries.

Justice Rubinstein emphasized that from his perspective as a legal advisor and chief negotiator, international law and international legal processes are part of the peace negotiations, including, questions of recognition, boundaries, freedom of navigation, etc. A lawyer's first challenge is to convince government leaders to listen to their professional advice. Lawyers have the common sense and experience, gained from years of conferences and negotiating texts.

Justice Rubinstein spoke of the important role of lawyers in the drafting of negotiations. Lawyers translate the principles into text after considering what is to be achieved, what international and domestic law says, and what common sense says. The lawyer is then in charge of the application, implementation, and litigation of the text. Most political leaders don't have the patience for the minutia of language. Consider the Camp David talks between Menachem Begin, Anwar Sadat, and Jimmy Carter. Begin was a lawyer by education who loved language and whose mind was set on what the text should say. Sadat wanted peace and the text was just details to him. Carter was an engineer so he sat with a yellow legal pad playing with formulas.

Words are a large part of a lawyers' role. For example, during negotiation with Jordan in the 1990s in Washington when Rabin and Hussein were going to sign the Washington Declaration, the Israeli government wanted to push in 'the termination of the state of war.' But Jordan said no because they were married to U.N. Resolution 242 and the term 'belligerency.' Both sides decided – and Hussein announced on the White House lawn – that if asked what belligerency being terminated means they would say it is equal to the termination of the state of war.

Justice Rubinstein concluded by stating that sometimes one is frustrated by being stuck in negotiations on a legal problem. It begins with suspicion and psychological problems. One of the main questions always asked is what will be the relationship between this treaty and previous treaties with other nations. Which commitment takes precedent? In order to get out of a deadlock, sometimes one must create great attachments to the treaty that say one thing and another at the same time so everyone can be happy with the interpretation.

Closing Ceremony

Mr. Ron Gavit, Deputy President of the Bar Association (Israel) thanked the Chairman and the guests for coming to Jerusalem in the year of the State of Israel's 60th birthday. The Israeli Bar Association has 43,000 registered attorneys; Israel has the largest per capita ratio of lawyers in the world. The bar works to protect human rights and R/L.

The balance between fighting terror while respecting human rights and R/L is very complex. The Israeli Supreme Court has faced such decisions many times and while many have criticized the courts for getting involved in such disputes – the Israeli legal community strongly affirms that even though the terrorists don't follow the law, the State must.

The members of the Host Committee expressed thanks to all those in attendance at the Jerusalem Conference. Their participation was vital in the success of this conference.

Mr. Ronald Greenberg, presiding over the closing ceremony, thanked all the speakers on behalf of the entire World Jurist Association and quickly remarked on how the conference had broadened everyone's knowledge and understanding regarding peace and maintaining and promoting the rule of law in times of conflict. He gave special thanks to Margaret Henneberry for her special touch, Ron Gavit, Meir Gabay, Itzhak Nener, Ethia Simha for all her hard work, Asher Axelrod, Meir Shamgar and the entire Host Committee.

Note of Thanks

The Board of Governors of the World Jurist Association wishes to thank Chief Justice (ret.) Meir Shamgar, Mrs. Ethia Simha, Mr. Itzhak Nener, and the Host Committee of the 2008 Jerusalem Conference. Their tireless efforts were invaluable and without them this conference would not have been possible. Additionally the many volunteers, sponsors, and supporters in Israel and around the world ensured the success of our program and we thank them all.