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Defending Sharon

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on Ariel Sharon's defense against Irit Kohn, a key member of the Israeli team working the ,**Mallat Chibli** she'd like to meet the war crimes investigation in Belgium, says lead attorney for the Sabra and Shatilla survivors who are suing the prime Lebanese ".minister, "to explain to him a little about the history of Israel

Kohn, director of the International ,In her first in-depth interview about the affair Justice, tells The Jerusalem Report that the suit Department at the Israeli Ministry of the charges, though they have to be treated seriously, but worries her ? not because of animosity and hatred," and "the hypocrisy and lack of honesty" of the because of "the ".behind it who, she says, failed to go after "those who are really guilty people

Elie Hobeika and his Phalangist In Kohn's view, those who are "really guilty" are physically embarked on the 62-hour rampage of militiamen, Israel's former allies who Shatilla Palestinian refugee camps in Beirut in rape and murder in the Sabra and .Sharon, she insists, is political September 1982. The case against

in an interview with The Report that Sharon, who was for his part, argues ,**Mallat** time of Israel's invasion of Lebanon, bears "command defense minister at the .massacres responsibility" for the

however, to throw the blame onto ,Israel's defense strategy in the Belgian case is not thrust of the official response to the Hobeika. Rather, according to Kohn, the main to the investigating judge in Brussels by survivors' complaint, recently submitted hired by Israel, argues that the Belgian courts do Michele Hirsch, the Belgian attorney .the case at all not have the authority to try

discussing whether or THEY LINED US UP IN THE living room and they started" shot us. Those who died died. not to kill us. Then they lined us up against the wall and Ismail were hiding in the I survived with my mother. My brothers Maher and started to call my brothers' names; bathroom. When they [the soldiers] left the house, I dead. My mother and my sister were able when one of them replied I knew he wasn't incapable. A few moments later while I was to escape from the house, but I was me "you're still alive?" and shot me again. I moving, they came back, they said to got up and I stayed until Saturday. I pulled myself pretended to be dead. That night I middle of the room and I covered the bodies. As I put out my along crawling into the the water jug they shot at me immediately. I only felt a bullet in my hand to reach for the man started swearing. The second man came and he hit me on the head hand and gun; I fainted. I stayed like that until Sunday, when our neighbor came and with his ".rescued me

Srou al-Meri, an example of the The above is part of the chilling testimony of Su'ad Shatilla victims' complaint. Meri, a many accounts included in the Sabra and

miraculously survived the massacre. Aged 14 at the time, Palestinian resident of Shatilla, three brothers aged 11, 6 and 3, and two sisters aged 18. Nineteen years on, Meri appears as Number 11 out of 28 named in the case against Sharon and others on counts of war crimes against humanity and genocide crimes, crimes

at around 700. Independent sources have put the count as high as 3,500, pointing out that many victims disappeared, or were buried in the rubble of demolished buildings. The complaint, number will never be determined citing this range of figures, states that the exact

and two Belgian colleagues, Luc Walley and Michael Verhaeghe, filed the complaint in June. They were taking advantage of a Belgian law, introduced in 1993 and modified in 1999 that allows for bringing war criminals to account regardless of where or when alleged crimes were committed

Sharon, Amos Yaron, then division commander in Beirut and now director general of the Defense Ministry, and "other mass murderers, killings, rapes and disappearance of Israeli and Lebanese responsible for the

If, "readily acknowledges Mallat In reality, though, the main target is Sharon, as the case of hopefully, we get Mr. Sharon indicted first and eventually arrested, as in it will be one former Yugoslavian president Slobodan Milosevic," he enthuses, "then history of the most remarkable developments in international law in

of Israel's Kahan Commission of The complaint relies significantly on the 1983 report selectively, the complaint states that Inquiry into the massacres. Quoting somewhat responsible for the massacres the commission found Sharon "personally

Israeli dismisses Mallat, France Sitting in a Paris cafe during a working trip to merit. "This is not an criticism that the case is political, insisting on its purely judicial person," he protests. "God Israeli crime, but a crime associated with a particular convinced by our argument knows, there are many decent Israelis who are

ironic point that has become an oft-repeated refrain: that goes on to make an Mallat precedent for universal jurisdiction with its own Eichmann trial in Israel itself set a Eichmann, the implementer of Hitler's final solution for the Jews, who 1961. Adolf captured in Argentina, was sentenced to death in Israel for crimes committed in was Europe during World War II

of investigating judge Patrick Collignon. He will decide who, if at all, should be indicted. Now, with the end of the traditional August vacance that brings most European cities to a lazy summer to begin in earnest standstill, work in Brussels is expected

belies an evident KOHN'S OUTWARDLY REFINED and soft-spoken approach outrage over the Belgian proceedings

office, the Sabra and Shatilla affair For starters, she notes, speaking in her Jerusalem one brought a suit against Sharon until was in 1982. "The first question is why no prime minister of Israel, there was a campaign to today. It's clear that after he became the case a politically motivated abuse of the Belgian attack him," she says, calling .legal system

amendment to the Belgian law for crimes against states that the 1999 **Mallat** While for the complaint, Kohn says the basics were already humanity provided the impetus into effect in 1993, should anyone have wanted to sue in place when the law went .Sharon

standing behind it," she hints When we speak about a political suit we know who is" they took the victims who were hurt," she darkly, refusing to go into details. "It's true ".not by them, but by organizations in Lebanon adds. "However, the suit was initiated

points out that the complaint was As further evidence of a political campaign, she controversial "Panorama" documentary, "The filed one day after the BBC aired its Sabra and Shatilla affair, and soon after Belgium Accused," about Sharon's role in the .of the European Union took up its term as president

Sharon, and not Elie Hobeika," the But the main question, she says, has to be "Why knows exactly where he is and what he commander of the Phalangist force. "Everyone .did," she adds

no problem locating Hobeika. His law firm is based in would certainly have **Mallat** resides. A former cabinet minister and a member of parliament Beirut, where Hobeika has a whole **Mallat** .Hobeika now describes himself as a businessman ,until last year working on the Sharon case in the Lebanese capital, including members of his team well- firm, his students at St. Joseph's Jesuit University, Dr. Rosemary Sayegh, a law Sabra and " .known local anthropologist, and Sana Hussein, a researcher from Shatilla .for the case Shatilla Committees" are being set up around the world to help pay

inquiry in Brussels and would go to Hobeika has publicly stated that he welcomes the good for the " says that would be **Mallat** .testify, in order to clear his name follow." But the investigation, and for the truth, and hopefully Mr. Sharon will to contact Hobeika Lebanese lawyer and his Belgian counterparts have not attempted concentrating on what they call the and apparently don't intend to. Instead, they are Belgian and international law consider those ".principle of "command responsibility and on that ,**Mallat** the gravest responsibility, says in the position of command to bear .believes Sharon is indictable count he

is based on a twisted reading of the Kohn, for her part, argues that the case in Belgium well-thumbed copy, she stresses that the Kahan Commission report. Quoting from a having disregarded the danger of acts of report found Sharon responsible "for Phal-angists against the population of the refugee vengeance and bloodshed by the take this danger into account when he decided to have the camps, and having failed to ".camps Phalangists enter the

Commission found the prime minister 'responsible' for what happened, there are many, many kilometers. They are trying to put Sharon in Hobeika's clothes

The Kahan Commission's panel was headed by Yitzhak Barak, today's Supreme Court president, and included Aharon Kohn, who is one of Israel's "very best legal powers," stresses Kohn, who marvels that Israel had the courage to establish such a commission of self-examination in the first place. "Sharon resigned from his post as a result. The commission didn't recommend criminal proceedings though it could have," she says

As for the concept of "command responsibility", it would apply in this case only if Sharon had "ordered them to go in and commit a massacre"

And she calls the numerous testimonies of Sabra and Shatilla survivors now attesting to the presence of Israelis inside the camps during the massacres "pure lies." Kohn says that one victim was asked by the media how she knew those soldiers she'd identified as Israeli were indeed Israeli. She replied that she recognized them by the Stars of David on their helmets? something that, in fact, only exists in caricatures of Israeli soldiers in the Arabic press

Sources who are knowledgeable about Sharon's own take on the Sabra and Shatilla affair insist that until today, he feels he was truly wronged by the Kahan Commission's conclusions. He has never budged from his insistence that he had received no intelligence and could not have known that the Phalangists were about to commit a massacre in the camps

BUT FOR NOW, THE FOCUS OF Israel's legal strategy in the Belgium case is not to argue the innocence or guilt of the prime minister and director general of the Foreign Ministry, a couple of other officials and Belgian human-rights attorney Hirsch? will first try to get the case dismissed on the grounds that the Belgian court does not have the authority to try it

Ironically, Hirsch has only recently been on the other side of the Belgian war crimes law. She represented victims of the 1994 Rwandan genocide who filed suit against four Rwandans, including two nuns, for their part in it. In the first successful suit of its kind under the Belgian law, the four were convicted and sentenced to long prison terms. The four Hirsch points out, were present on Belgian soil where they had sought refuge after leaving Rwanda. That point is crucial. "A reasonable application of Belgian law requires that the suspect be on Belgian territory," she told The Report in response to a question

But Kohn doesn't want to give away tactics in the middle of legal proceedings. summing up the line of Israel's response to the Sabra and Shatilla victims' complaint, she argues that "this group is trying to trap the Belgian judiciary. The law wasn't meant to be the court of the world for this. It wasn't meant to be the

That, says Kohn, should be the job of the International Criminal Court (ICC) that is now in the process of being established as the result of an international convention.

international panel of judges will sit together and rule in suspected war cases. There, an international panel of judges will sit together and rule in suspected war cases. Israel is one of the 136 signatories to the convention, but has not yet ratified it. So far, some 38 countries have ratified the convention. Sixty are retroactive cases as before the court can be set up, but even then, it won't accept The Hague by a special Belgium now does. (Milosevic, meanwhile, is being tried in the Yugoslavia tribunal set up to deal with war crimes in the former

Belgium impinge upon Israel's Furthermore, Kohn argues that the proceedings in prime minister. And secondly, we have judicial sovereignty. "First of all, this is our tried the case. Sabra and Shatilla was a already held a commission of inquiry that who did it. I'm not saying that terrible things terrible massacre, but you have to know ".brought to court, but in this case it already has been in the world shouldn't be

Belgium whatsoever, neither Kohn also notes that this case has no connection to here, she argues, is where it differs through the victims, nor the perpetrators ? and thousands of Holocaust victims living in from the Eichmann trial. In that case, the that gave the Israeli court the authority to try Israel "were the straight connection token, she acknowledges when asked, Hobeika should Eichmann here." By this same .either, since Israel cannot have its cake and eat it in Belgium not be tried

war crimes law to exclude There has been some pressure for Belgium to amend its Brussels has put off any possible current heads of state and government officials, but stresses that no pressure has been exerted by changes until the end of the year. Kohn a purely internal Belgian affair. "We claim that, Israeli officials, and that it is the Belgian court has no authority to try this case." Such a ,according to the law today would be of no help to Sharon once he left office in any case. change in the law meanwhile, argues that even now, Belgium must not go against the ,Hirsch .principle of absolute immunity for serving heads of state or government international

a legal concept that is gaining ,Hirsch is a firm advocate of universal jurisdiction .long as it is practiced fairly ground. Kohn says she too is in favor of it, so

London University's School of Oriental and African who taught law at ,**Mallat Chibli** a track record regarding universal justice. Since the Gulf Studies until 1995, also has campaigned to get Saddam Hussein indicted for war crimes. He helped War, he has British non-governmental organization, Indict, with U.S. State Department establish a action by six Iraqis who have is not involved in an **Mallat** .funding, for that purpose (.under the same law in Belgium "filed a complaint against the "Butcher of Baghdad

possibilities: an points to three **Mallat** ,Looking ahead in the Sharon case which would only be ,international warrant for Sharon's arrest; a domestic warrant .element of surprise good for Belgium; or a secret warrant, which would have an

prevail. "In our view, the case has to stop Kohn is hoping that the Israeli strategy will it doesn't, Kohn says she doesn't understand why right here," she says. But even if threatening language of arrest warrants. Israel and is already using the **Mallat** the European Convention on Mutual Assistance in Belgium are both members of assistance treaty that aids cooperation between countries. If Criminal Matters, a legal judge wants to hear Sharon's testimony, Kohn notes, there is no need the investigating

warrants. A request could be made for a statement to be given in Israel, or the for .treaty judge could come to Israel himself to collect testimony, under the terms of the

Belgium or not today, Kohn replies. Asked whether she would advise Sharon to visit she sees no reason why he shouldn't go. ,that if he has some official business there stresses, suggesting that her answer might "But you asked me about today," she .circumstances change according to the

release from put out a press **Mallat** ,Three days after filing the complaint in Brussels survivors have had Beirut. It ended on a triumphant note. "The Sabra and Shatilla .last it won't be their ,**Mallat** their first day in court," he wrote. If it's up to

Kohn, who has to take all possible outcomes into account, doesn't seem entirely convinced it'll be their last either.