

Straddling the Divide

It was a fairly typical meeting between lawyers that know one another but who don't get to meet very often.

One of those present was Shawan Jabarin from Ramallah, head of Al-Haq, a Palestinian human rights organization formed in 1979 and one of the oldest rights group in the Middle East. He was visiting Berlin together with Hamdi Shaqqura from the Gaza based Palestinian Centre for Human Rights, in part to hold talks with members of the German parliament and representatives from non-governmental organizations. That's where I saw them again. The last time we had met was in Ramallah in 2007.

They had both been giving talks at a conference to mark the 10th anniversary of the International Court of Justice's Advisory Opinion on the wall separating the occupied Palestinian territories from the Israeli heartland. The Court concluded that the building of the wall was in breach of international law and that the state of Israel must halt construction and undo the damage caused. Yet Israel has refused to recognize the Opinion. The Israeli Supreme Court has ordered the demolition or relocation of parts of the wall but only in a handful of individual cases.

We met to discuss possible ways of providing legal protection to victims of torture and other human rights violations outside of the region. In other European countries, Palestinian human rights activists and local lawyers have already tried to instigate criminal proceedings against senior Israeli political and military figures as they traveled through those countries. They encountered the same problems we all do when we try to apply the principle of universal jurisdiction to suspects from powerful countries: The path to securing criminal prosecutions is littered with political obstacles.

In the Netherlands, for instance, a court incorrectly held that an individual suspected of committing war crimes in Palestine was immune from prosecution. Only after the suspect had left the country was the legal error corrected, by which stage, of course, it was too late.

Success in these kinds of cases is even more difficult than usual as states are afraid of causing international relations problems if they proceed with the arrests of suspects. The situation in Germany, as I explained to my colleagues, is made more complicated by the state's close alliance with Israel which makes politicians unwilling to criticize its human rights violations or take any other action. A further problem in this country is that expressing even a purely objective and legally-grounded criticism of an Israeli act can soon land you in the unwelcome company of overt or closet anti-Semites.

But over the last few years there have been some promising developments. Last year for instance the Willy Brandt Haus in Berlin hosted a powerful photo exhibition by Breaking the Silence, a group of Israeli army veterans who are critical of the military's actions. Recently, 17 European states have taken action against corporations that are facilitating or profiting from the illegal occupation of the territories. This is another issue that we wish to discuss with the two organizations.

And for those who like things to be always balanced: The lawyers from Gaza and Ramallah also take action against human rights violations committed by the Palestinian authorities. In doing so they straddle the divide – a brave undertaking under such fraught circumstances.