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A QUEST FOR JUSTICE

THE CASE AGAINST ARIEL SHARON

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September 2001 and September 1982: two crimes against humanity

Similarities exist between the acts committed in New York and those in the camps of Sabra and Shatila

Chibli Mallat

Will all human beings be subject to the same law, and more importantly, to the same application of the law? Will all the victims of devastating September days see those responsible for their suffering appear before a court of law? The question is as old as history. In the Middle East, the question acquired additional meaning on Sept. 11.

As those responsible for the crimes against humanity perpetrated against New York and Washington residents are being pursued across the world, the case against Ariel Sharon for the massacres perpetrated in the refugee camps of Sabra and Shatila is proceeding before the Belgian courts. Will the person who an Israeli commission of enquiry found to "bear personal responsibility" for the massacres in Sabra and Shatila in Sept. 1982 finally be held to account and put behind bars?

A few weeks before the complaint was filed by 23 plaintiffs in Brussels on June 18, 2001, the first full trial held under a Belgian "universal jurisdiction" law resulted in the conviction and sentencing of four persons who were found guilty of the large-scale massacres in Rwanda. A week after the case against Sharon was brought before the Belgian criminal courts, Slobodan Milosevic was arrested in Belgrade and delivered to the International Criminal Tribunal in The Hague. With the Sharon case, and the massacres of Sept. 11, a further test for global justice is afoot.

Comparisons are always difficult. Massacres are too complex and dramatic to be exactly similar in every respect, and the massive crime perpetrated in New York on Sept. 11 is sui generis in many ways. But it is no different in essence from the massacre perpetrated between Sept. 16 and 18, 1982 in the Palestinian camps of Beirut. Then Israeli Defense Minister Ariel Sharon encircled the camps, sealed them, and sent in his closest allies amongst the Lebanese militias to "cleanse" the area of the "2,000 terrorists" which he insisted had remained there. As a result, hundreds of Palestinian and Lebanese civilians were subject to three days of relentless tor-

ture, rape and killing, while hundreds more were arrested and trucked away, never to come back: an estimated 2000 civilians were killed or disappeared.

All massive killings remain stuck in the memory of horror and guilt. Unlike occasional murders, they are remembered by every human being. Unlike any other violent act, the wantonness and scale of large-scale killings of innocents puts the event at a different level altogether, a level shared by other notorious tragedies in modern history: Halabja in Kurdish Iraq in 1988, the killing fields of Cambodia, Srebrenica in the former Yugoslavia, Sabra and Shatila, and now New York. Such atrocities are different from ordinary crimes because of their context and magnitude. By its sheer size, its wantonness, its ferocity, its callousness, its set-up, the means used and the thousands of innocent civilians destroyed in a brief lapse of time, the crime then qualifies as a crime against humanity, a category which is well defined in international law and carries the common responsibility of all humankind.

Article 7 of the International Criminal Court (ICC) Statutes of 1998, for example, describes a crime against humanity as an act "committed as part of a widespread or systematic attack directed against any civilian population." There is consistent case-law in serious courts across the world that have tried these and related crimes, from the Nuremberg and Tokyo trials to the Pinochet case in Britain, irrespective of the place where the massacre took place. The principle of universal jurisdiction can be found in the very early principles of "the law of people." The great European publicist Vattel wrote in 1758 that even if justice is normally limited territorially to the state in which a crime is committed, "one must except from the rule those thugs who, because of the magnitude of their crimes - declare themselves the enemy of human kind." This is why "universal jurisdiction" is compelling: any court can, nay should, try the perpetrator and his accomplices.

There is more in common between September 1982 in Beirut and Sept. 11 in New York. The law of June 16, 1993



(modified on Feb. 10, 1999), under which the case was brought by survivors against Ariel Sharon in Belgium, offers a good example of a precise, common, language: not only does the statute condemn mass killings and other crimes as crimes against humanity under the ICC treaty's definition, but the Belgian law also calls for the prosecution of "those who design, hold or carry an instrument - or transform an existing instrument or construction - for the purpose of carrying such crimes." The details of the use of aircraft as mass murder instrument on Sept. 11 could hardly be better qualified.

The consequences for crimes against humanity are significant. Under international law, all mankind is legally involved. Every single person in the world is concerned, and every government is bound to cooperate to produce the suspects and culprits, and assist in the investigation. Crimes against humanity mobilize the whole world, as the crime occurs on a scale of its own, as in the treatment of Nazi crimes in the 1961 Eichmann case in Israel, or the Rwanda and Yugoslavia increasing case-law. The principle of trying mass crime in a different way than ordinary murders is graphical-

ly expressed by a French author, who finds it inconceivable "to make the Holocaust lose its nature by permitting its division into six million individual murders." Mechanisms designed to punish crimes against humanity are also specific. They stress short-term measures such as the rejection of sovereign prerogatives and long-term pursuit. They refuse amnesties and time limitations, involve worldwide investigations, accountability and responsibility coupled with the need to pursue the perpetrators and accomplices. They also reject traditional obstacles in both investigation and trial.

For crimes against humanity, there is no acceptable obstacle between justice and the author of the crimes. No decent person doubts that Osama bin Laden should be pursued and brought to justice for the Sept. 11 massacres. The question posed to the world by the Sharon case in Belgium is similar: will the man without whom the Sabra and Shatila massacres would not have taken place continue to remain beyond criminal retribution? Chibli Mallat is counsel for the victims of Sabra and Chatila in the case brought against Sharon in Brussels on June 18, 2001.

The US must stay true to the war against all terrorism

When Ariel Sharon charged imperiously into Lebanon with his army in 1982, he represented a near perfect example of *hubris*, a Greek word meaning "excessive pride" and "wanton violence."

Sharon duped his Cabinet colleagues as well as then-Prime Minister Menachem Begin in pressing home his ambitions for Lebanon, first and foremost of which was to drive the Palestinians out of the country.

His long-standing animosity toward Palestinians is well-documented. He has spent much of his life attacking and killing Palestinians, a people he once described as "two-legged animals." He was the commander of the infamous Unit 101 in the 1950s which was responsible for the slaughter of up to 70 Palestinians in the West Bank village of Qibya in 1953. As prime minister since February, Sharon has encouraged extra-judicial assassinations in a policy known by the euphemism of "targeted killings."

But it is his role in the massacre of up to 2,000 Palestinian and Lebanese residents in Sabra and Shatila refugee camps in September 1982 that has earned Sharon the undying enmity of Arabs and the approbation and disgust of people all over the world.

Yet the ghosts of that grim summer 19 years ago have returned to haunt Sharon. The hubris displayed by Sharon in 1982 is turning into his public humiliation in 2001 and Schadenfreude for the Israeli premier's enemies, as he finds himself facing legal action from 23 survivors of the Sabra/Shatila slaughter.

It is perhaps a crime in itself that Sharon has not been brought to account for his actions in Sabra and Shatila before. Despite the wrist-slapping delivered by the Israeli Kahan commission, which found Sharon "personally responsible" for the killings, he emerged from his brief period away from the limelight to eventually attain the highest pinnacle of power in Israel. That he should win the premiership, despite his blood-soaked record, speaks volumes for contemporary society in Israel and does not bode well for a lasting peace in the Middle East.

US President George W. Bush would do well to ponder Sharon's appalling record of wanton destruction and unchecked violence when he greets the Israeli premier next week in Washington.

Bush has launched a new initiative to restore calm between the Palestinians and Israelis and resurrect the near lifeless peace process. The appointment of General

One can expect him to do his utmost to frustrate the prospect of negotiations

Anthony Zinni, a former US Marine, as Powell's senior Middle East adviser charged with bringing about a ceasefire, is a step in the right direction. Similarly, recent references by Bush and Powell to a future viable Palestinian state will be welcomed by the Palestinian leadership.

Given Sharon's track record, however, one can expect him to do his utmost to frustrate the prospect of negotiations resuming between Israel and the Palestinian Authority. This, after all, is the man whose commitment to peace with the Palestinians was demonstrated in 1998 by his clarion call to all settlers to "move, run and grab as many hilltops as they can to enlarge the settlements because everything we take now will stay ours ... Everything we don't grab will go to them."

In the Middle East, it came as no surprise that Sharon greeted Powell's announcement of Zinni's appointment by stepping up assassinations of Palestinians, which resulted in a general upsurge of violence in the Occupied Territories - as Sharon knew it would.

The sight of him buddy-buddying up to Zinni - one old warrior general to another - on board a helicopter during a tour of the West Bank earlier this week was equally predictable. Sharon spoke of defense, security and strategy: military language and terminology to win Zinni's sympathy.

The Bush administration needs the support of the Arab world as it continues to prosecute its war against terror. One way of ensuring that support is not to soft-peddle Sharon but to adopt a much tougher approach to his transgressions and foot-dragging. The Arab world is convinced that Sharon does not stand for peace but merely supports a continuation of the status quo, with all its tragedy, bloodshed and despair. And that Arab view is not without foundation - as a court in Belgium is in the process of discovering.

Vanished victims of Israelis return to accuse Sharon

Julie Flint
The Observer
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The men who "disappeared" in the aftermath of the 1982 massacres in Lebanon's Sabra and Chatila refugee camps could get revenge against Tel Aviv's defiant strongman.

Early on 18 September 1982, in the closing moments of the Sabra and Chatila massacre in which Israel's Lebanese Christian militia allies slaughtered up to 1,500 Palestinian refugees, Sana Mahmoud Sersawi thought she was finally about to die. The militiamen withdrawing from the Palestinian camps in Beirut had marched her, together with several hundred other unarmed civilians, to the edge of the Shatila camp. There they levelled their guns. On that desolate corner, in the fourth month of Israel's invasion of Lebanon, Sana believes that Israeli soldiers saved her life. It was 36 hours since the Israeli commanders who sent the Lebanese Forces militia into the camps had received the first reports of atrocities. But now, as the reports began to circulate more widely, Israeli soldiers shouted to their allies: "Give us the people and leave the camps!"

The Lebanese obeyed and handed their prisoners to the Israelis, who then marched them along the main road towards Beirut's sports stadium. Sana looked over her shoulder as she went into the stadium and saw her husband, Hassan Hashim, and her sister's husband, Farraj Ali Sayyed, behind her. Inside the stadium, a sprawling complex fully controlled by the Israeli Defence Forces (IDF), women were led in one direction and men in another. Sana, her sister, mother and their eight children were released an hour later. Hassan and Farraj vanished. The people who disappeared - during and after the massacre - are the forgotten victims of Sabra and Chatila. Almost every family in the camps has a relative or friend among the disappeared. What is crucial is that they disappeared while in the hands of the Israeli army, during an operation under the direct control of Israel's then Defence Minister Ariel Sharon, now Prime Minister. The fate of the disappeared of Sabra and Chatila will come back to haunt Sharon when a Belgian court hears a suit brought by their relatives alleging his involvement in the massacres. But while Sharon has always denied responsibility for a massacre carried out by Israel's Lebanese Christian allies, he has never had

to answer for the fate of those who disappeared while in the hands of his Israeli soldiers. Bahija Zrein lost her brother; Imad Ali his great-uncle and cousin; Fadi Abdel Qader his father and uncle.

"We went into the stadium and then never saw them again," says Sana. "We asked about them and they said: 'There's no one here! No one talks about them. No one knows about them. No one knows whether they are alive or dead.'" Overlooked for almost two decades, the disappeared now seem likely to emerge as a key element in the efforts of 40 Lebanese and Palestinians who lost relatives in the massacre to bring Sharon to trial for war crimes committed when, as Defence Minister, he had overall responsibility for the IDF. A suit filed in a Belgian court in June - under legislation that allows Belgium to prosecute foreigners for war crimes regardless of where they were committed - charges that Sharon had command responsibility in the massacre.

"In international law, command responsibility - also known as indirect responsibility - is more severe than the direct responsibility of those who actually do the killing," says Chibli Mallat, one of three lawyers representing the plaintiffs. "Whether in the

Yugoslav massacres or in Germany or Japan in World War II, those who sat at the top, often miles away from the death camps, are more responsible than those who pulled the trigger." In February 1983, Israel's Kahan Commission of Inquiry found that no Israeli was "directly responsible" for the massacre, but determined that Sharon bore "personal responsibility." Sharon resigned his portfolio, but stayed in the Cabinet. The massacre began during the evening of 16 September, two weeks after PLO fighters completed their evacuation from Beirut and two days after the assassination of the Lebanese Forces' leader, President-elect Bashir Gemayel. On the eve of the massacre, Sharon blamed Palestinians - incorrectly - for the assassination. As the Lebanese entered the camps to "mop up" 2,000 "terrorists" Sharon claimed were concealed there, Israeli soldiers surrounded and closed them off and lit the sky with flares. Three days later, at least 900 civilians were dead. In a Belgian appeals court on Wednesday, Sharon's lawyers will argue that the suit should be dismissed on procedural grounds. They will say that Sharon has immunity as a head of government; that the Belgian law, first enacted in 1993, cannot be used

retroactively; and that Sharon has already been judged by Kahan. Mallat and his colleagues say their case is "very orthodox" under Belgian international law. There is no immunity for war crimes, no "legal acrobatics". They will argue that Kahan was not a court: it had no criminal dimension. And it ignored a lot of elements - particularly the disappearances.

"Hundreds of people were rounded up under the supervision and control and with the involvement of the Israeli forces," says Mallat. "They were interrogated, then put on trucks and a lot of them did not come back. The sports stadium is probably one of the places that carries one of the largest elements of horror. The Israelis were in force there, interrogations took place there and people were trucked away from there never to appear again."

In the Kahan report, the stadium is mentioned only once - as a place where survivors were given food and water. A cameraman who filmed there on 19 September says Israeli soldiers were doing more than giving food and water: they were identifying Palestinians from a list they carried and taking them inside the stadium for interrogation. Siham Balqees still lives in Shatila and offers

one clue as to what may have happened to the men who disappeared. She says she ran inside the stadium and saw her brother standing on a truck. An Israeli soldier threatened to kill her unless she left immediately, but she refused. Instead, she pulled her brother off the truck and walked out with him. He told her he had been beaten and quoted his interrogators as saying: "Tell us where the terrorists and the weapons are! Tell us or we will give you to the Lebanese Forces!" He was refused food and water.

Asked whether Palestinians did indeed disappear from the stadium, an Israeli government spokesman refused to comment.

"We are arguing that this is politically motivated manipulation of Belgium's legal system."

Almost 20 years after the fact, it seems unlikely that Belgium's investigating judge will be able to establish where the disappeared went and what then happened to them. But one thing is certain. "Israel was in full control from the border to Beirut," says Mallat. "Sharon's allies will fight tooth and nail to stop this case from getting to trial because they know that, once it comes to trial, Ariel Sharon has no chance of escaping justice."