

# The Complaint

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they would hear his voice and come to kill us. We stayed in the bathroom; they came in and searched the house, but they didn't find us. We heard the screams and the massacre through the bathroom window. That's how we knew that they had gone into the shelter and taken everyone they found there, including my relatives. On the Saturday, we escaped into the interior inside of the camp. After that, my mother went back to see my brothers and sisters, but she couldn't recognise them because they were so disfigured. All that we knew was that they had been buried in the mass grave. My father taught the child who survived (my father's nephew) to call him Daddy. ● Mrs Amal Hussein lost a brother, two sisters and several other relatives.

B2. Testimonies, survivors of Sabra and Shatila.

In addition to their own statements, the plaintiffs present a series of statements from other survivors of the massacre.

### Mohammed Raad:

On Wednesday we were at home waiting for the visit. I was at Sabra and the roads were empty. When I arrived at Ali Hender's cafe, I met some young men who called me over and asked if I knew. I said no. They said that the Israelis had entered with the Phalangists and that they were destroying things. I went straight home, got my wife and we went to her brother's house. We said to him, "Abu Suheil, let's get away from here." He replied, "We are Lebanese, they won't bother us." I was with another relative and I said to him, "Leave your children and go." He called me a coward. My wife and I started walking until we reached the airport bridge that leads to the airport, and from there I saw the Israelis surrounding the area. An Israeli soldier shouted at me. The Israelis started asking me where I had come from and where I was going; then they said to my wife and to another woman passing by to stay where they were before ordering me to follow them and wait by the mountain. But I was directly behind Harat Hreik and we escaped to Ghobeirah.

On Saturday we went back to see my relatives. What can I say: people were on their backs, black. I found my brother-in-law dead; he had been hit on the head with an axe. We found thirty other members of the family dead.

The plaintiffs also present the testimonies of survivors gathered by journalists, and the accounts of eyewitnesses, notably: in particular:

Ellen Siegel, US nationality, nurse in Beirut in 1982, currently lives in Washington DC (USA).

Robert Fisk, British nationality, journalist, one of the first journalists to visit the camps after the massacre.

Nabil Ahmed, survivor.

Jean Genet, French nationality, poet and playwright, visited the camps immediately after the massacre.

Dr Swee Ang, Singaporean nationality, doctor in Gaza hospital, Sabra, at the time of the massacre.

Dr Per Miehllumshagen, Norwegian nationality, idem.

Dr Ben Aloys, Dutch nationality, currently lives in Great Britain,

nurse in the Gaza hospital, Sabra, at the time of the massacre, currently lives in Great Britain.

Dr David Grey, British nationality, currently lives in Great Britain, doctor in Gaza hospital, Sabra, at the time of the massacre. Dr Grey, who was one of the three doctors who returned to the hospital after the initial evacuation and with an official 'laissez-passer' from the Israeli army, currently lives in Great Britain.

## II. LEGAL QUALIFICATION OF THE FACTS APPLICABLE LAW

**A. THE CRIME OF GENOCIDE**  
At the time of the massacre of Sabra and Shatila, the Security Council adopted Resolution 521 (September 1982) which, notably, in relevant part, "Condemns the criminal massacre of Palestinian citizens in Beirut."

On 16 December 1982, the United Nations General Assembly adopted, with an overwhelming majority, the following resolution (37/123D): "The General Assembly,

Recalling its resolution 95 (I) of 11 December 1946,

Recalling also its resolution 96 (I) of 11 December 1946, in which it, inter alia, affirmed that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable,

Referring to the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly on 9 December 1948,

Recalling the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, Appalled at the large-scale massacre of Palestinian civilians in the Sabra and Shatila refugee camps situated at Beirut,

Recognizing the universal outrage and condemnation of that massacre,

Recalling its resolution ES-7/9 of 24 September 1982,

1. Condemns in the strongest terms the large-scale massacre of Palestinian civilians in the Sabra and Shatila refugee camps;

2. Resolves that the massacre was an act of genocide."

This conclusion merits consideration. In effect, article 2 of the 9 December 1948 Convention on genocide, approved by the law of 26 June 1951, provides the following definition:

"...The crime of genocide consists of one of the following acts, committed with the intention of destroying, either in whole or in part, a national, ethnic, racial or religious group such as: 1) the killing of members of the group; 2) a serious attack on the mental or physical integrity of members of the group"

The facts clearly demonstrate that the attack against the refugees at Sabra and Shatila rested upon a profound ethnic hatred of Palestinians because of their national origin.

In his book "From Beirut to Jerusalem," the American journalist Thomas Friedman, who was one of the first witnesses after the massacre, wrote:

(...) "Many Israelis had so dehumanised the Palestinians in their own minds and had so intimately equated

the words 'Palestinian', 'P.L.O.' and 'terrorists' on their radio and television for so long, actually referring to 'terrorist tanks' and 'terrorist hospitals,' and they simply lost track of the distinction between Palestinian fighters and Palestinian civilians, combatants and non-combatants."

This collective "demonisation" of Palestinians as described by Mr Friedman (...) also corresponds with the famous comments uttered by the then Israeli Prime Minister referring to Palestinians as "two-legged animals," and with those of Rafael Eitan, who according to the Kahan commission shared responsibility for the massacre, and who spoke of the Palestinians as "drugged cockroaches."

(...) In conclusion, all the constituent elements of the crime of genocide, as defined in the 1948 Convention and reproduced in article 6 of the ICC Statute and in article 1§1 of the law of 16 June 1993 are present.

## B. CRIMES AGAINST HUMANITY

B1. Definition and source(s) of incrimination

According to the Rome Statute of the International Criminal Court (ICC), as approved by the law of 25 May 2000, there is a crime against humanity when certain acts are committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (article 7.1). Article 7.2 specifies that the term "Attack directed against any civilian population" means "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack." It stands out from the preparatory work of the ICC Statute that the definition of article 7.1, as well as the specification of article 7.2, was conceived in a very broad manner.

The definition of article 7.1 was taken up again in article 1 §2 of the law of 16 June 1993 relative to the repression of grave violations of international humanitarian law, as modified by the law of 10 February 1999.

It is important to underline that in the strictest sense of the term, these legislative texts do not incriminate crime against humanity but confirm its pre-existent incrimination. The ICC Statute makes this clear in article 10. The Belgian legislator expressed this clearly during the preparatory work for the law of 1999.

Once again it has been clearly shown that International Customary Law and the *ius cogens* are the sources of incrimination for crimes against humanity. Several judicial decisions have explicitly confirmed this source of incrimination, including the ICTY. Particularly interesting in this case are, on the one hand, the decision of the Israeli Supreme Court in the Eichmann case, which is explicitly drawn from "the Laws of Humanity" and "the dictates of Public Conscience," and on the other hand the decision rendered by Judge Vandermeersch in the Pinochet case, according to which, "It is to be considered that before being codified in treaties or laws, crimes against humanity are established in international custom and as such fall under international *ius cogens*," which is imposed in internal jurisdiction with the effect of constraining "erga omnes."

Every definition of 'crime against humanity' is thus, by definition, always incomplete. In this manner, it is necessary also to be aware that the definition in the ICC Statute (and in Belgian law) is more restrictive than that of Nuremberg, which to this day remains a primary source of customary law (as applied in the Eichmann and Pinochet affairs).

The facts of this case are clearly crimes against humanity in the sense of both definitions (Nuremberg and the ICC). The following analysis, made in light of the most strict definition (that of the ICC), demonstrates this sufficiently.

B2. First and most important constituent element: an attack against a civilian population.

It is undeniable that the population of Sabra and Shatila was a civilian one. If in the past a limited number of armed resistance fighters had been in the camps, these groups had in any case been evacuated several days previously, in conformity with the 'Habib' records. If Israeli reports mention isolated acts of resistance, there is every indication that this was a legitimate resistance on the part of civilians, and this does not alter the civilian nature of the population concerned. According to the jurisprudence of the ICTY, even the presence of a minority of armed people in a group essentially made up of civilians does not in any way modify the civilian character of the group. This jurisprudence conforms to the commentaries of the ICRC in the 8 June 1977 Additional Protocol (Protocol 1) to the Fourth Geneva Convention of 12 August 1949 relating to the protection of victims of international armed conflicts.

B2.1. First sub-criterion: multiple crimes

The first sub-criterion refers to the number of crimes (multiple commissions). The classic doctrine demanding that the crime be committed on a massive scale is not necessarily concerned with the purely statistical sense of the term. There are no abstract criteria, or specific figures for qualifying these criteria. In addition, as mentioned above, the large-scale character is not retained as an element in the ICC Statute's definition and neither, therefore, in the Belgian law of 10 February 1999. On the con-



Sharon outlines the progress of the Israeli Army to reporters during the 1982 invasion

trary, a proposal to include as a condition that the crime be "perpetrated on a large scale" was rejected.

In any case, multiple murders, rapes and other crimes specified by the above definition were committed at Sabra and Shatila between 16-18 September 1982, as evidenced by the testimonies of the long list of plaintiffs and witnesses, who constitute only some of the survivors of the massacres.

The references to rape are particularly systematic. The rape and murder of a young woman of 19 who worked at the hospital are well known (cf. the testimony of Ben Aloys), but the phenomenon's recurrence can be found in several passages, mentioned for example in Kapeliouk.

B2.2. Second sub-criterion: organization and/or agreement

The second sub-criterion in the definition of the Statute is that the acts must be committed in the application or the pursuit of a political collective (of a state or an organisation). The notion "political" demands a certain degree of co-ordination in the heart of the organisation, state or otherwise, to which the perpetrators belong.

First of all, the highly efficient co-operation between the Phalangist forces and the regular Israeli army (IDF) sufficiently indicates the existence of prior planning or at least organisation, without which the massacre at Sabra and Shatila would not have been able to take place.

The closure of the camps was made airtight by the Israeli forces, and several reports underline how those who attempted to escape in the first two days were turned back by the Israeli soldiers, who had received the order to "seal off" the camp.

In addition, over and above the elements of the event already evoked in this first part of this complaint, this pre-planning is clearly a result of the following elements:

● Minister Sharon and Lebanese president-elect Bashir Gemayel had several meetings about, among other things, the expulsion of Palestinians from Lebanon. According to various sources, one of these meetings took place in the night of 12-13 September and was about the 'mopping up' of the camps;

● On 9 July 1982, Sharon proposed to Habib to send the Phalangists into West Beirut, thus evidencing the fact that he had great influence and control over them; none would doubt that the militia acted "under the supervision" of the Israeli army (cf. infra);

● Several passages in Sharon's own autobiography (entitled *Warrior*) deal with his intention to "clean up" Lebanon of everyone involved in or linked to the P.L.O. It is also in this sense that Israeli journalists explain the ensemble of the operation as a grand deed of Mr Sharon, which included the "transfer" of Palestinians from South Lebanon if not from the entire country;

● In the MacBride Commission report, it is clearly indicated that the Israeli authorities bear responsibility for the massacres at Sabra and Shatila, because they were implicated in their planning and preparation, and because these authorities facilitated the perpetration of the crimes;

(...) From the statements of the plaintiffs and witnesses there arise two new elements: the first is the presence of Israeli soldiers at the scene of the crime, inside the zone of the camps. The second is the collaboration of the Israelis if not in the killing then certainly in the segregation, interrogation and leading of dozens of civilians to destinations from which they would never return.

It is difficult to imagine that not a single Israeli soldier, whether from the army or from the secret services, penetrated the camps during three days. It must be remembered that the militia were directly solicited for the "mopping up" work, that the various logistical aspects, including a bulldozer used to raze houses and dig mass graves, as well as the lighting of the sky that did not let up all night, that "fresh" militia were sent into the

of article 8 of the ICC Statute, and as grave violations against persons and property protected by the terms of the Geneva Conventions and of Article 1 § 3 of the 16 June 1993 law, these massacres having been perpetrated within the framework of an aggressive invasion by the Israeli army into Lebanese territory, thus presenting an international character to the sense of the IV Convention.

The victims of Sabra and Shatila must all be considered as protected persons as defined in the IV Convention, particularly Article 147. Mr Sharon's allegations of the existence of 2,000 armed persons inside the camps were patently contradicted by the facts. Almost none of the refugees put up resistance. Numerous people were found murdered with their identity cards in their hands, dramatically illustrating their faith in the protection that should have been accorded to them in their capacity as civilians (see supra, B2).

To the above is added the fact that the Israeli Army was, at the time, an occupying force in the sense of article 4 of the same IV Convention, and that this army had therefore a clear responsibility towards the protected persons.

D. COMBINATION OF VIOLATIONS

In light of the preceding qualifications, we must conclude that the actions of the different perpetrators of the massacres at Sabra and Shatila constitute a combination of material and intentional violations. The same facts constitute war crimes, crimes against humanity and the crime of genocide.

There is no ruling in either customary or conventional law to oppose the application of several qualifications to the same fact or combination of facts. On the contrary: in the first case judged by the ICTR in Arusha (the Akayesu case), a combination of violations was established.

A combination of violations was also established by the French Cassation Court in the Barbie case.

E. CONCLUSION

The actions committed at Sabra and Shatila together constitute a crime of genocide, a crime against humanity, war crimes and grave violations of the 1949 IV Geneva Conventions.

The present complaint is based on the aforementioned qualifications, which are incriminated in international customary law (*ius cogens*) as well as in positive Belgian law

Nonetheless, not only did the persons identified in the present complaint as responsible for the Sabra and Shatila massacres commit or participate in this massacre, but they also acted in the context of a policy of persecution, repression and even extermination.

Finally, it is important here to repeat UN General Assembly resolution 37/123D, by which the Sabra and Shatila massacres was qualified as an act of genocide. Given that, by definition, every act of genocide in the sense of the 1948 Convention constitutes a species of the same genus, that is, a crime against humanity, the acceptance of the qualification of 'genocide' automatically implies that all the criteria for the qualification of a crime against humanity are fulfilled.

This moral element will be more developed during the discussion of the individual penal responsibility for the Sabra and Shatila massacres (cf. infra, point IV).

## IV. RESPONSIBILITIES

Not until the event of an in-depth investigation will it be possible to determine the exact responsibilities of the protagonists of these crimes. The Kahan report concluded the personal responsibility of Defence Minister Ariel Sharon in the Sabra and Shatila massacres. It also indicated the responsibility of Lieutenant General Rafael Eitan, Commandant Brigadier General Amos Yaron and Commandant Major General Drori, as well as that of the Phalangist leaders.

The central figure is undeniably General Ariel Sharon, then Israeli Defence Minister, who personally directed the military operations in the Lebanon and who was in Beirut at the time of the events. Mr Sharon is currently Prime Minister of Israel.

The constituent elements of these indications are Sharon's public announcement that "2,000 terrorists remain in the camps" and the declaration before an assembly of Phalangists after the assassination of their leader Gemayel that they "shouldn't cry like women," but rather that they must "act like men," making explicit reference to the Palestinian camps.

Concerning the Phalangist militia, they could be considered *de facto* auxiliary forces to the military power occupying South Lebanon and Beirut at the time. These militia were armed and trained by Israel. Their leaders would not have been able to take any initiative that would go against the will of the occupying power, and the operations they carried out were devised and prepared in collaboration with the Israeli military leaders.

Finally, it was the Israeli army that created the necessary environment for the crime to take place, notably by surrounding the camps with troops, providing logistical support to the militia and lighting up the camps throughout the night.

The plaintiffs bring a civil indictment against Ariel Sharon, Israeli Defence Minister at the time of the events and currently Prime Minister; against Amos Yaron, commandant of the division and Brigadier General at the time of the events and currently Secretary General of the Defence Ministry, and against all other person, whether Lebanese or Israeli, whose responsibility will be established during the events of the investigation.

V. DAMAGES

The plaintiffs claim compensation for all the crimes encompassed in the present complaint that caused them harm.

## MEMORABLE QUOTES

Instruction F. Only one element, and that is the IDF, shall command the forces in the area. For the operation in the camps the Phalangists should be sent in.

Defense Minister (Ariel Sharon), Instructions, Sept. 15, 1982 (Massacre started Sept. 16)

Defense Minister Ariel Sharon, in a statement, tied the killing to the P.L.O., saying "it symbolises the terrorist murderousness threatening all people of peace from the hands of the P.L.O terrorist organizations and their supporters."

Associated Press, 15 September 1982  
Sharon's comment on hearing the news of the death of Lebanese President-elect, Bashir Gemayel, in a bomb attack in Beirut on Sept. 14.

An American diplomat at the scene broke news of the slaughter to his country's special ambassador. Ambassador Draper sent a furious message to Ariel Sharon saying he was responsible for the area.

MORRIS DRAPER (US Special Envoy to the Middle East in 1982): "You must stop the acts of slaughter, they are horrifying. I have a representative in the camp counting the bodies. You should be ashamed. The situation is absolutely appalling. They're killing children! You have the field completely under control and are therefore responsible for the area."

FERGAL KEANE (BBC Reporter): And you've had no doubt since then or at the time that Ariel Sharon was responsible?

DRAPER: "No doubt whatsoever."

Transcript of BBC Panorama Program, The Accused, June 2001

If the person who gave the command knows, or should know on the facts available to him or her, that is a situation where innocent civilians are going to be

injured or killed, then that person is responsible, in fact in my book more responsible even than people who carry out the order.

Judge Richard Goldstone  
Transcript of BBC Panorama Program, The Accused, June 2001

The Minister of Defense, Mr. Ariel Sharon We have found, as has been detailed in this report, that the Minister of Defense bears personal responsibility. In our opinion, it is fitting that the Minister of Defense draw the appropriate personal conclusions arising out of the defects revealed with regard to the manner in which he discharged the duties of his office – and if necessary, that the Prime Minister consider whether he should exercise his authority under Section 21-A(a) of the Basic Law: the Government, according to which "the Prime Minister may, after informing the Cabinet of his intention to do so, remove a minister from office."

Extract from the conclusion of the Kahan Commission of Inquiry into the events at the refugee camps in Beirut, Feb. 8, 1983.

Dear Justice Barak,  
At the time, I promised that the day will come when I will – democratically and through the law – erase the conclusions of the Kahan Commission

Ariel Sharon, Aug. 12, 1993

If there is a moral to the painful episode of Sabra and Shatilla, it has yet to be acknowledged.

Zeev Schiff and Ehud Yaari, Israel's Lebanon War, 1984

"I have nothing to apologize for."

Ariel Sharon, 1982, 1983, 2000