



The Legal Case Against Ariel Sharon

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Assalaamu alaikum.¹

On 12th February 2003, the Court of Cassation, the highest Court in Belgium, ruled that Ariel Sharon, Israel's current Prime Minister, and the man widely charged with sparking the second Palestinian Intifada, after his provocative visit to the temple Mount, could be tried for war crimes after he leaves his position of Prime Minister of Israel. It ruled that the investigation and trial of Sharon could proceed even if he was not physically present in the country. Moreover, it held that action against his co-defendant, Amos Yaron former Israeli Army chief of staff could begin immediately.

The infamous massacre in Sabra and Shatila is imprinted in our collective memory as an atrocious act committed against the Palestinian people. The Belgian Court decision is a landmark ruling making real the possibility of seeking justice and redress for the victims. It marks a turning point in a period of fifty years whereby Israel has been allowed to evade and disregard the international rule of law without consequences, where grave human rights atrocities have been committed by Israeli perpetrators, safe in the knowledge that they could expect impunity.

The implications of the Court ruling helps to break down this wall of impunity that has protected such people, opening up the possibility of seeking justice, not just for past atrocities, but for present ones. The case against Ariel Sharon was lodged in Belgium on the 18th June 2001, by 23 Lebanese and Palestinian survivors of the 1982 Sabra and Shatila massacres. They filed the case under the Belgian Act concerning the punishment of grave breaches of international humanitarian law, enacted on 16th June 1993 and later modified on 10th February 1999 so as to conform to the requirements of the Rome Statute. It allows Belgian courts to prosecute foreigners for certain offences committed abroad, with regards to massacres committed between the 16th and the 18th of September 1982 in the two refugee camps in Beirut. Ariel Sharon, the then Israeli Defence Minister, as well as other Israelis and Lebanese responsible, were charged with grave violations of international humanitarian law, including acts of genocide, crimes against humanity and crimes against persons and goods as protected under the Geneva Conventions.

The fundamental argument of the case rests on Ariel Sharon's command responsibility as general of the Israeli Defence Forces (IDF) which, as an occupying force in Beirut, was responsible for the safety of the population. The Fourth Geneva Convention, relative to the protection of civilian persons in time of war to which Israel is a signatory, provides for the protection of persons who, in case of a conflict or occupation, are in the hands of a party to the conflict or occupying power of which they are not nationals.

The residents of Sabra and Shatila refugee camps were persons protected by the Fourth Geneva Convention as Palestinians and Lebanese living in Beirut under Israeli occupation. The IDF was in full control of Beirut when the massacres took place in the refugee camps in Sabra and Shatila. Sharon had the camps encircled and sealed and sent in Lebanese militia units, affiliated directly or indirectly with the Israeli backed christian Lebanese forces, the Phalange, a militia with a history of hatred and indiscriminate

¹ This paper was presented at the 'Al-Quds: City of Three Monotheistic Faiths' conference, organised by the Institute of Islamic Studies at the Islamic Centre of England, London, UK in March 2003.

violence against Palestinians. They would cleanse the area of the 2,000 terrorists which Sharon insisted were present in the camps. The IDF sealed off the refugee camps refusing to allow terrified pleading camp residents to escape through the exits. What ensued was a three day ordeal of relentless torture, rape and killing of between a thousand to two thousand unarmed Lebanese and Palestinian civilians, mostly children, women and the elderly. Hundreds more were arrested and disappeared. The IDF supplied the flares that lit the way for the Phalange and provided a bulldozer to help bury the bodies in a mass grave.

According to article 29 of the Fourth Geneva Convention, the protection of the residents of Sabra and Shatila refugee camps fell directly to the IDF. The party to the conflict in whose hand protected persons maybe, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred. As the Minister in charge of the army on behalf of the government, individual responsibility for the protection of the civilians fell to Defence Minister Ariel Sharon. Ariel Sharon is responsible under international law based on the concept of command responsibility which imputes responsibility not only to those who commit crimes with their own hands, but also to their superiors who possess the power to prevent or abort any such criminal activity. The Belgian Act which accounts for command responsibility reaffirms this principle already establishing customary international law dating back to the Nuremberg principles which judged complicity in the commission of a crime against peace, a war crime or a crime against humanity is to be a crime under international law.

Command responsibility is articulated in the statutes and the case law of the ICTY and the ICTR and in article 28 of the Rome Statute. The war crimes alleged to have been committed at Sabra and Shatila were directly perpetrated by the Phalange and included willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body, extensive destruction of property, intentionally directing attacks against individual civilians not taking part in hostilities, and rape.

These crimes were committed by the Phalangist militia in the refugee camps, but were provided direct and indirect support by Ariel Sharon and the IDF.

On 19th of September 1982, the UN Security Council issued Resolution 521 condemning the massacre of Palestinian civilians. This was followed by a General Assembly Resolution on 16th December 1982, qualifying the massacre as an act of genocide. This means that according to the definition of genocide provided by the article 2 of the 1948 Geneva Convention, the massacre of Sabra and Shatila were committed with the intention of destroying either in whole or part a national, ethnic, racial or religious group. International outrage led to the speculation regarding responsibility for the incident, expressions of fury within Israeli society prompted the Israeli cabinet to establish a Commission of enquiry charged with determining all the facts and factors connected with the atrocity carried out by a unit of Lebanese forces against the civilian population in the Shatila and Sabra camps. The Commission, referred to as the Kahan Commission, held that Ariel Sharon had disregarded the danger of acts of vengeance and bloodshed by Phalangists, failed to take this danger into account when he decided to have the Phalangist enter the camps and had not ordered appropriate measures for preventing or reducing the danger of massacre as a condition for the Phalangist entry into the camps.

Holding that Sharon should bear personal responsibility for the massacres, it recommended that the Minister of Defence draws the appropriate personal conclusions

arising out of the defects revealed with regards to the manner in which he discharged the duties of his office. Subsequent to the findings of the Commission in 1993, Ariel Sharon resigned from his position as Minister of Defence. No judicial action was taken against any of the parties involved in the massacre. In February 2001, Ariel Sharon was elected Prime Minister and took office in March. Traditionally, states have enacted Criminal Law to prosecute perpetrators of war crimes committed within their territory, regardless of the perpetrator and victim's nationality. International law allows states to enact criminal laws that are of universal jurisdiction. Therefore, although until now there's been a lack of political will to do so by the international community, the national courts have always had the jurisdiction to try war crimes, crimes against humanity and genocide regardless of where they took place or the nationality or residence of either the victim or the accused. The presence of the alleged perpetrator is also not necessary within the borders of the country.

The case against Ariel Sharon is based on this principle of universal jurisdiction for war crimes, crimes against humanity and genocide, which is not only enshrined in the Fourth Geneva Convention, but is also part of customary international law. Article 146 of the 1949 Geneva Convention to which both Belgium and Israel are both signatories states that “ the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed, any of the grave breaches of the present Convention defined in the following article: ‘Each High Contracting Party shall be under the obligation to search for persons alleged to have committed or to have ordered to be committed such grave breaches and shall bring such persons regardless of their nationality before its own courts.’”

These provisions reflect the unanimous view of the international community after the horrors of the 2nd World War, that matters of crimes against humanity, war crimes and genocide, are beyond the internal affairs of sovereign states, that the commission of these crimes places responsibility on all of mankind to ensure that justice is done. Evidently, the Nuremberg Charter and the judgement of the Nuremberg Tribunal, established that offences of war crimes have no particular geographic location and thus any state has jurisdiction to try offenders of war crimes, regardless of nationality or location of the offence. Further, they placed individual responsibility upon those engaging in war crimes, committing crimes against humanity, or waging wars of aggression. Despite the huge outrage expressed by Israel at the decision of the Court of Cassation, it was probably Israel itself that set the precedent for what the courts are trying to do. This was through its abduction in 1961 and subsequent trial, prosecution and execution of Nazi war criminal Adolf Eichmann, for crimes against humanity committed in Europe against nationals of other countries. The concept of immunity from prosecution in foreign courts and international tribunals has further been eroded by the work of ad hoc tribunals created by the security council to prosecute the perpetrators of war crimes, crimes against humanity and genocide in the former Yugoslavia and Rwanda. They specifically exercise jurisdiction over the responsible individual at all levels and it is anticipated that the permanent International Criminal Court will also exercise a more general jurisdiction over individuals who have committed such crimes. It is noteworthy that the ad hoc statutes of the two tribunals as well as the statute for the International Criminal Court reject any defence based upon the various forms of sovereign and diplomatic immunity that might otherwise have been argued to be available to the charged individuals. From this it can be concluded, that today, international tribunals have the power to try offenders against international criminal law and to exercise universal jurisdiction over the application of this body of law.

The desired legality of exercising universal jurisdiction is further evident from a growing state practice to try offenders with those states where the territorial or personal jurisdiction over the offender have failed to act by carrying out national prosecution of foreigners for international crimes committed abroad. The Pinochet extradition case in the United Kingdom represents a prime example that set in motion a debate on the limits of the immunities of current and former heads of state. Other examples of prosecutions taken in Senegal of Hisssein Harbre, the former Head of State of the state of Chad and the former Serbian President Slobodan Milosevic.

The principle of universal jurisdiction will remain vitally important for prosecution of perpetrators, even after the permanent establishment of the ICC. Although it will have the jurisdiction of a genocide, war crimes and crimes against humanity, the ICC will not be able to prosecute retrospectively. It can only act against offences committed after the 1st of July 2002 after its statutes came into effect. Moreover, the states where the crimes were committed and the state of the accused national must be party to the statute or consent to its jurisdiction. This in effect will leave certain cases out of this jurisdiction, where it will then become necessary to implement the principle of universal jurisdiction.

Despite severe condemnation by the UN security council as a criminal massacre, the man found personally responsible for this crime and those that assisted have never been pursued or punished. Indeed Sharon's record in human rights throughout his career has been dismal. Evidence points to the commission of international crimes in many cases, beyond Sabra and Shatila.

Several of these incidents date back to the 1950s when Sharon was a commander of IDF 101 (Special Commando Unit 101), a small commando unit charged with carrying out special tasks that resulted in at least one massacre and several raids in refugee camps. Sharon's management of his current position as Prime Minister has showed equally little respect for human rights and international law. Actions taken by Israeli forces against the Palestinian population during the current intifada have included strategic policies of assassination, closures resulting in a lack of access to medical care and education as well as various methods of collective punishment. Since Sharon's election victory, the number of illegal Israeli settlements have grown rapidly in contravention of International Humanitarian Law.

The recognition of the butchery in Sabra and Shatila until now have gone virtually unacknowledged. More perhaps by those that claim to be the historical bearers of international justice. Perhaps this court ruling may serve as a comfort to those victims of the past as well as those of the recent intifada, particularly Jenin and perhaps may give hope that they too one day may see real the prospect of seeking justice.

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