

THE COMPLAINT AGAINST ARIEL SHARON

Lodged in Belgium on 18 June 2001

For more information, see **indictsharon.net**, the website of the International Campaign for Justice for the Victims of Sabra & Shatila, offering news on the case lodged in Belgium against Israeli Prime Minister Ariel Sharon, Amos Yaron and other Israelis and Lebanese responsible for the massacre, killing, rape and disappearance of civilians that took place in Beirut between 16 and 18 September 1982 in the camps of Sabra and Shatila and the surrounding area.

PRELIMINARIES

1. **Mrs. Samiha Abbas Hijazi**, Lebanese (no passport, document #5496895/90), currently residing near the Austrian school in Al Horch, Beirut.
2. **Mr. Abdel Nasser Alameh**, Lebanese (passport #0473395), currently residing in El Deek Road, Sabra, Beirut.
3. **Mrs. Wadha Hassan Al Sabeq**, Palestinian (special refugee document #205963), currently residing in Bir Hassan, Beirut.
4. **Mr. Mahmoud Younis**, Palestinian (special refugee document #217163), currently residing in Shatila camp, Beirut.
5. **Mrs. Fadia Ali Al Doukhi**, Palestinian (special refugee document #68624), currently residing in Miyeh Miyeh camp, Saida.
6. **Mrs. Amina Hasan Mohsen**, Palestinian (special refugee document #912/4969), currently residing in Hiba complex, Al Hamtari Street, Saida.
7. **Mrs. Sana Mahmoud Sersawi**, Palestinian (special refugee document #76/6931), currently residing in Houssi Building, Ali Al Bacha, Sabra, Beirut.
8. **Mrs. Nadima Yousef Said Nasser**, Palestinian (no passport, document #602/7382), currently residing in 1 Gaza Building, Sabra, Beirut.
9. **Mrs. Mouna Ali Hussein**, Palestinian (special refugee document #214057), currently residing in 1 Gaza Building, Sabra, Beirut.
10. **Mrs. Shaker Abdel Ghani Tatat**, Palestinian (no passport, document #842/2992), currently residing in Al Bacha Quarter, Sabra, Beirut.
11. **Mrs. Souad Srour Al Meri**, Palestinian nationality (document #924/21358, Lebanese passport # 1506939), currently resident in Al Horch region, Shatila, Beirut.
12. **Mr. Akram Ahmad Hussein**, Palestinian (special refugee document #902/9265), currently residing in Shatila camp, Beirut.
13. **Mrs. Bahija Zrein**, Palestinian (Document #108642), currently residing in Al Deek Alley, Sabra, Beirut.
14. **Mr. Muhammad Ibrahim Faqih**, Lebanese (Lebanese passport #322903), currently residing in Bir Hassan, Beirut.
15. **Mr. Muhammad Shawkat Abu Roudeina**, Palestinian (special refugee document #161877), currently residing in Shatila camp, Beirut.
16. **Mr. Fadi Abdel Qader Al Sakka**, Palestinian (no passport, document #471/1144), currently residing in Shatila camp, Beirut.
17. **Mr. Adnan Ali Al Mekdad**, Lebanese (no passport), currently residing in Al Rihab, Shatila, Beirut.

18. **Mrs. Amal Hussein**, Palestinian (no passport), currently residing in Shatila camp, Beirut.

19. **Mrs. Noufa Ahmad Al Khatib**, Lebanese currently residing in Bir Hassan, Beirut.

20. **Mr. Najib Abdel Rahman Al Khatib**, Palestinian (no passport), currently residing in Shatila camp, Beirut.

21. **Mr. Ali Salim Fayad**, Lebanese (no passport), currently residing at the south entrance to Sabra, Beirut.

22. **Mr. Ahmad Ali Al Khatib**, Lebanese currently residing in Bir Hassan, Beirut.

23. **Mrs. Nazek Abdel Rahman Al Jammal**, Lebanese (no passport), currently residing in Al Deek Road, Sabra, Beirut.

Represented by their counsels:

Mr. Luc Walley, solicitor, 154 Rue des Palais, 1030 Brussels (Belgium)

Mr. Michael Verhaeghe, solicitor, 60 Waversesteenweg, 3090 Overijse (Belgium)

Mr Chibli Mallat, solicitor, Beirut (Lebanon)

Bring a civil indictment against Messrs. Ariel Sharon, Amos Yaron, and other Israelis and Lebanese responsible for the massacre, killing, rape, and disappearance of civilians that took place in Beirut between Thursday 16 and Saturday 18 September 1982 in the camps of Sabra and Shatila and the surrounding area.

The charge is brought in accordance with the [Belgian] law of 16 June 1993 (as modified by the law of 10 February 1999) relating to the repression of grave violations of international humanitarian law; specifically:

- Acts of genocide (Article 1, §1)
- Crimes against humanity (Article 1, §2)
- Crimes against persons and goods protected by the Geneva Conventions signed in Geneva on 12 August 1949 (article 1 § 3)

The charge is founded on international customary law and on the '*ius cogens*' (the concept of *ius cogens* refers to superior international legal norms of a constitutional order) which relate to these crimes.

The plaintiffs have been personally injured and/or have lost close family members or property as a result of these crimes.

I. FACTS

A. GENERAL

On 6 June 1982, the Israeli army invaded Lebanon in retaliation for the attempted assassination of Israeli Ambassador Argov in London on 4 June. The Israeli secret services had that same day attributed the attempted assassination to a dissident Palestinian organisation backed by the government of Iraq, which was at the time eager to deflect world attention from its recent setbacks in the Iran-Iraq war.¹ The Israeli operation, planned well in advance, was called "Operation Peace for Galilee."

Initially, the Israeli government had announced that its intention was to penetrate just 40km into Lebanese territory. The military command, however, under the orders of Defence Minister Ariel Sharon, decided to execute a more ambitious project that Mr Sharon had prepared several months earlier. Having occupied the south of the country and destroyed any Palestinian and Lebanese resistance there, simultaneously committing a series of violations against the civilian population,² Israeli troops proceeded to penetrate as far as Beirut. By 18 June 1982 they had surrounded the Palestine Liberation Organisation's (PLO) armed forces in the western part of the Lebanese capital.

According to Lebanese statistics, the Israeli offensive, particularly the intensive shelling of Beirut, caused 18,000 deaths and 30,000 injuries, mostly among civilians.

After two months of fighting, a cease-fire was negotiated through the mediation of United States Envoy Philip Habib. Under the terms of these negotiations, the PLO was to evacuate Beirut under the supervision of a multinational force deployed in the evacuated part of the town. The Habib Accords envisaged that West Beirut would subsequently be under the control of the Lebanese army, and the Palestinian leadership was given guarantees by the Americans regarding the security of civilians in the camps after their departure.

The evacuation of the PLO ended on 1 September 1982.

On 10 September 1982, the multinational forces left Beirut. The next day, Mr Ariel Sharon announced that "2,000 terrorists" had remained inside the Palestinian refugee camps around Beirut. On Wednesday 15 September, the day after the assassination of President-elect Bashir Gemayel, the Israeli army occupied West Beirut, "encircling and sealing" the camps of Sabra and Shatila, which were inhabited by Lebanese and Palestinian civilians, the entirety of armed resisters (more than 14,000 people) having evacuated Beirut and its suburbs.³

Historians and journalists agree that it was probably during a meeting between Ariel Sharon and Bashir Gemayel in Bikfaya on 12 September that an agreement was made authorising the "Lebanese forces" to "mop up" these Palestinian camps.⁴ Mr Sharon had already announced, on 9 July 1982, his intention to send the Phalangist forces into West Beirut,⁵ and in his autobiography he confirms having negotiated the operation during his meeting with Gemayel in Bikfaya.⁶

According to statements made by Ariel Sharon on 22 September 1982 in the Knesset (Israeli parliament), the decision that the Phalangists should enter the refugee camps was made on Wednesday, 15 September 1982 at 15.30.⁷ Also according to General Sharon, the Israeli Command had received the following instruction: "*[t]he Tsahal⁸ forces are*

*forbidden to enter the refugee camps. The "mopping-up" of the camps will be carried out by the Phalanges or the Lebanese army."*⁹

By dawn on 15 September 1982, Israeli fighter-bombers were flying low over West Beirut and Israeli troops had secured their entry. From 9 am, General Sharon was present to personally direct the Israeli penetration, installing himself in the general army area at the Kuwait embassy junction situated at the edge of Shatila camp. From the roof of this six-storey building, it was possible to observe the town and the camps of Sabra and Shatila clearly.

By midday, the camps of Sabra and Shatila -- in reality a single zone of refugee camps in the south of West Beirut -- were surrounded by Israeli tanks and soldiers, who had installed checkpoints all around the camps in order to monitor the entry or exit of any person. During the late afternoon and evening, the camps were shelled.

By Thursday 16 September 1982, the Israeli army controlled West Beirut. In a press release, the Israeli military spokesperson declared, "*Tsahal controls all strategic points in Beirut. The refugee camps, inside which there is a concentration of terrorists, are surrounded and sealed.*" On the morning of 16 September, the following order was issued by the army high command: "*[t]he searching and **mopping up** of the camps will be done by the Phalangists/Lebanese army.*"¹⁰

During the course of the morning, shells were being fired down at the camps from higher elevations and Israeli snipers were shooting at people in the streets. By approximately midday, the Israeli military command gave the Phalangist militia the green light to enter the refugee camps. Shortly after 5 pm, a unit of approximately 150 Phalangists entered Shatila camp from the south and south-west.

At this point, General Drori telephoned Ariel Sharon and announced, "*Our friends are advancing into the camps. We have co-ordinated their entry.*" To which Sharon replied, "*Congratulations! Our friends' operation is approved.*"¹¹

For the next 40 hours the Phalangist militia raped, killed, and injured a large number of unarmed civilians, mostly children, women and elderly people inside the "encircled and sealed" camps. These actions, accompanied or followed by systematic roundups, backed or reinforced by the Israeli army, resulted in dozens of disappearances.

The Israeli army had full knowledge of what was going on in the camps right up until the morning of Saturday 18 September 1982, and its leaders were in continuous contact with the militia leaders who perpetrated the massacre. Yet they never intervened. Instead, they prevented civilians from escaping the camps and arranged for the camps to be illuminated throughout the night by flares launched into the sky from helicopters and mortars.

The count of victims varies between 700 (the official Israeli figure) and 3,500 (in the inquiry launched by the Israeli journalist Kapeliouk). The exact figure can never be determined because, in addition to the approximately 1,000 people who were buried in communal graves by the International Committee of the Red Cross (ICRC) or in the cemeteries of Beirut by members of their families, a large number of corpses were buried beneath bulldozed buildings by the militia members themselves. Also, particularly on 17 and 18 September, hundreds of people were carried away alive in trucks towards unknown destinations, never to return.

The victims and survivors of the massacres have never been deemed entitled to a formal investigation of the tragedy, whether in Lebanon, Israel, or elsewhere. After 400,000 Israelis took to the streets in protest once news of the massacre was broadcast by the

international media, the Israeli parliament (Knesset) named a commission of inquiry, to be presided over by Mr Yitzhak Kahan, in September 1982. In spite of the limitations of the Commission's mandate (limited because it was a political rather than a judicial mandate and because the voices and demands of the victims were completely ignored), the Commission concluded that the Minister of Defence was **personally responsible** for the massacres.¹²

Upon the insistence of the Commission, and the demonstrations that followed its report, Mr Sharon resigned from his post of Minister of Defence but remained in the government as Minister without Portfolio. It is worth noting that during the "Peace Now" demonstration immediately prior to Sharon's "resignation," demonstrators were attacked with grenades, resulting in the death of a young demonstrator.¹³

Several non-official inquiries and reports, including those of MacBride and of the Nordic Commission, based mainly on the testimony of western eyewitnesses, as well as other pieces of journalistic and historical research, have assembled vital pieces of information. Some of these texts, in part or in full, are annexed to this file.¹⁴

Despite evidence of what the UN Security Council described as a "criminal massacre," and the ranking of the Sabra and Shatila massacres in humankind's collective memory as among the most heinous crimes of the 20th century, the man found "**personally responsible**" for this crime, as well as his associates and the people who carried out the massacres, have never been pursued or punished. In 1984, Israeli journalists Schiff and Ya'ari concluded their chapter on the massacre with this sobering reflection: "*If there is a moral to the painful episode of Sabra and Shatila, it has yet to be acknowledged.*"¹⁵ The reality of this impunity remains true to this day.

The United Nations Security Council condemned the massacre with Resolution 521 (19 September 1982). This condemnation was followed by a 16 December 1982 General Assembly resolution qualifying the massacre as an "act of genocide."

B. SPECIFICS

B1. Plaintiffs, survivors of Sabra and Shatila.

In annex to the present charges, the plaintiffs submit a statement of their personal suffering. The originals are in Arabic; each statement has been translated into French [and now English].

1. Samiha Abbas Hijazi:

On Thursday, there was shelling when the Israelis came, then it got worse so we went down into the shelter. (...) We learned on Friday that there had been a massacre. I went to my neighbours' house. I saw our neighbour Mustapha Al Habarat; he was injured and lying in a bath of his own blood. His wife and children were dead. We took him to the Gaza hospital and then we fled. When things had calmed down, I came back and searched for my daughter and my husband for four days. I spent four days looking for them through all the dead bodies. I found Zeinab dead, her face burnt. Her husband had been cut in two and had no head. I took them and buried them.

Madame Abbas Hijazi lost her daughter, her son-in-law, her daughter's godmother and other loved ones.

2. Abdel Nasser Alameh:

On the night of the carnage, we were at home and we heard that there was a massacre at Shatila(...) We kept watch on the road all night, taking turns to sleep a few hours, until daybreak when some people managed to escape. I thought my brother had gone ahead of us to West Beirut. We waited for him but he didn't come. In fact my brother was one of the ones they took away, and we never even found his body."

Mr Alameh lost his brother, who was 19 years old.

3. Wadha Hassan Al Sabeq:

We were at home on Friday 17 September; the neighbours came and they started to say: "Israel has come in, go to the Israelis, they are taking papers and stamping them." We went out to surrender ourselves to the Israelis. When we got there, the tanks and the Israeli soldiers were there, but we were surprised to see that they had Lebanese forces with them. They took the men and left us women and children together. When they took the children and all the men from me, they said to us, "Go to the Sports Centre," and they took us there. They left us there until 7pm, then they told us, "Go to Fakhani and don't go back to your house," then they started firing shells and bullets at us.

On one side there were some men who had been arrested; they took them and we have never found out what happened to them. To this day we know nothing about what happened to them; they just disappeared.

Mrs Al Sabeq lost two sons (aged 16 and 19), a brother and about 15 other relatives.

4. Mahmoud Younis:

I was 11 years old. It was night and we could hear shelling and gunfire. (...) We took refuge in the bedroom and stayed there. As soon as they arrived, they went straight to the living room, and they shot at the photos on the walls, especially the one of my brother who was killed in "Black September." They ransacked the living room, cursing and swearing. After having looked for us in vain, they went up to the roof and stayed there all night long. We spent that night in terror in our hiding place, listening to the shooting and people screaming, while Israel fired flares to light the sky until dawn.

The next morning they started saying, "Give yourself up and your life will be spared." My nephew was 18 months old. He was hungry and we were far from the kitchen. My sister wanted him to quieten down, and she put her hand over his mouth, fearing that they would hear his cries. Her husband decided that we would have to give ourselves up, adding that each person's fate was preordained by God anyway. The women went out first, my brothers, my father, my brother-in-law and other members of the family followed. My brother was ill. As soon as they heard our voices, they shot in our direction and came straight back inside the house. They asked us where we had been the day before when they had come in and not found anyone there. Then they ordered the women and children to go out. My brother-in-law started kissing his little girl as if he were saying goodbye. An armed man came towards my niece, tied a rope around her neck and threatened to strangle her if her father didn't let go of her. He let go of her and gave her to me. They wanted to take me too but my mother told them I was a girl. They made my mother and the women walk to the Sports Centre. While I was walking I saw my aunt's husband, Abu Nayef, being murdered near his house with blows of an axe to his head. The dead bodies were disfigured. While I was carrying my niece, I bumped into a dead body that had been hit with an axe and I fell over. They knew then that I was a boy, and one of them put me up against the wall; he wanted to fire a bullet into my head. My

mother begged him and kissed his feet so that he would let me go. He pushed her away. When he did that, he heard the clinking of some money she had hidden in her clothes. He asked her what that meant. She replied that he could have all the money he wanted but he had to let me stay with her. In this way we carried on our way and we arrived at the Sports Centre. The Israeli bulldozers were busy digging large trenches. We were told that we all had to get in because they wanted to bury us all alive. My mother started begging him again, and then she asked for a mouthful of water before dying.

At the Sports Centre, I saw the Israeli military, as well as tanks, bulldozers and artillery, all Israeli. We also saw groups of Phalangists with the Israelis.

The Sports Centre was packed with women and children. We stayed there until sunset. An Israeli then came and he said, "Everyone go to the Cola region, whoever comes back to the camp will die." We left, as they fired shots in our direction.

Mr Younis lost his father, three brothers, his maternal uncle, his maternal cousin, two paternal cousins and other members of his family.

5. Fadia Ali Al Doukhi:

When the shelling started and we knew that Israel had surrounded the camp, my father told us to run away. We asked him to come with us, but he refused because he wanted to protect the house. We ran away, leaving him in the house. Later, we found out that a massacre had taken place. We found out that my father was dead and we saw his picture in the newspaper. His foot had been cut off. Our neighbour, who lived in the house where my father had sheltered, told us how they killed him.

Mrs Al Doukhi, who was 11 years old at the time, lost her father.

6. Amina Hasan Mohsen:

We were at home the Thursday when the shelling started. I didn't know what was going on outside. When the shelling intensified, I tried to leave the house to save myself and the children. When we went out, we saw dead bodies spread out all over the street. My children were scared. An Israeli told us to go out. Then we saw someone speaking Lebanese. When we went out under cover of the Israelis, they started shouting at us. At that moment I counted my children and I saw that Samir was missing; when he saw the dead people on the ground he got scared and ran away. At that moment I didn't have the fortitude to go looking for him because the whole area was full of Israeli and Lebanese troops. We escaped, and when the massacre was over I looked for Samir, but the corpses were so mutilated I couldn't recognise him among them.

Mrs Mohsen lost her 16-year-old son.

7. Sana Mahmoud Sersawi:

We lived in the Said area of Sabra, and when the shelling started we sought refuge at my parents' house in Shatila. This happened on Wednesday. At about midnight, some women who came from the western quarter said that killings were taking place. We escaped once again, towards the center of the camp. Then, when daybreak came, we hid ourselves in the shelter of the rest home. I was pregnant at the time, and I had two daughters who were still taking milk. We stayed in the rest home for two days, until Saturday. We didn't have any milk left. My husband went out to get some for the girls. That night was so long,

and the Israelis were firing flares to illuminate the sky. This is how my husband went to Sabra. The Israelis had come as far as the Gaza hospital. After that, I went out to look for my husband, and my sister went to look for her husband. We arrived at the entrance to Shatila. There, they had put the men on one side and the women on the other. I started looking among all the men. I saw him, and I said to him, “[y]ou know, these are Phalangists.” He replied, “[w]hat happened at Tel al Zaater is going to happen to us.” The armed men ordered us to walk in front, and the men behind. We walked like this until we got to the communal grave. There, the bulldozer started digging. Among us was a man who was wearing a white nurse’s shirt; they called him and filled him with bullets in front of everyone. The women started screaming. The Israelis posted in front of the Kuwaiti embassy and in front of the Rihab station requested through loudspeakers that we be handed over to them.

That’s how we found ourselves in their hands. They took us to the Sports Centre, and the men were supposed to walk behind us. But they took the men’s shirts off and started blindfolding them. At the Sports Centre, the Israelis submitted the young people to an interrogation, and the Phalangists delivered 200 people to them. And that’s how neither my husband nor my sister’s husband ever came back.

Mrs Sersawi lost her 30-year-old husband and her brother-in-law.

8. Nadima Yousef Said Nasser:

It was Thursday. Suddenly the street was deserted. My mother went to the neighbours’ house, and the shelling started. About 10 families were gathered at the neighbours’ house. A little while later, a woman came in from the Irsan quarter. She shouted, “They’ve killed Hassan’s wife!” She was carrying her children and shouting that it was a massacre. I picked up one of my twin daughters, who was a year old, went to my husband and said, “They say that there’s a massacre.” He replied, “Don’t be silly.” I took one of my daughters and gave him the other one, but the shelling got stronger and we went back to the neighbours’ shelter. The shelter was full of women, men and children; a woman from Tel Al Zaater was crying, saying, “This is what happened at Tel Al Zaater.”

A little later, I went out of the shelter, and I saw armed men who were putting the men against the walls. I saw a neighbour; they tore open her stomach. Some woman came out of the house opposite and started waving her scarf around, saying, “We must give ourselves up.” Suddenly I heard my sister shouting, “They’ve cut his throat!” I thought that my parents had been killed. I rushed to see them, carrying my daughter. They killed my sister’s husband in front of me. I went up, I saw them shooting at the men. They killed them all. I fled. My other daughter stayed with her father. The armed men left, taking with them the men from the shelter. My husband was among them. On entering the camp a Lebanese woman came; she had seen my husband holding my daughter. She had seen how my husband had been killed by a Phalangist: with the blow of an axe to his head. My daughter was covered in blood. The man gave her to the Lebanese woman, who came back to the camp and gave her to some relatives of mine. I fled to Gaza hospital. When they entered the hospital, I escaped once again.

Mrs Said Nasser lost her husband, her father-in-law, three of her husband’s nephews and five other relatives.

9. Mouna Ali Hussein:

I was in my house in Horch, I was 4 months pregnant and I had an 8-month-old son. We lived peacefully. We heard the Israeli aeroplanes flying intensively overhead, their noise

got louder and then the shooting started. I took my son and I said to my husband, "I want to go to my parents' house in the Western quarter." We went, and while we were there, the shooting increased. We stayed with neighbours who had a ground floor 2-storey house. When the shelling got worse, we stayed inside. It was six o'clock. We closed the door and stayed inside. There were only women and children there, except for my husband and a young man. We heard people shouting outside, and the armed men saying, "don't shoot, use the axe. If they hear shooting they will escape." A bomb exploded near the house, and everyone started screaming. They heard us, and started shooting at us. We shouted even louder and a young man was killed in front of us as he was trying to put the candle out. They carried on shooting, and when they heard us they threw a bomb at us. A woman was injured, as was my mother. The bedroom became a river of blood. The soldiers started shouting at us, "Come out! If you don't come out we will dynamite the house!" They insulted us. My mother opened the door, saying that she wanted to sacrifice herself. She saw ten armed men. She said to one of them, "Don't kill us." He replied, "Everyone out, get in a line." One after the other we went out. I stayed with my husband and with my other son, and then we went out. They said to my husband, "Come here, you." My husband was carrying our son, so he gave him to me. The armed man said to him, "Get back." My husband thought he wanted his ID card. As he was backing away, they machine-gunned him down in front of me. He didn't say a word; he fell. I waited for my turn. They insulted me. I followed my mother and my sister to the orphanage, and we fled. The children lived alone, their father didn't have any brothers or close relatives. They had no one at their side. Other orphans will find an uncle, but my children have only me. God help us. My son, even at his age, really needs a father to help him, someone he can talk to about his problems. When you're an only child, what a huge empty space that leaves.

Mrs Ali Hussein lost her husband and her brother-in-law.

10. Shaker Abdel Ghani Natat:

It was Saturday 18 September and we were at home when I went to check the car outside. That's when I saw some soldiers; I thought they were from the Lebanese army. They demanded to search the house; the family was asleep so I woke them up and we all went outside. They took us towards Shatila camp. As we were walking, we passed people who had been killed and corpses and it was then that I realised then that there was a massacre going on. They drove us to the Rihab station; they wanted to take us to the Kuwaiti embassy. That's when the cars stopped and loaded up with youths, no one but youths, including my son.

As for us, they delivered us to the Israelis and the Israelis took us to the Sports Centre, where they kept us.

That's how they took some people away, while they left others. My son was put in a car in front of me; I saw them take him, but I have no idea what became of him that day.

Mr Abdel Gahni Natat's son was 22 years old at the time.

11. Su'ad Srou Meri:

On Wednesday, after Bashir [Gemayel] had been killed, we heard Israeli helicopters flying low overhead, and on Wednesday night the Israelis started firing illumination flares, which lit up the camp as though it were day. Some of my friends went down into the shelter. On Thursday evening I went with my brother Maher to see some friends and tell them to come and sleep at our house; on the way the road was full of corpses. I went into

the shelter but I didn't find anyone there, so we went back. Suddenly I saw our neighbour, who was injured and had been thrown on the ground. I asked him where our friends were, he replied that they had taken the girls and asked me to help him, but I was not able to rescue him and I went straight back home with my brother. Maher immediately told my father that there was a massacre. I found out from our neighbour that the Phalangists were there. When my father found out, he said that we had to stay inside the house. Our neighbour was also there. We stayed in the house all night long. On Friday morning my brother Bassam and our neighbour climbed up to the roof to see what was happening, but the Phalangists spotted them straight away. A few moments later, about thirteen men knocked on the front door. My father asked who they were, they said, "Israelis." We got up to see what they wanted; they said, "You're still here," and then they asked my father if he had anything. He said he had some money. They took the money and hit my father. I asked them, "How can you hit an old man?" Then they hit me. They lined us up in the living room and they started discussing whether or not to kill us. Then they lined us up against the wall and shot us. Those who died, died; I survived with my mother. My brothers Maher and Ismail were hiding in the bathroom. When they [the soldiers] left the house, I started to call my brothers' names; when one of them replied I knew he wasn't dead. My mother and my sister were able to escape from the house, but I was not able to. A few moments later while I was moving, they [the soldiers] came back, they said to me, "you're still alive?" and shot me again. I pretended to be dead. That night I got up and I stayed there until Saturday. I pulled myself along crawling into the middle of the room and I covered the bodies. As I put out my hand to reach for the water jug they shot at me immediately. I only felt a bullet in my hand and the man started swearing. The second man came and he hit me on the head with his gun; I fainted. I stayed like that until Sunday, when our neighbour came and rescued me.

Mrs Al Meri lost her father, three brothers, (aged 11, 6 and 3) and two sisters (18 months and 9 months).

12. Akram Ahmad Hussein:

[The twelfth plaintiff, Mr Akram Ahmad Hussein, was not at Sabra and Shatila at the time of the events, cf. infra, part B3 of this submission.]

13. Bahija Zrein:

We were at home and we got wind of a massacre, but we didn't believe it. In the night, two young men came to our house and told us that there was a massacre in the camp. We then went outside to see what was happening. We saw the Lebanese Forces standing outside; they called us. There were a lot of people and we thought they were Israelis. When we heard their Lebanese accents I ran away, but they followed me and arrested us young people, both men and women. All this happened at about 5 o'clock in the morning.

They went into the area and took away about 18 young people, while confining us - men, women and children - to the camp. I saw my brothers and some children among the men they took away. While we were walking, we saw people who had been killed with axes. Among them were doctors from Gaza hospital. They lined them up and slaughtered them; then they started shooting at us and killed a large number of people, including 18 of our neighbours' sons. While they were shooting, the whole camp was surrounded by Israeli tanks and all the diggers were Israeli. An Israeli patrol presented itself to us and asked us to go to the Sports Centre. The men went, while we women were taken to the Kuwaiti embassy.

That's how we saw them loading the young people into the cars. Among those young people was my brother. They blindfolded them and they loaded my brother in the car. That's how he disappeared and I have never seen him again since.

Mrs Zrein's brother was 22 years old at the time of the events.

14. Mohammed Ibrahim Faqih:

That morning, they started shelling around the outside of the camps, including Shatila, and we could hear the sustained shooting. The shelling reached the main roads and we didn't know what the reason for it was. We could not believe it. We couldn't even move from one place to another or escape because of the shelling and machine-gun fire.

We stayed at home and suddenly a shell hit our neighbour's house. Some of the shrapnel hit my son in the chest and the leg, and we took him to Akka hospital, but they wouldn't admit him because of the large number of injured people already there. We took him to Gaza hospital. My brother and I stayed with him at the hospital, and meanwhile the shelling of Sabra and Shatila camps intensified. A woman came to tell us that she had seen them coming; I fled but I saw how they entered and took away all the injured and sick people. So I ran away and I came back three hours later. They had taken away many people and the only one left was my injured son. I don't know how many people they took away alive.

Then we took my son to a hospital in Hamra, and the next day I heard that they had come to Sabra and they had taken away the girls. When I came back here I saw my daughter Fatima had been hit with an axe, along with my little girl. I noticed that they had dug a ditch in the ground and they had buried them alive in the ditch. The baby's throat had been slit. I also saw people who had been killed and pregnant women with their stomachs ripped open. About thirty young people had been massacred near our house, both Lebanese and Palestinian. They didn't spare anyone; they killed everyone they came across. In the home of our neighbour Ali Salim Fayad, they had killed his wife and children.

My God, what can I say, what can I tell you? They had demolished the shops in Sabra road and dug large ditches where they had buried the victims. I saw about 400 children's corpses. They upturned the earth and buried them. From the twelve members of our neighbour's family, eleven were killed and only one escaped.

Mr Faqih's two daughters were aged 2_ and 14 at the time of the events.

15. Mohammed Shawqat Abu Roudeina:

I was at home with my father, my mother, and my sister. When the shelling started, we were at the home of my father's uncle. There, the shelling started again, and we went into the bedroom, the men staying in the living room. Then we went to a neighbour's house. There were about 25 or more of us. A little while later, we heard the cries of a girl who had been injured in the back. Armed men had stationed themselves in the area. Then we heard shooting, screams and strange voices. Aida, my cousin, went up to the shop and turned on the light. A man slit her throat and they dragged her by her hair. She started screaming "Daddy!" then her voice went dead. Her father went to follow her. They killed him immediately. That's how they realised that we were in the house. They came down to the floor above us, where they broke and ransacked everything and we heard them calling out to each other, "George, Tony..." When we heard them breaking everything our voices rose, and that's how they knew that we were on the floor below. One of them came down

and saw us. He immediately told the others, and they all came down. My father was sitting on a chair, and as soon as he saw them, he kissed me, put some cologne on me and told my mother to take good care of the children. My father's cousin said to his wife, "the children are your responsibility."

I will never forget. The image of that day is engraved in my memory. They ordered the men to stand against the wall. They made us go out behind them into the road. When I got to the door, I looked up at the red sky, red streaked with flare grenades. Once we arrived at the beginning of the road, we heard the shots fired at my father and my uncle, as well as some shouting. We walked several metres, flanked by armed men. My cousin saw her father and she started screaming. I saw my father's car, which they had opened and were sitting in. That image is also engraved in my memory, because I asked my mother what they were doing with my father's car but she didn't reply. As we walked along we saw the dead people.

They took us to the Sports Centre, and they placed us there in a room where there was a woman and her children. They brought people there. They took some of them away in cars and killed the others. At that moment, the Israeli tanks were there. Suddenly a mine that had been there since the beginning of the Israeli invasion exploded. They ran away, and so did we.

Mr Abu Roudeina lost his father, his (pregnant) sister, his brother-in-law and three other members of his family.

16. Fadi Abdel Qader Al Sakka:

We had spent the whole of Friday hidden in the house, thinking that the Israelis were going to penetrate the camp.

On Saturday at about midday, while we were still at home, we saw the Israelis arriving at our house. They told us all to come out. I was a little boy of 6 at the time. We came out and they took us to the road to the western side. My father was carrying my little brother; they told him to give the child to my grandmother, who was also with us. They wanted to take away my father and my uncle, so my grandmother asked where they were taking them. Someone told her that they would be back soon. While we were walking, the roads were strewn with dead people and I saw how they were treating people. My father and my uncle never came back after that day when they were taken away.

Mr Al Sakka lost his father and an uncle.

17. Adnan Ali Al Mekdad:

At about 3 pm on Thursday, after the death of Bashir, Sharon made some worrying moves. There were foreign men surrounding the region. Some people found out about this and fled. My mother saw the armed men, made them some tea and told them she was Lebanese. They told her that they were only after the Palestinians, and that, being Lebanese, she could stay in the area, no one would bother her, she just had to keep her ID papers with her.

We were looking for family members, when I saw her hanging from a tree. After that we set about gathering the corpses and burying them.

Mr Adnan Ali Al Mekdad lost his father, his mother and more than forty members of his extended family.

18. Amal Hussein:

On Wednesday, Israeli aeroplanes started flying over the area and the shooting and shelling began. My brothers and sisters were scared. Those who were scared went down into the shelter next to our house. Thus, one group slept in the shelter and the other group slept in the house. The aeroplanes continued hovering, and there were more and more of them. My three-month-old nephew, who was with my sister in the shelter, started crying. He wanted to eat. She came out with him and four others, and they all came into the house. As soon as she came in – this was on Thursday – we heard shouting, it was coming from the children and women in the shelter, which we could see from our bathroom window. All of a sudden, the armed Phalangists invaded the area. No one could leave the house. All we could hear was the screaming of babies and women. They started killing people. We stayed in the house; we opened the doors and then went into the bathroom with my little nephew. We had gagged his mouth for fear that 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 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 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.

19. Noufa Ahmad Al Khatib:

Two days before the massacre, the Israelis came to our area. They came, took us, lined us up and then let us go. The next day they withdrew and went into a hospital. We fled, and the day after that I learnt that there had been a massacre. Then the next day I was told the story of the massacre. I was in Shatila, I saw the victims, and I started to look for my relatives. I saw my mother, she was dead and I saw her and recognised her. I saw all the victims who died and those who were still lined up against the walls.

Mrs Noufa Ahmad Al Khatib lost her mother, her sister, and several other close relatives.

20. Ali Salim Fayad:

We were in the house and we had some people there. There was a car across the way and we went to move it. As we were coming back that Thursday, there were some armed men in front of the house. They ordered the separation of the men from the women and children. They lined up the men as well as our Palestinian neighbour and his family, against the wall and they shot them. The women and children were slaughtered in the road. Before shooting, they asked for their identity cards and they kept those. The Phalangists searched the house and the Israelis protected them with their tanks and their flares. When they shot us I was hit in the back, the thigh and the hand. The night was lit up by the flares. I remained laid out on the ground. Later I called out to someone who was passing and asked him to call an ambulance. A short while later my daughter came and took me to Akka hospital. The next day the Phalangists came to the hospital and asked my son, who was in the room next door, about me. They took away some of the injured Palestinians. I saw them dragging a wounded man out of his bed and hitting him on the head with an axe. He was young, and they killed him.

Mr Ali Salim Fayad lost his wife, his two daughters, his son and his sister-in-law.

21. Ahmad Ali Al Kahtib:

It was between five and six pm on Thursday. We were in the area and there was some shooting. A young man from our area was injured. We took him to Gaza hospital. While the massacres were taking place, we tried to go back but the road was closed. I spent three days away from home.

Mr Ahmad Ali Al Khatib lost his father, his mother, four brothers, three sisters and his grandmother.

22. Nazek Abdel Rahman Al Jamal:

My eldest son went to get the car so we could escape; they came and arrested him at Sabra Square. My second son went to get bread and food, we were at home, and the Israelis and the Phalangists took us away from the house and made us walk in a line to Sabra. While we were walking I saw my eldest son walking in another line and my sisters saw my other son. They made us walk as far as the Kuwaiti embassy, and when we got there they said, "Women go home." There was an explosion and the people ran, on the way back I saw dead bodies on both sides of the road, women and old people. They had blown up the corpses and the children were dead. I went home and the children weren't there. I spent four days looking for the children; my brother brought my youngest son's dead body; I had already seen my eldest son dead in the pit.

Mrs Nazek Abdel Rahman Al Jamal lost her two sons aged 20 and 22.

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.

1. 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 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 Horeik and we escaped to Ghobeireh.

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.

2. Jamila Mohammed Khalife:

On Thursday at about 4 o'clock pm, they were at Al Horch, and we knew that there was a massacre. We also knew that the Israelis were in the Sports centre; but we were asked not to do anything.

A short while later, the shelling intensified but we thought that things would quieten down soon after. We went to seek shelter at our neighbours' house. Looking towards the Sports Centre, we saw hundreds of armed elements descending upon it and in just a few moments they appeared in front of the house full of people. We started shouting that the Israelis had attacked us. When they reached the house they started insulting us, blaspheming, and then our neighbours' son shut the door in their faces and we fled through another door to hide in the shelter, which was full of people.

The Israelis and the Phalangists came back a short while later with a loudspeaker, through which they asked us to give ourselves up, promising that our lives would be spared if we came out of the shelter. We waved a white flag, but when we came out of the shelter my father said that our lives would not be spared and that they were going to kill us. I told him not to be scared and to come with us. They dragged us all along; women, children and men; my father tried to escape and they killed him in front of my mother and my little sister. They made us all walk; our injured neighbour was with us, carrying her intestines and haemorrhaging. She and I escaped into the Shatila camp, and from there we sought refuge in the Gaza hospital. When they arrived near the Gaza hospital, we ran away once again.

When the massacre was over, we went back and saw the corpses of the dead, including that of our neighbours' son Samir, who had been murdered. And under the corpses, they had placed bombs as booby-traps.

3. Shahira Abu Roudeina:

On Thursday 15 September, after sunset, the Israeli air force carried out some raids against us. We lived in the western part of the camp, and when the shelling started drawing nearer, we – my husband, my children and I – went to my parents' home at the entrance of the camp, to see where they wanted to go. But we all stayed at my parents' house until 7 pm, at which time, seeing as the shelling kept intensifying, my sister went to see what was happening outside. They immediately shot at her. She shouted, "Daddy!" and didn't come back. Hearing her cry, my father went out. He saw her and said, "Our little girl is dead." Then they shot at him, and he fell. The whole camp was lit up by light flares, and none of us could go outside. We stayed locked in like that until 2 am. Then we understood that there had been a massacre.

The noise of the killing and the screams haunted us until dawn. At five in the morning, they came down through the roof, and suddenly we saw them on the stairs in front of the door of the bedroom where we were. About fifteen armed men positioned themselves at the window, and four of them came in. The children screamed and cried, and we women screamed, too. They put the men against the wall -- my husband, my paternal cousin and my brother – and they pumped them full of bullets in front of us. They made us come out and lined us up in our turn against the wall, wanting to pump bullets into us as well, but then they started arguing about who would be the first to shoot. Then they took us to the Sports Centre and took us into a room full of men, women and children. While guarding that room, they were also sharpening their axes and preparing their guns. It was Friday, at about five am. At midday, they brought back the young men and the women from the

rest house, as well as some people from the Kuwaiti embassy. In the middle of the Sports Centre there were mines which had been there since the beginning of the Israeli invasion. One of the mines exploded. People fled, and we were among them. What can I say? When we were at the Sports Centre, the Israelis were securing the protection of the Phalangists, and Israeli tanks were stationed there. Also, it was the Israelis who shouted into the loudspeakers, "Give yourselves up and your lives will be spared."

4. Hamad Mohammed Shamas:

On Wednesday, when the Israeli army arrived at the Sports Centre with its tanks, and when we found out that the Israelis were there, I went with a friend to ask them what was going on.

They asked me if I was a terrorist, I said "no". Then they said to us, "stay at home, there's nothing going on". I went home. It was the 15th of September.

On Thursday 16 September, I was talking to Abu Merhef and Abu Nabil when suddenly we heard the sound of bombs falling on the houses, and the screams of injured people. We ran to help the wounded, and to drive them the Akka and Gaza hospitals. Afterwards, I suggested to my father that he go down into the shelter. The shelling kept intensifying, and we went down into the shelter. The children were thirsty. I went to get some water and blankets. My brother had been away from the house for 15 days because he was working. He came, and stood with us at the door to the shelter. Suddenly, we saw some Israelis and some Phalangists coming towards us, swearing and cursing. They told us to come out. We did. They placed us against the wall and pointed at Abu Merhef; he had 500 pounds in his pocket. Abu Merhef told them to take 250 pounds and to leave him with 250 pounds for the children. When they heard that, they immediately shot at the men. I was hit and I pretended to be dead. Three or four others fell on top of me. They were dead – Abu Hassan Al Bourgi, Kassem Al Bourgi, Abu Nabil and Ali Mehanna. I remember that Ali Mehanna survived his injuries for at least an hour; when he regained consciousness he started calling for help and asking if there was anyone still alive. I said, "I am," and he said, "who?" I said, "Hamad." He said, "Please Hamad, I am injured in the stomach and in the hand. Say hello to my mother, my sister, so-and-so, and tell them Ali sends his love." I said, "How do you know that I'm going to live? Is there anyone else alive near you?" He was sitting up and I was still lying down. A little while later they came back and said to Ali, "Are you still calling?" They insulted him and hit him on the head. But he got up again and he said to them, "Is that how you treat us, you sons of bitches?" because he thought they weren't supposed to attack the Lebanese. They then resumed their task, 5 or 6 times. They fired more shots to make sure that everyone was dead. They pointed the gun at my thigh and fired. They had come back to make sure everyone was dead. At about five in the morning, I tried to get up from where I was. There was a wall next to me. I moved along the road and I heard the sound of the tanks. I went to hide in the home of Osman Houhou, which had been destroyed. Suddenly I heard an Israeli on a microphone saying, "Give up your weapons, you will have your lives spared and those of your family."

I tried to climb up the slope in order to give myself up like they said. When I was almost there, I looked and I saw them placing the men on one side and the women on the other. Then I saw them shooting them. That's why I went back to hide in the house I had left a little while earlier. I stayed there until the evening. They were sitting around a table drinking alcohol, there was only a wall separating me from them. The wall was cracked; I could see what was happening. They were saying to each other, "don't leave anything that moves."

In that way I remained in the house until 10 o'clock on Sunday morning. I lost hope and I couldn't handle any more, I decided to go out even if it meant being killed. I tried to go

back to our house, but I found it destroyed. I couldn't walk because of all the dead people strewn over the road. And every time my hand touched one of them, I felt their flesh between my fingers.

I saw Um Bashir who had been killed with her seven children. It was as if she was sleeping with her seven children around her. I went back home and sat down with the dead. The Makdad girl came to call for help, and that's how I got taken to the hospital.

5. Milaneh Boutros:

We were at home that Thursday. There was shelling, and we went into the shelter. The place was packed with men, women, and children.

A little later, someone from, I believe, the Rashidiya camp came to take his family. Mohammed Shamas' brother also came and suggested that he leave. But Mohammed refused and we stayed in the shelter. I picked up my 2-year-old daughter and went out. I saw armed men and Israeli soldiers calling for people.

I went out first, thinking that they were there to protect us. I said to one of them, "You're here to protect us." He said, "Shut up!" and started insulting and swearing. "Shut up! Are you pretending to be Lebanese now?" I told him that I was from Zghorta and that my [husband] was Lebanese. He took us away. I was carrying one of my daughters, another one was holding my hand, and the other children were clinging to my clothes. We stepped over the corpses. The area was light as day because of the illumination flares. When we got to the Kuwaiti embassy, they took Ali, my husband's nephew, and they loaded us into trucks. We headed towards Dora and then Bikfayya. There, a woman stood on a balcony and said, "you're bringing me women; I want men." With us was a small boy of 13, Ali Zayyoun, who was cowering in a corner of the bus. As soon as they saw him, they took him and killed him. Then they took us to Ouzai. The next day they asked us to go back to our houses. There were Israeli patrols and Phalangist blockades everywhere. The ground was littered with corpses. At the door of the shelter I saw my husband, my son and other murdered people. Another corpse had been thrown on top of my son, who had been killed by an axe to his head.

6. Najib Abdel Rahman Al Khatib:

Before entering our house, the Israelis started firing flares to light the sky. When the shelling got nearer, my father took us into the shelter until the shelling calmed down a little.

We went to Akka hospital, where we slept one night. But at about 5 in the morning, they penetrated the hospital and we fled again. On the Saturday, I came back to the house to pick up some things. I saw only dead bodies on the ground, and I saw the Israelis and the Phalangists passing by. I went back again and I went in through the garden of our house; that's when I saw my dead father. I went to the house and I saw a basin. It was full of people's heads. I fled.

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

7. **Ellen SIEGEL**, US national, nurse in Beirut in 1982, currently lives in Washington DC (USA).
8. **Robert FISK**, British national, journalist, one of the first journalists to visit the camps after the massacre.
9. **Nabil AHMED**, survivor.
10. **Jean GENET**, French national, poet and playwright, visited the camps immediately after the massacre.
11. **Dr Swee CHAI ANG**, Singaporean national, doctor in Gaza hospital, Sabra, at the time of the massacre.
12. **Dr Per MIEHLUMSHAGEN**, Norwegian national, idem.
13. **Dr Ben ALOFS**, Dutch national, nurse in the Gaza hospital, Sabra, at the time of the massacre, currently lives in Great Britain.
14. **Dr David GREY**, British national, doctor in Gaza hospital, Sabra, at the time of the massacre (one of the three doctors who returned to the hospital after the initial evacuation with an official '*laissez-passer*' from the Israeli army), currently lives in Great Britain.

B3: Other plaintiffs:

12. Akram Ahmad Hussein:

Mr Hussein was in Tripoli at the time of the events. He lost his entire family: his mother, five brothers (aged 17, 13, 12, 11 and 11) and two sisters (aged 10 and 9).

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, in relevant part,

“Condemns the criminal massacre of Palestinian civilians in Beirut”

On 16 December 1982, the United Nations General Assembly adopted, with an overwhelming majority,¹⁶ 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 civilised 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,

Recognising 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 1951,¹⁷ 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* : 1) *The killing of members of the group*; 2) *A serious attack on the mental or physical integrity of members of the group...*”¹⁸

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

The intention to harm them was clearly fuelled by the fact that they were Palestinians. The American journalist Thomas Friedman, who was one of the first witnesses on the scene after the massacre, elucidates this phenomenon in his book:

Afterward, the Israeli soldiers would claim they did not know what was happening in the camps. They did not hear the screams and shouts of people being massacred. They did not see the wanton murder of innocents through their telescopic binoculars. Had they seen, they would have stopped it immediately.

All of this is true. The Israeli soldiers did not see innocent civilians being massacred and they did not hear the screams of innocent children going to their graves. What they saw was a "terrorist infestation" being "mopped up" and "terrorist nurses" scurrying about and "terrorist teenagers" trying to defend them, and what they heard were "terrorist women" screaming. In the Israeli psyche you don't come to the rescue of "terrorists." There is no such thing as "terrorists" being massacred.

Many Israelis had so dehumanised the Palestinians in their own minds and had so intimately equated the words "Palestinian," "PLO," and "terrorists" on their radio and television for so long, actually referring to "terrorist tanks" and "terrorist hospitals," that they simply lost track of the distinction between Palestinian fighters and Palestinian civilians, combatants and non-combatants. The Kahan commission, the Israeli government inquiry board that later investigated the events in Sabra and Shatila, uncovered repeated instances within the first hours of the massacre in which Israeli officials overheard Phalangists referring to the killing of Palestinian civilians. Some Israeli officers even conveyed this information to their superiors, but they did not respond. The most egregious case was when, two hours after the operation began on Thursday evening, the commander of the Israeli troops around Sabra and Shatila, Brigadier General Amos Yaron, was informed by an intelligence officer that a Phalangist militiaman within the camp had radioed the Phalangist officer responsible for liaison with Israeli troops and told him that he was holding forty-five Palestinians. He asked for orders on what to do with them. The liaison officer's reply was, "Do the will of God."¹⁹ Even upon hearing such a report, Yaron did not halt the operation.

This collective "demonisation" of Palestinians described by Mr Friedman is also evidenced in Ariel Sharon's autobiography 'Warrior': The objective of the attack on Sabra and Shatila was "to clean the PLO cadres out of West Beirut."²⁰ In another passage from the same book, Mr Sharon explains the purpose of Israel's invasion of Lebanon in the following terms: "Any effective approach (...) would have to look not just at specific local targets but at **the entire PLO military and political infrastructure in Lebanon**. And this, whether we liked it or not, would force us to take into account the **entire** Lebanese tangle."

It also squares with the infamous comments of the Israeli prime minister at the time, who called Palestinians "two-legged animals," and with those of Rafael Eitan, who, according to the Kahan commission, shared responsibility for the massacre, and who once compared Palestinians to "drugged cockroaches."

Furthermore, it is clear from the testimony of the plaintiffs and other survivors of the massacre that, in addition to the Israeli commanders, those who actually carried out the massacre exhibited a similar hatred for Palestinians as a national group. Although it is true that a large number of Lebanese were also killed, the ethnic nature of the killings is clear from many plaintiffs' accounts of formal or intended distinctions being made between Lebanese and Palestinians. As plaintiff Adnan Ali Mekdad recounts: "My mother saw the

armed men, made them some tea and told them she was Lebanese. They told her that they were only after the Palestinians, and that, being Lebanese, she could stay in the area, no-one would bother her, she just had to keep her ID papers with her.”

The hatred of Palestinians as an ethnic group, on the part of the Israeli military command as much as on behalf of the Phalangist perpetrators, is clearly noted by several journalists including Thomas Friedman:

The Israelis had so demonised Sabra and Shatila as nests of Palestinian terrorism and nothing more that they didn't even know that probably one quarter of the Sabra and Shatila neighbourhoods were inhabited by poor Lebanese Shi'ites who had come to Beirut from the countryside.... A picture in the As-Safir paper the day after the massacre was exposed captured the blind tribal rage of the Phalangists who tore through the camps. The picture, which occupied most of the top of the front page, consisted of a single hand. The fingers of this hand were locked around an identity card that could easily be read. The card belonged to Ilham Dakir Mikdaad, age thirty-two. She was a Shiite woman whose entire family, estimated to be forty individuals, was wiped out by the Phalangists. Her body was found lying on the main street in Shatila, with a row of bullets running across her breasts. It was clear what had happened: she must have been holding up her identity card to a Phalangist, trying to tell him she was a Lebanese Muslim, not a Palestinian, when he emptied his bullet clip into her chest.²¹

These conclusions are supported by the notorious assertions taken up in the enquiries and reports of the day regarding the collective dimension of the massacre (women and children as well as men), and the particular vindictiveness against pregnant women (see for example the testimonies of Mohammed Ibrahim Faqih and of Shawqat Abu Roudeina) and babies. From these numerous reports and testimonies, several instances stand out: a baby being trampled to death,²² the assertions of Lieutenant Avi Grabowski (who was present during the massacres but was ignored by the superiors to whom he reported what he saw),²³ and, especially, confirmation of the collaboration between the killers and the Israeli Ministry of Defence:

*At one point,²⁴ Sharon began to stress the need to destroy whatever was left of the PLO's infrastructure in West Beirut and emphasised the danger of letting terrorists remain free in the city: **"I don't want a single one of them left!"**, he was quoted as saying in a session with Hobeika, a Phalangist militia head.*

***"How do you single them out?"** Hobeika asked.*

*It was an odd question for a high-ranking officer in a militia known for its talent at ferreting out terrorists, and **Sharon decided to evade it. "I'm off to Bikfaya now,"** was his reply. **"We'll discuss that at a more restricted session."**²⁵*

To that note, which Israeli authors qualified as "sinister," it must be added that, in the jurisprudence of the ICTY,²⁶ the "specific intention of the crime of genocide does not have to be clearly expressed. (...) It can be inferred from a certain number of elements, such as the general doctrine of the political project (...) or the repetition of discriminatory destructive acts (or) the perpetration of acts undermining the foundation of the group."²⁷ In the *Akayesu* case, the tribunal concluded that "[t]his intention can be deduced from a certain number of elements, relevant to genocide, crimes against humanity and war crimes, by example of the massive and/or systematic character or of their atrocity (...)"²⁸

In conclusion, all the constituent elements of the crime of genocide, as defined in the 1948 Convention and as reproduced in article 6 of the ICC Statute and in article 1§1 of the law of 16 June 1993,²⁹ 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, crimes against humanity occur whenever certain acts³⁰ 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 “[a]ttack 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 organisational policy to commit such attack.” It is clear 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.³¹

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 crucial to note that, in the strictest sense of the term, these legislative texts do not incriminate a crime against humanity but confirm its pre-existent incrimination. The ICC Statute makes this clear in article 10.³² The Belgian legislator expressed this unequivocally during the preparatory work for the law of 1999.³³

Once again³⁴ it is clear that ***International Customary Law*** and the *ius cogens*³⁵ are the sources of incrimination for crimes against humanity. Several judicial decisions have explicitly confirmed this source of incrimination,³⁶ including the ICTY.³⁷ Particularly interesting in this case are, on the one hand, the Israeli Supreme Court's decision in the Eichmann case, which is explicitly drawn from “the Laws of Humanity” and “the dictates of Public Conscience,”³⁸ 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’.*”³⁹

Thus, every definition of ‘crime against humanity’ is – by definition – always incomplete. It is also important to note that the definition in the ICC Statute (and in Belgian law) is more restrictive than that of Nuremberg,⁴⁰ which to this day remains a primary source of customary law (as applied in the Eichmann and Pinochet affairs).

The facts of this case clearly indicate the commission of crimes against humanity in the sense of both definitions (Nuremberg and the ICC). The following analysis, based on the strictest definition (that of the ICC), demonstrates this sufficiently.

B2. First and most essential 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 were in the camps, these groups had been evacuated several days earlier in conformity with the aforementioned ‘Habib’ accords. If Israeli reports mentioned isolated acts of resistance, there is every indication that these constituted legitimate acts of resistance on the part of civilians, and such acts in no way alter the civilian nature of the population. According to the jurisprudence of the ICTY, even the presence of a minority of armed people in a group comprised primarily of civilians

does not modify the *civilian* character of the group.⁴¹ This jurisprudence conforms to the commentaries of the ICRC in the 8 June 1977⁴² Additional Protocol (Protocol 1) to the Fourth Geneva Convention of 12 August 1949 relating to the protection of victims of international armed conflicts.

The concept of protecting the life and integrity of civilians is based on empirical and dramatic historical experience, as is expressed very well in the preamble of the ICC Statute: “*Mindful that during this century millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity...*” Therefore, every attack that targets civilians as such is eminently *grave*.

The exclusively civilian presence in the two refugee camps is confirmed by the ensemble of testimonies and reports. The most revealing testimony came from an (unnamed) information services officer on the evening of the first day of the massacre, Thursday 16 September, at 20.40 – “*There are evidently no terrorists in the camp.*”⁴³

Not only did civilians exclusively populate the camps, but the Israeli commander had even been aware of this since the previous day.

As indicated above, Article 7.2 of the ICC Statute specifies the notion of attack against a civilian population by adding two additional sub-criteria:

B2.1. First sub-criterion: multiple crimes

The first sub-criterion refers to the number of crimes (multiple commissions). The classic doctrine that the crime be committed on a massive scale is not necessarily to be measured statistically. There are no abstract criteria or specific figures for qualifying these terms.⁴⁴ In addition, as mentioned above, the large-scale criterion 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 contrary, a proposal to include as a condition that the crime be “perpetrated on a large scale” was rejected.⁴⁵

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 plaintiffs and witnesses, who constitute only some of the survivors of the massacres.

The references to rape are particularly systematic. The details of the rape and murder of a young woman of 19 who worked at the hospital are well known (cf. the testimony of Ben Alofs), but the phenomenon’s recurrence can be found in several passages, mentioned, for example, in Kapeliouk.⁴⁶

B2.2. Second sub-criterion: organisation 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 objective*** (of a state or an organisation). The notion ‘political’ demands a certain degree of co-ordination in the organisation, state or otherwise, to which the perpetrators belong.

The importance of this second sub-criterion must, however, be qualified further: the most recent evolution of the ICTY jurisprudence shows that the criterion of co-operation is no longer considered a *constituent element* of a crime against humanity, but rather, as an index of the systematic nature of the crime.⁴⁷ The reverse is already accepted by doctrine and precedents: the general or systematic character in itself constitutes evidence of prior planning.

In any case, even if we set aside the most recent developments in the subject, the present facts sufficiently demonstrate that the massacres were planned and organised.

First of all, the highly efficient cooperation between the Phalangist forces and the regular Israeli army (IDF) clearly indicates the existence of prior planning or at least organisation, without which the massacre at Sabra and Shatila could not have taken place.

Israeli forces completely sealed off the camps, and several reports emphasise how those who attempted to escape the massacre were turned back, often at gunpoint, by the Israeli soldiers who had been commanded to “seal off” the camp.⁴⁸

Several testimonies of foreigners confirm these facts. The testimony of Astrid Barkved before the Nordic Commission is particularly clear on this point:

“Nordic Commission: *Did I understand you correctly that all Thursday, that is the day between those two days which we have been speaking about, soldiers forced people back into the two camps? People were trying to flee from the camps?*

Astrid Barkved: *People tried to flee from the camp and some carried white flags. They went to the Israelis to tell them to stop shooting but they were sent back again to the hospital.*

Nordic Commission: *By Israeli soldiers or by other soldiers?*

Astrid Barkved: *By the Israelis.*

Nordic Commission: *So they were forced back into the camp on Thursday?*

Astrid Barkved: *Yes.*⁴⁹

In addition to the facts detailed in this first part of this complaint, the premeditated and coordinated nature of the massacre is evidenced by the following incidents:

- 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,⁵⁰ one of these meetings took place in the night of 12-13 September and concerned the “cleaning” of the camps;
- On 9 July 1982, Sharon proposed to U.S. Envoy Habib to send the Phalangists into West Beirut,⁵¹ thus evidencing that he had effective 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 “cleanse” Lebanon of everyone involved in or linked to the PLO. It is in accord with this intention that Israeli journalists explain the ensemble of the operation as a grand design of Mr Sharon, which included the “transfer” of Palestinians from South Lebanon, if not from the entire country;⁵²
- In his testimony before the official Israeli Commission of Inquiry, General Yaron declared that he completely approved the decision to send the Phalangist forces into the camps of Sabra and Shatila, particularly because: *“The fighting serves their purposes well, so let them participate and not let the IDF do everything.”*
- The MacBride Commission posits 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;⁵³

- In the same MacBride report, the international commission also placed the massacres of Sabra and Shatila in the larger context of a policy of destruction -- including by shelling – of a series of buildings of clearly civilian character (hospitals, schools etc).⁵⁴
- Finally, various sources,⁵⁵ as well as the testimonies of the plaintiffs, demonstrate that the armed Israeli forces not only instigated and facilitated the actions of the Phalangists, but also that IDF soldiers participated in them on site. This is confirmed by the crucial testimony of a Dutch doctor (then a nurse) who was present at Sabra and Shatila at the time of the massacre and who, among others, confirms having personally witnessed the close coordination between the armed Israeli forces and the Phalangists in the camps.⁵⁶

It is necessary to wait for the convergence of testimonies on this subject, which for the first time are to be heard before a tribunal.⁵⁷

From the statements of the plaintiffs and witnesses arise two important 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 and the Phalangists, if not in the actual killing, then certainly in the segregation, interrogation and conducting 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 the three days of the massacres.⁵⁸ It must be remembered that the militia were directly solicited for the “mopping up” work, that the various logistical aspects, including using an Israeli bulldozer to raze houses and dig mass graves, as well as the continuous illumination of the night skies by Israeli flares, and the delivery of “fresh” militia on the afternoon of the second day, all hinged upon direct orders from the Israeli command. Gen. Ariel Sharon himself gave the order to allow the Phalangists to enter the camps “under the supervision” of his own army:

[Wednesday 15 September]: At 9:00 A.M. Sharon arrived at the forward command post together with Saguy. After being told of the Phalange’s willingness to enter the camps, he repeated his order to send them in “under the IDF’s supervision.”⁵⁹

It is thus not surprising that different testimonies recount the presence of Israelis inside the camps. In the reports and the inquiries, the names of soldiers who saw the killing and protested to their superiors are numerous.⁶⁰ Only a few soldiers made the first move and confided their experiences and concerns to journalists and investigators, but naturally those who were with the militia did not do so, and the inquiry should determine how the claim that no Israeli military personnel ever entered the camps can still be maintained.

Even if an inquiry into the presence of Israelis in the camps during the massacre did not come to fruition, there is no doubt (particularly on Friday 17 and Saturday 18 September) that dozens of civilians, mainly men, disappeared after a “screening” process had been completed in the presence of the Israeli army. There are numerous testimonies about these lethal selections, particularly those that took place at the Sports Centre adjoining the camps, where the Israeli army was present in force.

Following are excerpts from some of the testimonies that support these two new elements, which demand a fuller investigation:

Wadha Hassan Al Sabeq:

We were at home on Friday 17 September; the neighbours came and they started to say: Israel had come in, go to the Israelis, they are taking papers and stamping them. Suddenly, after having gone out to see the Israelis, when we got there, the tanks and the Israeli soldiers were there, we were surprised to see that they had the Lebanese forces

with them. They took the men and left us, women and children, together. When they took the children and all the men from me, they said to us, "Go to the Sports Centre," and they took us there. They left us there until 7pm, then they told us, "Go to Fakhani and don't go back to your house," then they started firing shells and bullets at us.

There were some men standing to one side; they took them and we have never found out what happened to them. To this day we know nothing about them and they are still considered disappeared.

Mahmoud Younis:

At the Sports Centre, I saw the Israeli military, as well as tanks, bulldozers and artillery, all Israeli. We also saw groups of Phalangists reunited with the Israelis.

Jamila Mohammed Khalife:

The Israelis and the Phalangists came back a short while later with a loudspeaker, through which they asked us to give ourselves up, promising that our lives would be spared if we came out of the shelter. We waved a white flag, but when we came out of the shelter my father said that our lives would not be spared and that they were going to kill us. I told him not to be scared and to come with us. They dragged us all along; women, children and men; my father tried to escape and they killed him in front of my mother and my little sister. They made us all walk; our injured neighbour was with us, carrying her intestines and haemorrhaging.

Amina Hassan Mohsen:

An Israeli told us to go out. Then we saw a person speaking Lebanese. When we went out under cover of the Israelis, they started shouting at us. At that moment I counted my children and I saw that Samir was missing...

Shahira Abu Roudeina

What can I say? When we were at the Sports Centre, the Israelis were securing the protection of the Phalangists, and Israeli tanks were stationed there. Also, it was the Israelis who shouted into the loudspeakers, "Give yourselves up and your lives will be spared."

Bahija Zrein:

An Israeli patrol presented itself to us and asked us to go to the Sports Centre. The men went, while we women were taken to the Kuwaiti embassy.

That's how we saw them loading the young people into the cars. Among those young people was my brother. They blindfolded them and they loaded my brother in the car. That's how he disappeared and I have never seen him again since.

Fadi Al Sakka

On Saturday at about midday, while we were still at home, we saw the Israelis arriving at our house. They told us all to come out. I was a little boy of 6 at the time. We came out and they took us to the road to the western side. My father was carrying my little brother; they told him to give the child to my grandmother, who was also with us. They wanted to take away my father and my uncle, so my grandmother asked where they were taking them. Someone told her that they would be back soon.

The indications of planning and coordination are numerous and convincing. In every hypothesis, the proof of this constituent element, as with all proof of intention required for the crime of genocide, can be gleaned from the objective circumstances of the event.⁶¹

B3. Second constituent element: The generalised or systematic character of the attack:

On this point of jurisdiction customary law has also evolved since the Nuremberg and Tokyo trials: currently it is no longer necessary for the attack against a civilian population to be generalised *and* systematic.

Yet the murders and other criminal actions committed at Sabra and Shatila were generalised **and** systematic. The fact that access to the camps was closed and that groups of killers “mopped up” area after area over the course of three days, indicates systematic planning.

B4. Third constituent element: The moral element

Finally, the crimes must be committed **in the knowledge** of a generalised or systematic attack against a civilian population.

As demonstrated in the ICC Statute, it is no longer necessary that a perpetrator of a crime against humanity must have acted according to a policy of persecution, repression or extermination. It is sufficient for the perpetrator to have acted with knowledge of cause (*sciens et volens*, cf. article 30 of the ICC Statute). This regulation is founded in customary law as well as in the relevant conventional 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 to recall UN General Assembly resolution 37/123D, by which the Sabra and Shatila massacres 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 developed further during the discussion of the individual penal responsibility for the Sabra and Shatila massacres (cf. *infra*, point IV).

C. WAR CRIMES

Committed in violation of the provisions of the 1949 IV Geneva Convention relative to the protection of civilians in times of war (ratified by Israel⁶² and by Belgium⁶³), the Sabra and Shatila massacres must equally be qualified as war crimes according to the terms 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 introducing 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 that 2,000 armed persons were inside the camps⁶⁴ are patently contradicted by the facts. Very few of the Sabra and Shatila refugees put up the slightest 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 as civilians (see *supra*, B2).

The Israeli army was, at the time of the massacres, an occupation force in the sense of article 4 of the same IV Convention, and thus, this army had a clear responsibility towards the protected persons.

War crimes consist of, notably: intentional homicide, torture or other inhumane treatment; the destruction of property without military necessity, as well as generally subjecting a civilian population or civilian people to attack, and subjecting undefended localities to attack. All these crimes were committed at Sabra and Shatila by the Phalangist militia, actively supported by the Israeli Defence Forces, who had given them control of the camps “under their supervision.”⁶⁵

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.⁶⁶

A combination of violations was also established by the French Cassation Court in the *Barbie*⁶⁷ 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 punishable in international customary law (*ius cogens*) as well as in positive Belgian law.

III. UNIVERSAL COMPETENCE OF BELGIAN COURTS

A. GENOCIDE

Universal competence to pursue and punish the crime of genocide stems primarily from *ius cogens*, and notably from the 1948 Convention. In its 8 April 1993 decision, the International Court of Justice declared, “*all parties have assumed the obligation to prevent and to punish the crime of genocide*”⁶⁸ and, “*the rights and obligations established by the 1948 Convention are rights and obligations erga omnes.*” The ICTY Appeals Chamber declared in the *Blaskic* case that the obligation for each national jurisdiction “*to judge or to extradite the persons presumed responsible for grave violations of international humanitarian law*”⁶⁹ was customary in character. If it is true that Article VI of the Convention effectively expresses preference for the jurisdiction of the tribunals of the State directly concerned with the events, this competence is however not exclusive.⁷⁰

From the preceding considerations there follows the observation that the law of 10 February 1999 (modifying the law of 16 June 1993) is a *procedural law* relative to universal competence for crimes of genocide. This law is therefore immediately applicable, whatever the date of the violation.⁷¹ The Belgian legislator has also clearly applied the same principle in the same domain with the 22 March 1996 law relative to the recognition of the International Tribunal for ex-Yugoslavia and Rwanda: this recognition rests, in effect, on a *formal* competence in positive Belgian law in relation to deeds committed since 1991, well before the law of 22 March 1996.

B. CRIMES AGAINST HUMANITY

The civil parties fully adhering to the reasoning developed in the order rendered on 6 November 1998 in the Pinochet case⁷² and based in particular on the observation that the crime against humanity can be incriminated in the *ius cogens*.

This same reasoning can be found in a number of decisions pronounced in other countries, as, for example, in the *Demjanjuk* decision, in which a United States federal court decided: “*The universality principle is based on the assumption that some crimes are so universally condemned that the perpetrators are the enemies of all people. Therefore, any nation which has custody of the perpetrators may punish them according to its law applicable to such offences ... Israel or any other nation ... may undertake to vindicate the interest of all nations by seeking to punish the perpetrators of such crimes.*”⁷³

In addition, the civil parties emphasise that the Belgian government and legislature expressly approved this reasoning in the preparation of the law of 19 February 1999, modifying the law of 16 June 1993.⁷⁴ In confirming the *ius cogens* as a source for incrimination, the government and legislator also evidenced the **procedural law** character of the law of 10 February 1999. As such, and particularly with regard to universal competence, it is thus (as is the crime of genocide) for immediate application, whatever the date of the violation.⁷⁵

C. WAR CRIMES

According to article 146 of the 1949 Geneva Convention, “*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. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.”

Hence, the Military Code of the United States of America contains an express disposition with regard to the universal competence for crimes against humanity.⁷⁶

The law of 16 June 1993 forms, in domestic Belgian law, the execution of this international obligation in terms of universal jurisdiction. Also according to these terms, the law of 16 June 1993 must be immediately applied, whatever the date of the violation (cf. supra).

IV. RESPONSIBILITIES

Until the completion of an in-depth investigation, it will not be possible to determine the exact responsibilities of the protagonists of these crimes. The Kahan Commission Report concluded that Defence Minister Ariel Sharon bore personal responsibility for 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 unquestionably General Ariel Sharon, then Israeli Defence Minister, who personally directed the military operations in Lebanon and who was in Beirut at the time of the events. Mr Sharon is currently Prime Minister of Israel.

Certain information indicates that Mr Sharon, although preferring to allow his local collaborators to perform the massacre in the camps, might have planned it with a view to terrorising the entirety of the Palestinian population of the Lebanon into leaving, or retreating to the north of the country.

The constituent elements of these indications are Sharon's public announcement that "*2,000 terrorists remain in the camps*" and his 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.

It is noteworthy that in the weeks leading up to the massacre, other war crimes were committed against the civilian Palestinian population of South Lebanon, notably in Tyre and Sidon.⁷⁷

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 contradicted the will of the occupying power, and the operations they carried out were devised and prepared in collaboration with the Israeli military leaders.⁷⁸

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 illuminating the camps throughout each night.

As for the main executioners, one can refer to the names cited in the Kahan reports and in the works of Kapeliouk and Schiff and Ya'ari.⁷⁹

It is worth considering Article 4 of the law of 16 June 1993 concerning the inclusion of participatory acts to the crime in the sense of Articles 66 and 67 of the Penal Code, and failing actively to intervene to prevent or put an end to the offence in the event that it is possible to do so. This last incrimination – that of the *responsibility of the superior* [or *command responsibility*] – has its origin in the jurisprudence of the Nuremberg tribunals and was clearly marked in Articles 86 and 87 of the 1977 Geneva Protocol 1. These regulations relating to the responsibility of the superior are also present in customary law.^{80, 81} Related to this point is the fact that the law of 16 June 1993 has not created a new incrimination. Article 4 of this law states and confirms a pre-existing regulation in international customary law. As such, and in light of Articles 7.2 of the ECHR and 15.2 of the 1966 International Pact on Civil and Political Rights, it can be applied to the facts of the present case.

Regarding the responsibility of the superior, it is necessary to add that it applies not only to offences committed by persons in a formally subordinate relationship, but also to all other persons – whether soldiers or not – who, at the time of the offence find themselves under the control of the superior. The tie of subordination is estimated both *de jure and de facto*.⁸²

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, commander of the division and Brigadier General at the time of the events and currently Secretary General of the Defence Ministry, and against all other persons, whether Lebanese or Israeli, whose responsibility will be established during the course of the investigation.

V. DAMAGES

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

Awaiting the results of the investigation, they have provisionally estimated their damages, per plaintiff, at the sum of 1€ for moral damages and 1€ for material damages.

¹ The “Revolutionary Council,” better known as the “Abu Nidal Group,” cf. Z Schiff and E Ya'ari, *Israel's Lebanon War*, New York, Simon & Schuster, 1994, 97-100, on page 99: “The three detainees [arrested by Scotland Yard] also disclosed that an envoy from Baghdad emissary had brought them orders to carry out the assassination, and that they had received their weapons from the military attaché's office of the Iraqi embassy in London.” The name of the Iraqi responsible is mentioned by Dilip Hiro, *Iran under the Ayatollahs*, London, Routledge, 1985, 211: “*Israel's attack was triggered off by an attempt to assassinate Shlomo Argov, the Israeli ambassador to Britain, on the night of 3 June. The London operation was masterminded by Nawal Al Rosan, an Iraqi ‘carpet dealer’ who was later found to be a colonel in the Iraqi intelligence.*” (Footnotes omitted). It is worth noting that Ambassador Argov later denounced Ariel Sharon's war on Lebanon. [Note to the English text: Some quotes hereafter might be a translation from the French version of the complaint, as the original was not always available to the translators.]

² For a detailed catalogue of the violations of the Geneva Conventions with regard to the civilian population, see the report of the MacBride Commission (Nobel Peace Prize 1974), *Israel in Lebanon, The Report of the International Commission to enquire into reported violations of International Law by Israel during its invasion of the Lebanon*, 28 August 1982 – 29 November 1982, London, Ithaca, 1983, 187-192 (Conclusions) – hereafter referred to as the MacBride Commission.

³ According to Kapeliouk, *Sabra et Shatila: Enquête sur un massacre*, Paris, Seuil 1982, citing Ha'aretz of 15 September 1982, General Eitan declared the previous day before the Knesset's Commission for Foreign Affairs that “*[n]othing remains in Beirut but some terrorists and a small PLO office.*” Kapeliouk, p 30.

⁴ Benny Morris, *The Righteous Victims*, New York, A. Knopf, 1999, p. 540.

⁵ Schiff and Ya'ari, *Israel's Lebanon War*, New York, Simon and Schuster, 1984, p. 251.

⁶ Ariel Sharon, *Warrior: An Autobiography*, Simon and Schuster, New York, 1989, p. 498.

⁷ Sharon at the Knesset, Annex to the Kahan Commission report, *The Beirut Massacre, The Complete Kahan Commission Report*, Princeton, Karz Cohl, 1983, p. 124 (Hereafter, the *Kahan Commission Report*).

⁸ Israeli Defence Forces [actual literal translation from Hebrew; 'tsahal' is an acronym of this phrase.]

⁹ Kahan Commission - Report, p. 125.

¹⁰ Kahan Commission Report, p. 14.

¹¹ Kapeliouk, p. 37

¹² Kahan Commission Report, p. 104: "We have found...that the Minister of Defence bears personal responsibility." We shall return to this edifying conclusion.

¹³ Emil Grunzweig. Avraham Burg, the current Speaker of the Knesset, was hurt during this demonstration.

¹⁴ The most well known works are the reports of the Kahan Commission, the MacBride Commission and the Nordic Commission, and the books of Robert Fisk, Ze'ev Schiff and Ehud Ya'ari, Amnon Kapeliouk, Thomas Friedman, Jonathan Randall and others. An enquiry by the Lebanese military prosecutor, which concluded that no responsibility lay with the executors of the massacre, has never been published. Tabitha Petran, *The Struggle Over Lebanon*, New York, Monthly Review Press, 1987, p. 289.

¹⁵ Schiff and Ya'ari, p. 285.

¹⁶ Resolution 37/123D was passed with 124 votes in favour, no votes against and 22 abstentions.

¹⁷ MB 11.2.1952.

¹⁸ [Translated from French].

¹⁹ Thomas Friedman, *From Beirut to Jerusalem*, New York, Farrar, 1989, p. 163.

²⁰ Sharon, p. 498.

²¹ Friedman, p. 164.

²² Schiff and Ya'ari, p. 264; "Infant trampled to death by a man wearing spiked shoes."

²³ "I saw Phalangists killing civilians. [...] One of them said to me: "Pregnant women will give birth to terrorists." Kapeliouk, p. 60. On the orders, idem.: "A parachute sergeant hears his officer announcing on his radio at 11h: 'It may not please us, but I forbid you all to intervene in what happens in the camps'."

²⁴ Thursday 16 September, just before the entry of the militia into the camps.

²⁵ Schiff and Ya'ari, p. 255. Hobeika was the militia head responsible for the first "mopping up" operation.

²⁶ I.T 95-5 and 19-R61, 11.7.1991 Karadic and Mendic.

²⁷ David, E., *Legal Principles of Armed Conflict*, Brussels, Bruylant, 1999, p. 661. ICTR, *Akayesu* case, verdict of 2.9.1998, in particular §478: “This intention can be deduced from a certain number of elements, concerning genocide, of the crime against humanity and war crimes, by example of their massive and/or systematic character or of their atrocity (...)”

²⁸ ICTR, *Akayesu* case, verdict of 2.9.1998, §478.

²⁹ 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, article 1§1.

³⁰ Notably murder, torture, rape and all forms of sexual violence of comparable gravity...all of which occurred at Sabra and Shatila.

³¹ It must be known in effect that in the last report of the preparatory committee for the creation of an international criminal court, published on 14 April 1998, several options were retained for the definition of a crime against humanity. One of these options imposed the condition that the crime was committed “in the context of a generalised or systematic campaign against a population,” another added the condition that the crime be “perpetrated on a large scale,” and a third added that the crimes must be “inspired by political, philosophical, racial, ethnic or religious motives, or resting upon any other arbitrary criterion.” Not one of these variations, which limited in some way the notion of crimes against humanity, was retained.

³² Article 10: “Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

³³ Belgian Senate 1998-1999, document 1-749/3, page 19 ff. In a note to the commission, the Minister of Justice specified that according to Belgian law, incrimination for a crime against humanity comes from the application of international custom, expressly recognised as a legal source in the International Covenant on Civil and Political Rights (ICCPR, article 15.2) and in the European Convention on Human Rights (ECHR, article 7.2). In this context, the Minister concludes, “The introduction of an explicit incrimination for crimes of genocide and crimes against humanity constitutes therefore only a confirmation of the existing law, while assuring a higher visibility...(ibid, p. 20).

³⁴ Another important legal reference is article 7.2 of the CEDH affirming that the imperative of legality, as well as the principle of non-retroactivity that is derived from this imperative, does not in any way oppose the pursuit and the condemnation of persons reputed to be “*criminals according to the wide principles of law recognised by the*

ensemble of nations.” An entirely analogous provision is found in the 1966 United Nations Pact (article 15.2).

³⁵ This idea was enshrined in the 1969 Vienna convention on the Treaties Law (article 53). It concerns customary laws, accepted and recognised by the international community of States, and unconditionally applicable to all.

³⁶ Among others, the *Barbie* case (with the important decision of principles rendered by the French Cassation Court, 20.12.1985).

³⁷ ICTY, *Tadic* case, n^o IY-94-I-T, judgment of 7.5.1997, §§622-623. In this regard, it is also worth noting that the jurisprudence for the two international criminal tribunals (ICT) has been an important source for the writers of the ICC Statute. This is illustrated in the exposé of the motives of the Belgian government as regards the law of assent of said statute.

³⁸ Cited by David, E., *Principles of the Law of Armed Conflict*, Brussels, Bruylant, 1999, p. 653.

³⁹ Investigative judge in Brussels, 6 November 1998, R.D.P.C. 1999, pp 278 ff., J.T., 99, pp. 308 ff.

⁴⁰ Given that ‘the systematic and/or organised nature’ was not a constituent element at the time, cf. the London Accord contains the following definition: “*Crimes against humanity’ means murder, extermination, reduction to slavery, deportation and every inhumane act committed against any civilian population, before or during a war, or even persecution for political, racial or religious motives, when these acts or persecutions were committed following any crime that comes under the competence of the Tribunal, or in liaison with that crime, whether or not they constitute a violation of the internal laws of the country where they are perpetrated.*”

⁴¹ ICTY, *Kordik* case, n^o IT-95-14/2-T, verdict of 12.2.2001, §178ss. ICTY, *Blaskic* case, n^o IT-95-14-T, verdict of 3.3.2000. In the verdict, the Tribunal stated (§214): “Crimes against humanity are therefore not only concerned with acts committed against civilians in the strictest sense of the term, but equally incorporate abuse against two categories of people: those who belong to a resistance movement or who were combatants, whether in uniform or not, but who are not participating in hostilities at the moment of perpetration of the crimes, whether because they have left the army, are no longer carrying weapons, or finally they have been placed out of combat, notably through injury or detention. It follows equally that the concrete situation of the victim at the moment of the crime, more than his or her status, must be taken into account in order to determine whether he or she is a civilian. The result is that the presence of a military in

the midst of a civilian population does not change its civilian character.”

⁴² Commentaries of the ICRC (www.icrc.org/dih.nsf/): “(...) In times of war, it is inevitable that individuals belonging to the category of ‘combatants’ will be found mixed in with the civilian population, for example soldiers visiting their families on leave. However, provided that they do not constitute numerous units, this in no way changes the civilian character of a population.”

⁴³ Schiff and Ya'ari, p. 262. General Yaron interrupts him as he reports his fear that women, children and old people will be massacred.

⁴⁴ In this sense: ICTY, *Vukovar hospital* case, n° IT-95-13-R61, in particular paragraph 30 of the verdict.

⁴⁵ Cf. the report of the preparatory committee of 14.4.1998 doc. UN: A/CONF. 183/2/Add1, page 26. Also see: Human Rights Watch, *Justice in Balance – Recommendations for an Independent and Effective International Criminal Court*, June 1998, pp. 36-37: “(...) to require that crimes against humanity be committed as part of both a widespread and systematic attack imposes too high a threshold and is inconsistent with existing international standards. The same applies to the words ‘on a massive scale’ (...), which should be deleted... The requirement that the enumerated acts be committed as part of a widespread or systematic attack is consistent with the state of current international law.”

⁴⁶ Kapeliouk, p 47: *“They crush the heads of children and babies against the walls. Women, and even girls, are raped before being killed with an axe...”*

In the same area, several other women are raped before being killed. They are then undressed and their bodies lain out in the shape of a cross. One of the young girls raped, from the Mikdad family, is only seven years old...”

p. 60: *“The entrances to the camp are blocked and again and again the Israeli soldiers order the refugees trying to leave to turn back. The most striking case is a group of 500 people, who had found refuge in the Gaza hospital in Sabra, and who escape during the course of the afternoon when they hear that the militia have entered the hospital killing, wounding and raping everything in their path. Waving white flags, the unfortunate people arrived as far as the Al Mazraa coastal road... They are then stopped by Israeli soldiers. Their spokesperson explains that the people from Saad Haddad are murdering everyone. They receive nonetheless an order to return to the camp. Countering their hesitation, an Israeli tank points its cannon at them and obliges them to turn around.”*

p. 64: *“They tell of the torture, the women raped three, four or five times in a row, whose breasts were cut off before they were killed.”*

p. 84: *“My neighbour... lived opposite. She and her family stayed at home; no doubt they had not fully understood what was happening, so long have we been living with the noise of fighting and shelling. When we came back we found her, her hands and feet bound and her throat having been slit with a knife. Her underwear had been torn off and I think she had been raped.”*

⁴⁷ See, in particular, ICTY, *Kordic* case, n° IT-95-14/2-T, verdict of 26.2.2001, §182: The Trial Chamber agrees that it is not appropriate to adopt a strict view in relation to the plan or policy requirement. In particular, it endorses the Kupreskic finding that “although the concept of crimes against humanity necessarily implies a policy element, there is some doubt as to whether it is strictly a requirement, as such, for crimes against humanity.” In the Chamber’s view, the existence of a plan or policy should better be regarded as indicative of the systematic character of offences charged as crimes against humanity.

⁴⁸ The episode of the delegation of four men aged between 55 and 62 years and carrying a white flag is well known. It was Thursday night, at the beginning of the killing: “They went towards the Israeli post beside the Kuwait embassy, in order to explain that in the camp were neither weapons nor fighters and that its inhabitants would give themselves up...they were seen advancing towards the south side of the camp and then they disappeared. Two days later, three of their corpses were found...” Kapeliouk, p. 51.

⁴⁹ Nordic Commission report, pp. 117-8.

⁵⁰ Alia, J. “Lebanon: What Sharon will never say...”, the *Nouvel Observateur*, 6 November 1982; Morris, B., *The Righteous Victims*, New York, Alfred Knopf, 1999, p. 540.

⁵¹ Schiff and Ya’ari, *Israel’s Lebanon War*, New York, Simon and Schuster, 1984, p. 251.

⁵² Idem., for various quotes see pp. 240-241.

⁵³ Report of the International Commission to Enquire into Reported Violations of International Law by Israel During its Invasion of the Lebanon, presided over by Sean MacBride. Concerning the implication of the (armed) Israeli forces, the report concludes: *“The commission concludes that the Israeli authorities bear a heavy legal responsibility, as the occupying power, for the massacres at Sabra and Shatila. From the evidence disclosed, Israel was involved in the planning and the preparation of the massacres and played a facilitative role in the actual killings”* and *“8. Israeli authorities or forces were involved, directly or indirectly, in the massacres and other killings reported to have been*

carried out by Lebanese militiamen in the refugee camps of Sabra and Shatila (...).”

⁵⁴ Cf. in particular conclusions 4 and 5: “4. *There has been deliberate or indiscriminate or reckless bombardment of a civilian character, of hospitals, schools and other non-military targets. 5. There has been systematic bombardment and other destruction of towns, cities, villages and refugee camps.*”

⁵⁵ Cf. MacBride report: In the report, it is alleged that an ID card belonging to an IDF sergeant was found in the ruins of a house in Shatila, as well as a ‘*laissez-passer*’ written in Hebrew, giving a doctor access to the camps. The latter is confirmed in the testimony of Dr Ben ALOFS (annexed).

⁵⁶ Testimony of Dr Ben ALOFS annexed.

⁵⁷ Some commendable attempts, including certain extremely persuasive ones, were made to gather the testimonies of victims, but the Kahan Commission did not consider the testimonies of any of the massacre survivors. Even the testimonies of the hospital personnel were considered suspect in the Kahan report.

⁵⁸ It is worth noting that the information officers are not named, and that the Kahan commission report had a secret appendix, the contents of which have never been divulged.

⁵⁹ Schiff and Ya'ari, p. 254.

⁶⁰ Lieutenant Grabowitz and others.

⁶¹ David, E. op.cit., p 661, citing the jurisprudence of the ICTY and the ICTR as well as the consultancy of the ICJ.

⁶² Israel ratified the four 1949 conventions on 6 July 1951. The only reservations formulated in relation to this ratification concerned the use of the Red Shield of David as an emblem and distinctive sign (cf. the list on the ICRC website: <http://www.icrc.org>).

⁶³ On 3 September 1952, Belgium ratified the four 1949 conventions. Additional protocols 1 & 2 were ratified on 20 May 1986.

⁶⁴ Sharon's declaration, 11 September 1982.

⁶⁵ The MacBride Commission developed all these arguments almost twenty years ago to demand the establishment of a Special Tribunal for judging the crimes at Sabra and Shatila: “The Commission recommends that the United Nations set up a special international tribunal to investigate and prosecute individuals charged with crimes of state, especially in connection with the Shatila and Sabra massacres. Such prosecutions should be carried by due legal process and with fairness to the accused.” (Recommendation 8, p. 193).

⁶⁶ ICTR, first chamber, ICTR-96-4-T of 2 September 1998, §§468 and following. See in particular §496, treating the problem of combination of crimes: “*With regard to its Statute, the Chamber is of the opinion*

that the violations targeted in the Statute – genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions and its Additional Protocol II – include different constituent elements and, above all, their suppression aims at protecting distinct interests. There is then reason to retain them for similar facts. Moreover, following the case, it may be necessary to obtain condemnation of more than one of the infractions in order to give the measure of crimes committed by the accused. For example, the general who gave the order to kill all prisoners of war belonging to a given ethnic group, with the intention of eliminating that group, would be guilty at the same time of genocide and of violating article 3, although not necessarily of crimes against humanity. A condemnation for genocide and for violations of article 3 would then give the measure of comportment of the accused general.”

⁶⁷ Judgement of 20 December 1985; *Bulletin of Judgments of the Cassation Court*, 1985, pp. 1038 ff.

⁶⁸ ICJ 8 April 1993, cited by David, op.cit., p. 667.

⁶⁹ ICTY, 29 October 1997, case IT-95-14-AR, §29: “(...) *The International Tribunal does not have the mission of replacing the jurisdiction of any State. By virtue of Article 9 of the Statute, the International Tribunal and the national jurisdictions are concurrently competent. The national jurisdictions of the States of Ex-Yugoslavia, as those of all States, are **required by customary law to judge or to extradite those persons presumed responsible for grave violations of international humanitarian law.** The primacy of the Tribunal foreseen in article 9 2) is applicable to all national jurisdictions or, if these jurisdictions lack this customary obligation, it can intervene and judge.*” (our emphasis)

⁷⁰ David, op. cit., p. 666.

⁷¹ Penal competence is in effect subject to the same regulations as civil competence, cf. article 3 of the Judicial Code and the general principle on which it is based. (Cass., 24-12-1973, Pas., 1974, I, 447; Cass., 16-10-1985, RDPC., 1986, pp. 410-414; Brussels 01-03-1995, RDPC., 1995, p. 756). In the same sense: Closset-Marchal, G., *The Application in time of the laws of civil judicial law*, Bruylant, 1983, p. 29; Tulkens, F. and Van De Kerckhove, M., *Introduction to Penal Law*, Story-Scientia, 1998, p. 208; Verhaegen, J. & Hennau, C., *General Penal Law*, Bruylant, 1995, p. 88, n^o 90.

⁷² Brussels Investigation and hearing judge, 6 November 1998, RDPC, 1999, p. 278, JT 99, p. 308.

⁷³ US Appeals Chambers, 6th Circuit, 31.10.1985, cited by David, E., op. cit., p. 634.

⁷⁴ The customary character of the incrimination of crimes against humanity has already been illustrated with the same preparatory works, in particular: Doc.Parl.Sénat, session 1998-1999, doc. 1-749/3, page 19 onwards.

⁷⁵ Cf. Cass., 30-06-1993, Pas., 1993, I, 635. Verhaegen, J. and Hennau, C., *General Penal Law*, Bruylant, 1995, p. 88, n° 90.

⁷⁶ US Army Field Manual 27-10, §507(a): “The jurisdiction of United States military tribunals in connection with war crimes (...) extends also to all offences of this nature committed against nationals of allies and of co-belligerents and stateless persons.”

⁷⁷ S. MacBride, Report of the International Commission to Enquire Into Reported Violations of International Law by Israel During its Invasion of the Lebanon, conclusion 6.

⁷⁸ See, among others, the 12 February 1983 article in *Der Spiegel*, in which a soldier from the Phalange militia claims that there was a strategic meeting in the early afternoon of Wednesday 15 September 1982. According to the same soldier, about a dozen Israeli soldiers (in uniform) participated in this meeting. Also according to the same source, the Israeli soldiers clearly controlled the strategy for the attack on Sabra and Shatila.

⁷⁹ The directors of the killer units are also named in R Hatem’s book, published in the USA by Pride Publications and entitled *From Israel to Damascus*.

⁸⁰ ICTY, *Deliać* case, IT-96-21-A, Court of Appeal judgment of 20-02-2001, §§215-241. As the Appeals Chamber expressly indicated in this judgment, the question of the origin of the ‘responsibility of the superior’ is dealt with in terms of principle and with the aim of fixing the jurisprudence of the ICTY. (cf. §221) In its conclusion, the Appeals Chamber decided that – according to customary law – ‘superiors are legally responsible for the offences committed by their subordinates, if they know about them or are in possession of information on the basis of which they should know about them’. (§241)

⁸¹ The circumstance that Israel is not a party to Protocol 1 (1977) is not an obstacle to the declaration of a customary incrimination of universal impact. At the time of the Kuwait war, the USA qualified certain attacks by the Iraqi army as “war crimes,” including the Scud missile attacks on Israel. According to Professor E. David, this incrimination has its source in Additional Protocol 1 of 1977. In view of the fact that the USA is not party to the Additional Protocol, he concludes that the incrimination with reference to the Scud attack has its origins in customary law. (David, E., op.cit., p. 582).

⁸² ICTY, *Deliać* case, IT-96-21-A, Appeals Chamber judgment of 20.2.2001, §195 onwards, in particular §197: “*In determining*

questions of responsibility it is necessary to look to effective exercise of power or control and not to formal titles. (...) The Appeals Chamber considers that the ability to exercise effective control is necessary for the establishment of de facto command or superior responsibility and thus agrees with the Trial Chamber that the absence of formal appointment is not fatal to a finding of criminal responsibility.”