

la Repubblica

Israel in The Hague, lawyer Menachem Rosensaft: "The genocide charge does not hold up. The case is poorly constructed and South Africa is in bad faith."

by our correspondent Anna Lombardi



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Professor at Cornell about to begin course on "Antisemitism in the Courts and Jurisprudence"

January 13, 2024 at 11:12 a.m.

THE HAGUE - "South Africa is wrong: the arguments in its accusation of genocide against Israel do not hold water. Whatever Israel is doing and has done, it is not what is legally meant by that term: intentionally destroying the Palestinian people. It is not happening either in the West Bank or in Gaza." **Menachem Rosensaft**, 75, a celebrated New York lawyer, is general counsel emeritus of the World Jewish Congress, co-founder of the International Network of Children of Jewish Holocaust Survivors, and is about to begin a course at Cornell University entitled: "Antisemitism in the Courts and in Jurisprudence." In 1988 he was one of five American Jews who met then-Palestine Liberation Organization leader Yasser Arafat: "That's when the PLO changed its position," he recounts. "It went from being a terrorist organization to accepting a political process of recognizing Israel that led to the Oslo Accords. Let's not forget: Hamas was born then, precisely in opposition to that path."

Why do you consider South Africa's accusations unfounded?

"According to the articles of the Genocide Convention, the objective of the conflict should be the specific intent on the part of Israel to destroy the Palestinian national, religious ethnic group in its entirety or in part. The Court made this clear in 2007 in ruling on the 1995 Srebrenica massacre. It did not recognize Serbia responsible for genocide but for failing to prevent it from happening. The reason for this war is that Israel is - legitimately - trying to remove the existing threat posed by Hamas. The fact that Gaza civilians are suffering is regrettable and tragic. But that is not the purpose of the war. If anything, it is the Hamas terrorists who have a genocidal agenda."

What do you mean?

"The October 7 attack was a deliberate action perpetrated by a terrorist organization that targeted Israeli - that is, Jewish - civilians: women, men, children and the elderly. It subjected them to terrible, deliberate and intentional horrors and atrocities. Torture, rape. It cannot be ignored. Nor can it be allowed to be publicly claimed by the Hamas leadership that they will do it again. In its arguments, South Africa mentioned the attack almost in passing: and then forgot about it. This is bad faith. One of the things that bothers me is the intellectual dishonesty resulting from ignoring October 7. The war would not have happened and no Gaza civilians would have died without that attack."

So are you also opposed to the possible precautionary measures requested by South Africa?

"I have the impression that South Africa is not acting with the Palestinians in mind but for its own public relations reasons. If there were to be a ceasefire, there is no doubt, it would benefit Hamas. It would go back to reconstituting itself and lording it over Gaza. Then for goodness sake there are avenues that should be pursued...."

For example?

"The International Court of Justice is not the appropriate entity. But that does not mean that there should not be an appropriate space for political discussion on what to do after the war-a top priority. In that sense I support morally and pragmatically the position of President **Joe Biden** and Secretary of State **Antony Blinken**, to move toward the two-state solution. Political issue, outside the jurisdiction of the ICJ."

South Africa cited statements by some Israeli ministers talking about "genocide rhetoric"...

"I personally consider the presence in the government of individuals such as National Security Minister Itamar Ben-Gvir that of Heritage Minister Amichai Eliyahu a disgrace since well before October 7. And, I want to add, I find the settler violence in the West Bank criminal. But one cannot use the words of these extremists to say that these are the positions of the government and the army, which are quite distinct. Perhaps belatedly, but Prime Minister Benjamin Netanyahu has firmly rejected them. They do not work to support a case of genocide. I am the son of two survivors: of Auschwitz and Bergen-Belsen. To say that Gaza is an open-air concentration camp trivializes the suffering of Holocaust victims and Palestinians in Gaza. It is an easy way to score rhetorical points."

Do you really think South Africa is in bad faith?

"South Africa made a one-sided presentation where it never mentioned that Hamas uses its people as human shields and conducts military activities using civilian infrastructure as a base: schools and hospitals. If you make a presentation like that, after emphasizing the words of the Israeli ministers, you lose all kinds of value. There is a lack of real balance."

What will happen?

"A final decision will take time and I hope that the situation on the ground will improve much sooner. The Court can make recommendations and I expect they will. If it comes down to calling for a cease-fire, however, it will mean that it puts Hamas in a position to repeat a new October 7, and no government in the world would agree to put its people in that kind of danger. If, on the other hand, there will be recommendations on humanitarian aid, okay. But they should only be considered valid if the court recognizes -- and I am sure it will -- the extreme complexity of the situation. I am glad that among the judges sits on behalf of Israel Aharon Barak, a man of absolute integrity, a real judge, who is nobody's puppet. A Holocaust survivor, he is perhaps the only one who will be able to say "I know what genocide is, and not in the abstract but because I experienced it with my family." His presence is my hope for a balanced decision."