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Defending Sharon

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

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

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

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

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

"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 incapable. A few moments later while I was moving, they 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 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 neighbor came and rescued me."

The above is part of the chilling testimony of Su'ad Srour al-Meri, an example of the many accounts included in the Sabra and Shatilla victims' complaint. Meri, a Palestinian resident of Shatilla, miraculously survived the massacre. Aged 14 at the time, she lost her father, three brothers aged 11, 6 and 3, and two sisters aged 18 months and 9 months. Nineteen years on, Meri appears as Number 11 out of 28 plaintiffs and witnesses named in the case against Sharon and others on counts of war crimes, crimes against humanity and genocide.

Israel puts the number of those killed in the camps 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, citing this range of figures, states that the exact number will never be determined.

Meri came to Belgium to represent the survivors when **Mallat** 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 the alleged crimes were committed.

Officially, the complaint has been brought against Sharon, Amos Yaron, then division commander in Beirut and now director general of the Defense Ministry, and "other Israelis and Lebanese responsible for the massacres, killings, rapes and disappearance of civilian population."

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

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

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

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

Since mid-July, the Sharon case has been in the hands 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 standstill, work in Brussels is expected to begin in earnest.

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

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

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

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

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

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

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

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

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

Says Kohn: "Between this and claiming the Kahan 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 Kahan, the president of Israel's Supreme Court at the time, and included Aharon Barak, today's Supreme Court president ? some 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," states Kohn, 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. Rather, the state-appointed legal team ? which includes Kohn, the legal counsel 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.

Kohn doesn't want to give away tactics in the middle of legal proceedings. But 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 for this. It wasn't meant to be the court of the world."

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. There, an international panel of judges will sit together and rule in suspected war crimes 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 needed before the court can be set up, but even then, it won't accept retroactive cases as Belgium now does. (Milosevic, meanwhile, is being tried in The Hague by a special tribunal set up to deal with war crimes in the former Yugoslavia.)

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

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

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

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

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

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

Kohn is hoping that the Israeli strategy will prevail. "In our view, the case has to stop right here," she says. But even if it doesn't, Kohn says she doesn't understand why **Mallat** is already using

the threatening language of arrest warrants. Israel and Belgium are both members of the European Convention on Mutual Assistance in Criminal Matters, a legal assistance treaty that aids cooperation between countries. If the investigating judge wants to hear Sharon's testimony, Kohn notes, there is no need for warrants. A request could be made for a statement to be given in Israel, or the judge could come to Israel himself to collect testimony, under the terms of the treaty.

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

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

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