

International Coverage

Opening a judicial can of worms

As Sharon faces trial and Milosevic sits in a war crimes court, will the immunity clause for heads of state be repealed?

Nitzan Horowitz
Haaretz
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The simultaneity between the two events, one in Brussels and the other in The Hague, wasn't overlooked by the international media, or by diplomats from the Middle East. On the very day when Slobodan Milosevic was brought – or “kidnapped,” as the former Yugoslav president would have it – to the UN war crimes tribunal in The Hague, the public prosecutor's office in Brussels announced that complaints brought against Ariel Sharon relating to the Sabra and Chatila massacre were admissible in local courts. What once seemed like a far-fetched scenario – prosecuting sitting heads of states, incumbent leaders who presumably enjoy immunity under international law – has now turned into a possibility that requires serious response. “One thing has already become clear,” says an Arab public figure who has closely monitored recent turns of the screw in international law, “there is no way to belittle the significance of the direction to which the international legal system is headed.”

Palestinians who submitted their claim against Sharon were overjoyed by the Belgian decision. Chibli Mal-

lat, the Lebanese lawyer who represents the plaintiffs in the case, praised the Belgian move: “This is an important day for the Sabra and Chatila victims,” he announced. “We are confident that justice will be fully served, despite rumors about attempts to alter the Belgian law. We will do everything we can to help with evidence and witnesses. This is a very big case.”

But not all Arab officials were gleeful about the recent upsurge in overseas prosecution of alleged war crimes. On the same day when the claim against Sharon was relayed to judge-investigator Patrice Colignon (who is to review whether sufficient evidence exists to warrant an indictment), another complaint was filed with Colignon's colleague, Damien Vandermersch, who works in the same Brussels prosecutors' office. This second claim was also ruled admissible for review in Belgian courts. Six Kurds, former residents of northern Iraq, submitted the claim against Saddam Hussein, charging the Iraqi leader with wrongdoing in the attack of Kurds after the Gulf War.

Similar complaints have been filed in the past against other public figures from the Middle East, including Mohammed Basri, former interior minister of Morocco, and former Iranian president Ali Akbar Hashemi Rafsanjani. Kurdish resi-

dents of Turkey are currently contemplating the submission of claims against the political regime in Ankara, and right-wing Israelis are at work on a suit against Palestinian Authority Chairman Yasser Arafat.

The growing wave of war crime prosecutions hasn't just sent a shiver down the spine of leaders in the Middle East. The process that has picked up steam in Belgium has brought some sweat to the brow of public figures in many countries, including places where it seems highly unlikely that leaders might suddenly find themselves facing an extradition-arrest warrant on war crimes charges. Holland is one such country.

Officials in Israel's Embassy at The Hague were surprised to come across an article published by the Dutch newspaper *Trouw*, in which a comparison was drawn between Ariel Sharon, Israel's defense minister at the time of the Sabra and Chatila massacre, and Joris Voorhoeve, the Dutch defense minister at the time of the killings in Srebrenica in the summer of 1995, the worst massacre of the Bosnian war.

Srebrenica, in southern Bosnia, was at the time designated a UN Safe Area. Most of the peacekeeper soldiers deployed in the city were Dutch. Despite the international Safe Area designation, Srebrenica fell to the Serbs, and thousands of its Muslim residents were slaughtered. The Srebrenica atrocities sparked an international outcry. The Dutch did little to prevent the mass murder, apparently ignoring advance warnings that a massacre was pending.

Though classifying Voorhoeve as a war criminal might appear to stretch



Israeli soldiers read about the massacres in the Sabra and Shatila refugee camps in Beirut

the meaning of the designation, commentators in the Netherlands do not rule out the possibility of charges being filed in Belgium against the former defense minister. Nobody claims that this Dutch official murdered Srebrenica victims, or provided Serbs with a green light to perpetrate the mass murder. Yet, it can be argued that in his position, Voorhoeve had the wherewithal to take precautionary steps to stop the atrocity from unfolding, or at least to reduce its tragic scale.

Voorhoeve's responsibility – as-

suming it can be proven that he bears responsibility for the Srebrenica events – is, at most, indirect. But precedents for indicting public figures on charges of indirect responsibility for war crimes are already embedded in international law. For example, the UN war crimes tribunal in The Hague, where Milosevic currently stands trial, has sent Croatian and Serbian military commanders to prison, deeming them responsible for actions perpetrated by others who were under their command.

As the American organization Human Rights Watch sees it, valid interpretations of indirect responsibility could be involved in the Ariel Sharon case. “The government of Israel also has a responsibility to conduct an investigation of acts undertaken by its senior officials, those who knew that atrocities were liable to occur and who didn't take suitable steps to stop them when they knew that the murdering had started,” says Hanny Megally, director of Human Rights Watch's North Africa and Middle East division.

Yet the Belgian legal initiative against Sharon has stirred some misgivings among human rights professionals. They argue that since the massacre at the refugee camps was perpetrated by Lebanese Christian Phalangists, then Sharon should not be the sole focus of the war crimes investigation. Megally commented that the Lebanese government should investigate responsibility borne by leaders of the Phalangist militia, including Elie Hobeika, who today lives securely in Beirut.

Israel warns officials of legal risks abroad

Clyde Haberman
New York Times
July 30, 2001

The Israeli Foreign Ministry has sent a warning to government, army and security officials. Be careful in choosing destinations when traveling abroad, it cautioned, because certain countries might be prepared to charge ranking Israelis with violating Palestinians' human rights. The advisory that went out last week was not worded quite that bluntly. It recommended, as a senior ministry official put it Friday, that high-level officials “do their homework” to avoid stumbling into “a legal embarrassment.”

But the message was clear: Some countries, notably in Europe, believe that Israel has been unduly harsh toward the Palestinians, firing on young protesters disproportionately, targeting Islamic extremists for assassination, and restricting the movement of ordinary people to such an extent that Palestinians say their economy is nearing collapse. Israel's insistence that Palestinians have their own leaders to blame for their troubles, and that whatever it does is purely in the name of security, leaves many Europeans cold. So watch out, the Foreign Ministry told Israeli officials. This is a new age of lawyers without borders when it comes to human rights. Prosecutors are prepared to reach far beyond their own lands to put on trial political figures accused of gross violations. Witness, Israeli officials say, the international cases brought against Augusto

Pinochet of Chile and Slobodan Milosevic of Yugoslavia.

While Israelis blanch at the notion that they even remotely qualify for the same league as those two men, they are well aware that Israel often falls short of human rights standards

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as interpreted in Western Europe.

As a result, the Foreign Ministry has begun compiling a list of nations that claim “universal jurisdiction” in certain cases. Potential worry spots for the Israelis are said to include Belgium, Britain and Spain. “We're not in a panic,” a senior official said, “but I think we must know the facts. And if some system is getting crazy, we should be aware of it.” Concerns here about potential vulnerability have been fueled by two separate cases: an attempt in Belgium to charge the Israeli prime minister, Ariel Sharon, with war crimes, and unhappiness in Denmark because Israel has named a former chief of the Shin Bet security service as its new ambassador.

The Sharon case goes back 19 years, to the massacre of hundreds of unarmed Palestinian refugees in Lebanon after Israel's 1982 invasion to root out the Palestine Liberation Organization.

The killings in the Sabra and Chatila refugee camps were done by

Lebanese Christian militiamen, known as Phalangists. But they were allied with Israel, and an official Israeli investigation later concluded that Mr. Sharon, as defense minister and architect of the invasion, bore “indirect responsibility” for the mass deaths. He and other Israeli officials should have realized that a massacre was probable, the inquiry found, and should have immediately stepped in to stop the Phalangists. Mr. Sharon was forced to resign. Ever since, Sabra and Chatila have cast a shadow over his career. Now that he is prime minister, the massacre has come front and center again, although there is nothing to suggest that new evidence has emerged.

The BBC broadcast a documentary on the subject in mid-June. A day later, lawyers for 23 Sabra and Chatila survivors asked a Belgian court to indict Mr. Sharon, citing a law that authorizes trials in Belgium for war crimes, no matter where they occur. A court decision has yet to be made.

“Please understand, these people are looking for justice,” Luc Valley, a Belgian lawyer for the survivors, said in Jerusalem last week. But Israelis do not understand, including many who have long been passionately anti-Sharon. They see the Belgian case as an example of European pro-Arab, anti-Israel and perhaps even anti-Jewish bias. At the least, government officials have said, it is part of an effort to undermine Mr. Sharon politically during this crisis with the Palestinians.

Mr. Sharon and his government

has hired a Belgian lawyer to head off a possible indictment. The Denmark situation involves Carmi Gillon, who was the Shin Bet chief in the mid-1990s. Two weeks ago, he outraged many Danes when he said he endorsed using “moderate physical pressure” during police interrogations of suspected terrorists.

There was some talk in Copenhagen about arresting Mr. Gillon the moment he stepped off the plane. That threat quickly faded, but not Danish displeasure with Israel. In turn, the Israeli foreign minister, Shimon Peres, dug in his heels, despite rumblings in his ministry that perhaps Mr. Gillon could represent Israel somewhere else. The Shin Bet has saved many lives by stopping suicide bombers before they could blow themselves up, Mr. Peres said in Parliament.

It was not lost on some Israelis that they themselves have in the past supported the “globalization of the criminal international law,” as it was called by Alan Baker, a legal adviser to the Foreign Ministry. Mr. Baker mentioned the Holocaust, seemingly referring to Israel's abduction of the notorious Nazi figure Adolf Eichmann from Argentina in 1960. Mr. Eichmann was put on trial in Israel, found guilty and hanged in 1962.

“We always had an interest in true criminals being brought to justice,” Mr. Baker told Israeli radio. The problem now, he said, is “a tendency to exploit this good thing for political achievements such as delegitimizing the state of Israel and its leaders.”

Is Israel's prime minister a war criminal?

James Ron
Chicago Tribune
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For his critics, Ariel Sharon's electoral victory in Israel spells defeat for Middle Eastern peace. For his supporters, however, only a tough, right-wing politician with military credentials can deliver a lasting deal. Yet whatever steps Sharon takes vis-a-vis the Palestinians, he will be dogged by persistent allegations of past involvement in crimes of war. In a world where notions of international justice loom increasingly large, Sharon's record may prove acutely embarrassing for Israel.

At issue are at least three incidents in Sharon's past. The first took place in 1953, when a force under his command raided Qibya, a West Bank village, killing more than 60 inhabitants. A Time magazine report said Sharon's soldiers shot “every man, woman and child they could find” and then dynamited 42 houses, a school and a mosque. “The cries of the dying,” the magazine reported, “could be heard amidst the explosions.”

Sharon's autobiography acknowledges civilians were killed at Qibya, but says they were a mistake. Given the evidentiary record, however, his explanation seems weak.

Under international law, Sharon could be indicted for crimes against humanity.

The second incident took place during Israel's 1982 thrust into Lebanon, when Sharon was defense minister. For three months Israeli forces laid siege to West Beirut, where Palestinian guerrillas had dug in amid civilians. At the time, The Washington Post wrote that Sharon's army subjected the city to “punishment so

intense and indiscriminate that terror was the result.”

By Aug. 16, 1982, the International Herald Tribune wrote, Beirut had become a city of “broken concrete, flattened apartment buildings and death,” and Israeli journalists offer evidence of Sharon's direct responsibility. Zeev Schiff and Ehud Yaari wrote that in June 1982, Sharon told officers that Palestinian neighborhoods in Beirut should be “utterly destroyed,” even though they contained some 85,000 civilians. “Not a single terrorist neighborhood should be left standing,” Sharon reportedly said.

The guerrillas violated interna-

“While waging the Jewish state's wars he has amassed a record too awful to ignore”

l law by sheltering in a city, but the Geneva Conventions also ban the indiscriminate and disproportionate shelling of populated areas.

Fifteen years later, a war crimes tribunal indicted Bosnian Serb leaders for a similar assault on Sarajevo, even though Bosnian Muslim soldiers were stationed throughout the city.

The third case – the massacres at Sabra and Shatila – occurred on Sept. 16-18, 1982, toward the end of the battle for Beirut. The Falangists, an Israeli-allied Lebanese militia, were ordered by Sharon to mop up armed resistance in Palestinian refugee camps as Israeli forces stood guard.

Israeli reports say Falangist gunmen killed 700 to 800 civilians, but other sources estimate 2,000 dead. The New York Times' Thomas Friedman said he saw “groups of young men in their 20s and 30s who had

been lined up against walls, tied by their hands and feet, and then mowed down gangland-style.” Women, children and the elderly were also among those slain in the 62-hour assault.

Although Sharon denied responsibility, an Israeli commission of inquiry ruled in February 1983 that he bore “indirect responsibility” for the massacres, harshly castigating him for his role. In 1985, a US Military Law Review analysis argued that Sharon had “command responsibility” for the killings. In 1999, former Serbian leader Slobodan Milosevic was indicted by the Yugoslav war tribunal under a similar clause for Serbia's Kosovo crimes.

During the Cold War, men such as Sharon had little to fear from international legal prosecution. The Geneva Conventions obliged countries to pursue war criminals, but few countries cared.

Recently, however, activists have dramatically changed international legal practice. Chile's ex-president was indicted in Spain, Chad's ex-ruler was arrested in Senegal and Congo's foreign minister was charged by Belgian authorities. In addition, special tribunals for Yugoslavia and Rwanda have proved increasingly able to catch, try and imprison war criminals.

Sharon's electoral victory thus coincides with a global sea change in legal standards. Whether Sharon really wants peace, his reputation, as well as that of the nation that elected him, will be consistently undermined by his past. While waging Israel's wars, Sharon has amassed a record too awful to ignore.

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Belgian Consulate in capital stoned

Etgar Lefkovits
Jerusalem Post
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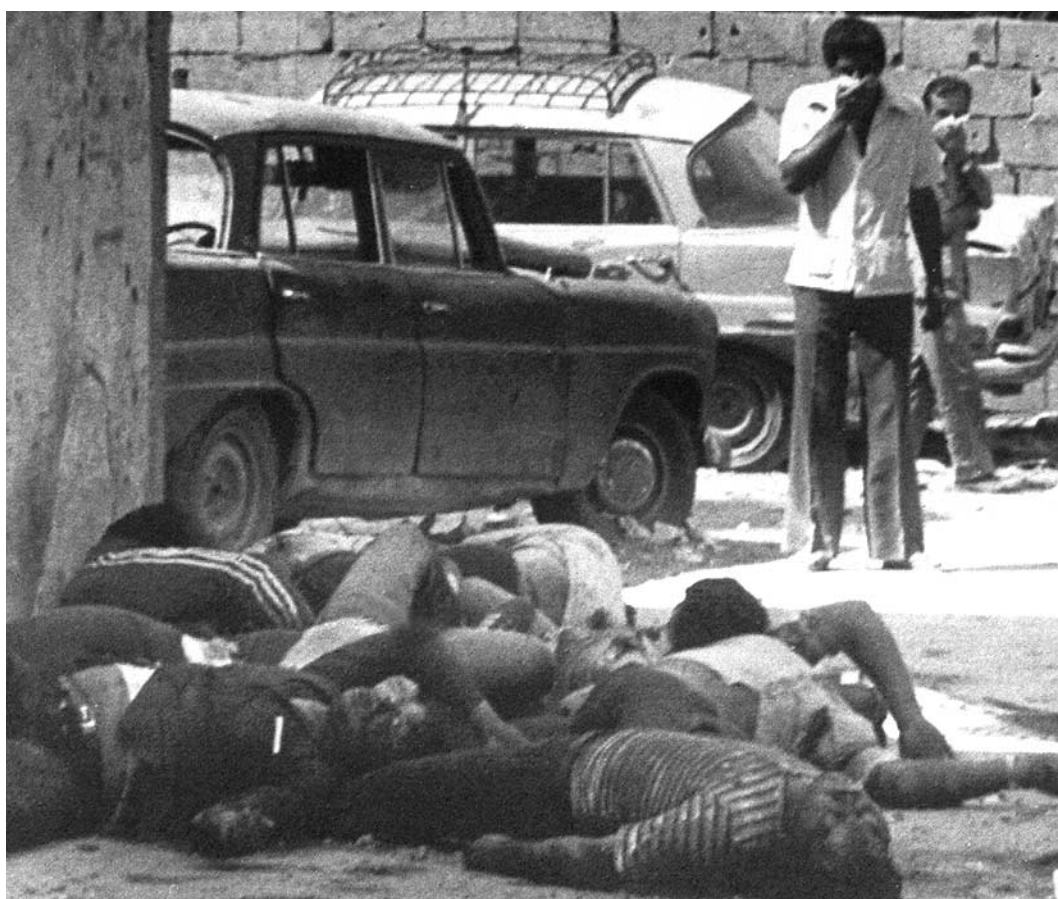
Suspected right-wing extremists threw stones at the Belgian Consulate in Jerusalem early yesterday morning. Nobody was injured in the attack, which took place at 2am, but three windows were damaged, according to Consul-General Leo D'aes.

“They were small stones, but they did a lot of damage,” D'aes said. “The most frightening thing was being awoken by the sound, and not knowing where it came from.” Police, who rushed to the Rehov Balfour residence in Jerusalem's Talbiyeh neighborhood, found leaflets from the outlawed Kach movement outside the house, as well as graffiti on the walls reading “Nazi go home,” “Jew-haters out,” and “Kach.”

Itamar Ben-Gvir, a self-declared spokesman for Kach, said supporters of the group had carried out the stoning and vandalism at the home of the “Belgian anti-Semites.” Police are investigating.

The attack comes during rising tension between the two countries in light of proceedings in an international Belgian court against Prime Minister Ariel Sharon for his alleged role in the 1982 Sabra and Shatilla massacres.

Scene of the massacres



A man surveys bodies of residents in the Sabra refugee camp after the massacre

Refugees use Belgian court to pursue Sharon for crimes against humanity

Gareth Smyth
Financial Times
June 17, 2001

Twenty-eight Palestinians will this week in Belgium present charges of crimes against humanity against Ariel Sharon, making the Israeli prime minister the latest political leader to face universal jurisdiction outside his own country.

The charges relate to the 1982 massacre in Beirut's Shatilla and Sabra refugee camps, when Israeli-allied Christian militiamen butchered at least 1,000 unarmed Palestinian civilians. An Israeli commission of enquiry led by Yitzhak Kahan found Mr. Sharon “personally responsible” for the massacre. Mr. Sharon, the chief driving force of an invasion that had taken Israeli armed forces into Beirut at the cost of 20,000 lives, subsequently re-

signed his post as defence minister. “There is an increasing trend toward universal competence in crimes that are especially heinous, shown by the (General Augusto) Pinochet case and then by the International Criminal Tribunals for both Former Yugoslavia and Rwanda,” said Chibli Mallat, a Lebanese lawyer advising the Palestinian refugees. “We have chosen to present the case in Belgium because it has a universal jurisdiction law, passed in 1993 and strengthened in 1999. It is not necessary for the plaintiff or the accused or the crime itself to have been committed in Belgium.”

“What is necessary is that the crimes are so great as to be against humanity or be serious breaches of international humanitarian law. We have assembled gruesome evidence from 28 survivors of the Sabra and Shatilla massacres. Armed Palestinian fighters had left the camps after

guarantees of safety given by Philip Habib (the US special envoy).”

The complaint against Mr. Sharon will be referred to an investigative judge who will decide how to proceed. Mr. Mallat said Mr. Sharon could be arrested if he were to visit Belgium,

“There is a trend toward universal competence in especially heinous crimes”

although he would probably have immunity on any official visit. “The victims are entitled to justice, after 20 years of oblivion,” said Mr. Mallat. “This is the first time they will have their say in court.”

Mr. Mallat has also worked with Indict, the international campaign to charge Iraqi President Saddam Hussein with crimes against humanity.