

KUALA LUMPUR WAR CRIMES TRIBUNAL

REPORTS OF JUDGMENTS,
RULINGS AND ORDERS
(INCLUDING NOTES OF PROCEEDINGS)

CHIEF PROSECUTOR OF
THE KUALA LUMPUR WAR CRIMES COMMISSION
V.
AMOS YARON AND THE STATE OF ISRAEL

JUDGMENT OF 25 NOVEMBER 2013

Kuala Lumpur Foundation To
CRIMINALISE WAR
WAR IS ABOUT KILLING. MASSIVE KILLING



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*Chief Prosecutor of the Kuala Lumpur War Crimes Commission
v. Amos Yaron and The State of Israel*

JUDGMENT



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1 **Chief Prosecutor of the Kuala Lumpur War Crimes Commission**

v.

Amos Yaron and the State of Israel

5 **Kuala Lumpur War Crimes Tribunal - Case No. 3-CHG-2013 and
Case No. 4-CHG-2013**

10 Coram: Judge Tan Sri Dato' Haji Lamin Bin Haji Mohd Yunus
(President), Judge Tunku Sofiah Jewa, Judge Shad Saleem Faruqi,
Judge Mohd Saari Yusuf, Judge Salleh Buang, Judge John Philpot
and Judge Tunku Intan Mainura.

25 November 2013.

15 *Public international law – war crime – crime against humanity – genocide –
impleading a sovereign State – State immunity – State liability for its organs
– jus cogens – whether Tribunal has jurisdiction – command responsibility.*

20 *Procedure – charges served on defendants – defendants not in court –
defendants did not submit to the jurisdiction of the Tribunal - Amicus
Curiae appearing for the defendants.*

25 *Evidence – burden of proof – proof of genocide intent – knowledge – mens
rea – the Kahan Commission report and findings – the effect of UN General
Assembly resolutions to prove genocide.*

The Kuala Lumpur War Crimes Tribunal (Tribunal) was convened
on 20 November 2013 to hear two charges against Amos Yaron (first
Defendant) and The State of Israel (second Defendant).

30 The first Defendant was charged with war crimes, crimes against
humanity and crime of genocide, whilst the second Defendant was
charged with the crime of genocide and war crimes. The charges
(together with the particulars of the charges) had been duly served
35 on the Defendants, and were read in open court by the Registrar as
these proceedings commenced. Neither Defendant was present in
these proceedings, but they were represented by the Defence Team
as *Amicus Curiae*.

40 At the start of the proceedings, the *Amicus Curiae* Team filed two
preliminary objections – the first contending that there are defects

in the charges preferred against the first Defendant, and the second contending that the State of Israel cannot be impleaded in these proceedings on the grounds of State immunity.

The *Amicus Curiae* Team submits that the trend in modern international criminal tribunals is either to have jurisdiction for acts that have been committed after these tribunals have been constituted such as the International Criminal Court (ICC), or alternatively its jurisdiction is for a limited duration of time, such as the International Criminal Tribunal for Rwanda (ICTR) and the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The *Amicus Curiae* Team further submits that this Tribunal came into existence on 6 June 2008, whilst the various acts allegedly committed by the first Defendant in charge no. 3 occurred in the month of September 1982, while the acts allegedly committed by the second Defendant in charge no. 4 occurred since 1948 and continue up to the present day.

The *Amicus Curiae* Team also submits that the State of Israel has not entered appearance in these proceedings and has therefore not submitted to the jurisdiction of this Tribunal. The *Amicus Curiae* Team submits that the State of Israel enjoys immunity for the crimes of genocide and war crimes and therefore Charge 4 should be dismissed.

In its response, the Prosecution Team submits that the jurisdiction issue must be established by reference to the founding Charter that sets up the Tribunal. In the Charter, there is no temporal limit. The Charter is identical to the 'open ended' temporal jurisdiction of the Military Tribunal at Nuremberg or the International Military Tribunal for the Far East.

With regard to the second preliminary objection, the Prosecution Team submits, *inter alia*, that these two Charges are international criminal war crimes being adjudicated by an international tribunal. States have no immunity for such crimes before such tribunals.

Before these proceedings began, the *Amicus Curiae* Team had also submitted two (2) applications to quash the charge against

1 the two Defendants. The grounds of applications were as follows:

1. The charge is defective for duplicity, and / or latent
5 duplicity.
2. The charge is defective for uncertainty.
3. The charge is an abuse of process and / or oppressive.

10 The *Amicus Curiae* Team contends that there were multiple offences within one charge and multiple forms of alleged instances of criminal conduct within one charge. The *Amicus Curiae* Team submits that the Rules against Duplicity must be strictly adhered to in a criminal proceeding.

15 In rebuttal, the Prosecution Team submits that this Tribunal is governed by its own Rules and these Rules are silent on the application of the Rule against Duplicity in drafting charges. This rule against duplicity, as it exists in national legal systems, does not, and
20 cannot, apply in the same way in proceedings before international criminal courts. More importantly, the Tribunal should take into account the heinous nature of these crimes and the scale they were alleged to be perpetrated.

25 Having considered the submissions by both parties the Tribunal unanimously ruled that the Preliminary Objections and Two Applications have little merit and were accordingly dismissed.

30 The Prosecution's case against the first Defendant is that the first Defendant had committed War Crimes, Crimes Against Humanity, and Genocide in his capacity as the Commanding Israeli General in military control of the Sabra and Shatila refugee camps in Israeli-occupied Lebanon in September of 1982 when he knowingly facilitated and permitted the large-scale Massacre of the Residents
35 of those two camps. These crimes were in violation of, *inter alia*, the Fourth Geneva Convention of 1949, the 1948 Genocide Convention, *jus cogens*, International Humanitarian Law; and Articles 9, 10, and 11 of the Charter.

40 The Prosecution's case against the second Defendant is that from 1948 and continuing to date the State of Israel had systematically carried

out against the Palestinian people a series of acts namely killing, causing serious bodily harm and deliberately inflicting conditions of life calculated to bring about physical destruction – with the intention of destroying in whole or in part the Palestinian people.

These acts constitute the Crime of Genocide under international law including the Convention on the Prevention and Punishment of the Crime of Genocide 1948 ('the Genocide Convention') in particular Article II and punishable under Article III of the said Convention. It also constitutes the crime of genocide as stipulated in Article 10 of the Charter.

The Prosecution called 11 witnesses, some of whom were physically present when they gave their testimony, whilst others gave their testimony through Skype.

Issues

As against the first Defendant

1. The burden of proof
2. Proof of genocide intent
3. State liability for the actions of its organs or persons
4. Relationship between the Lebanese militia and the first Defendant
5. Whether the first Defendant has knowledge of the acts committed by the militias
6. The impact of the Kahan Commission report and findings
7. The failure to accuse Ariel Sharon
8. The effect of General Assembly resolutions on proving genocide
9. Command responsibility
10. What crimes had been committed by the first Defendant

As against the second Defendant

1. Whether the Tribunal's jurisdiction is open-ended
2. Whether only natural persons can be charged
3. State of Israel's sovereign immunity and the impact of *jus cogens*

4. What amounts to genocide
5. Was there *mens rea*

Held

As against the first Defendant

1. The burden of proof is beyond all reasonable doubt. All elements of an infraction must be proven beyond all reasonable doubt. This applies to war crimes, crimes against humanity and the crime of genocide.
2. Proof of genocide intent can be done by inference in the light of all the facts and does not require a specific plan. If there is any alternative interpretation of the state of mind of the Defendants, the Prosecution will fail. The inference must be the only reasonable inference available on the evidence.
3. State liability is incurred if an organ of the State or a person or group whose acts are legally attributable to the State commits any of the acts described in Article III of the Genocide Convention.
4. The evidence before the Tribunal clearly shows without doubt that the first Defendant and the Israeli Defence Force (IDF) collaborated with the Phalangist militias and used the militias to carry out Israeli policy of destroying the Palestinian people. The first Defendant worked with the militias personally.
5. (a) There is no room for doubt that the first Defendant had knowledge of the acts being committed by the militias. The first Defendant had sent these militias into the Sabra and Shatila camps knowing what they would do. As reports emerged of the killings, the first Defendant failed in his duty as Commander of an occupying and invading force to protect civilian population.
(b) The evidence shows that the first Defendant consciously refused to protect the Palestinian population in the two camps. His responsibility however goes much further. He and the Israeli army used the militias to destroy the Palestinian people in the camps. He was informed throughout the progress of the massacre. The only reasonable inference is that the first Defendant intended mass murder and that the Palestinian population must be destroyed.
6. The Tribunal is not bound by the Kahan Commission report

- but its factual observations are useful in the search for the truth. 1
7. As regards the failure to charge Ariel Sharon, it is up to the Chief Prosecutor to decide whom to charge and the Tribunal cannot intervene in prosecutorial discretion. 1
 8. With regard to the use of the UN General Assembly resolutions to prove genocide, the Tribunal holds that the finding of intent to commit genocide by the General Assembly is soft law, but it is useful in the context to help evaluate the intentions of the two Defendants. 5
 9. Since the Tribunal has made a definite finding that the first Defendant is personally responsible, it declines to consider his liability for command responsibility. 11
 10. On the evidence, the Tribunal finds the first Defendant guilty of the crimes against humanity and genocide, and declines to convict him for war crimes as such would be a cumulative conviction. 15

As against the second Defendant

1. The offences of genocide and war crimes for which the second Defendant is being charged were not created by the Charter. These offences existed since the middle of the last century. The Charter sets up a machinery to investigate and prosecute these charges and to create a War Crimes Tribunal to adjudicate on them. The Charter does not specify any dates or time frames as was the case for the ICTY, the ICTR and the ECCC. The Tribunal holds that it is not prevented from adjudicating on events that occurred decades ago. The Tribunal holds that its jurisdiction is open-ended and not confined to any time period. 2
2. The *Amicus Curiae* Team had argued that there cannot be a charge against the second Defendant because the Charter envisages jurisdiction over natural persons only and not against nation States. The *Amicus Curiae* Team however concedes that the Tribunal has jurisdiction over a "government". The Tribunal is of the view that being a tribunal of conscience, and created to adjudicate on serious crimes, it must reject such technical and esoteric distinctions as between a "state" and a "government". States operate through their governments. Furthermore, Chapter III Article 6(b) of the Charter is conclusive proof that the Tribunal is empowered to try States as well as individuals. 3
3. (a) The *Amicus Curiae* Team submits that international law 3

does not permit the State of Israel to be impleaded as an accused. This concept stipulates that a State is immune from jurisdiction in a foreign court unless it consents. In some countries, the State jealously guards this “absolute” concept of State immunity. However other States prefer a “restrictive” interpretation, such as the practice in the United States of America. (b) The jurisprudence of the ICJ as well as that of national courts shows that the prohibition of genocide as a *jus cogens* norm of international law has been recognised. On the other hand, there is no legal authority which shows that the doctrine of State immunity has acquired the status of *jus cogens*. (c) It is trite law that when there is a conflict between two principles of law, the one hierarchically higher in importance should prevail. The Tribunal therefore holds that the doctrine against impleading a foreign State, being hierarchically lower in importance than that of the prohibition against genocide, resulted in the charge against the second Defendant to be maintained to full trial. (d) The idea of absolute State immunity from prosecution for crimes like genocide appears inconsistent with other wholesome developments in international law. Absolute State immunity is an antiquated doctrine and given the choice of precedents, this Tribunal is inclined to break free of the icy grip of this past dogma. (e) Another reason the Tribunal rejects the doctrine of absolute State immunity from prosecution for genocide, war crimes and crimes against humanity is that the existing international law on war and peace and humanitarianism is being enforced in a grossly inequitable manner. Small and weak nations are periodically subjected to sanctions, military interventions and regime changes. But the atrocities and brutalities inflicted on the weak nations in Latin America, Africa and Asia by powerful nations in North America and their allies go unscrutinised and unpunished. (f) The Tribunal takes note that the perpetrators of the Sabra and Shatila massacre had never been punished, but instead rewarded. The Military Advocate General of the IDF had informed an human rights group in Israel that he had closed the investigation of the Israreli air strike which had killed 21 members of the al-Samouni family.

4. (a) In simple terms, genocide means any designated acts committed with intent to destroy in whole or in part of a nation, ethnical, racial or religious group as such. The definition

of genocide is found in Part I Article 10 of the Charter, and is taken verbatim from Articles 2 and 3 of the Genocide Convention. (b) The Tribunal has heard 11 witnesses and examined documentary evidence that clearly indicated a catalogue of incredible crimes conceived as long ago as 1945 and continuing until the present day. These are not isolated acts in the heat of the moment but repeated pattern of atrocities committed against the inhabitants of Palestine. Many of these atrocities were, now and then, condemned by the UN Security Council, the UN General Assembly and other international organisations. (c) The *Amicus Curiae* Team has submitted an ingenious argument that there is no genocide in Palestine because the population of Palestine is continuing to grow. Unless there is significant decrease in population, there can be no genocide. The Tribunal finds this submission insensitive and inhuman. In determining whether genocide has been committed, one cannot play a game of numbers. Even if one person is killed on account of his race, ethnicity or religion with intention to kill others for the same reason, that is genocide.

5. What is also significant is that these acts have been systematically directed against the same group and by the same offenders over the last 67 years. The scale of atrocities committed and their general nature indicate a clear genocidal intention. The Tribunal accepts the evidence of expert witnesses for the Prosecution that the ethnic cleansing of Palestine is a world historic tragedy that is the result of deliberate State policies of succeeding governments of Israel since 1948.

The Tribunal unanimously finds, beyond reasonable doubt, the first Defendant guilty of the crimes against humanity and genocide, and the second Defendant guilty of genocide.

Cases referred to by the Tribunal

- Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6.*
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43.*

- KL War Crimes Commission v George W Bush and Anthony L Blair*
KLWCT Reports 2011 p 1.
Krstic ICTY 19 April 2004.
Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, 12
June 2002.
Blockburger v United States 284 US 299, 304 (1931).
Bagosora and Nsengiyumya ICTR.
The Schooner Exchange v McFaddon 11 US 116, 136 (1812).
Mighell v Sultan of Johor (1894) 1Q 149.
The Porto Alexandra Case (1920).
Duff Development Co v Kelantan Government [1924] AC 797.
The Cristina Case (1938) AC 485.
Commonwealth of Australia v Midford (Malaysia) Sdn Bhd & Anor [1990]
1 MLJ 475.
The Philippine Admiral [1976] 2 WLR 214.
Trendtex Trading Corporation Ltd v Central Bank of Nigeria.

Legislation, Conventions, referred to by the Tribunal

- Hague Regulations on Land Warfare 1907
Fourth Geneva Convention 1949
Genocide Convention 1948
Nuremberg Charter 1945

Documents referred to by the Tribunal

- Kahan Commission Report 1983
Sean MacBride Report 1983

Tan Sri Dato' Haji Lamin bin Haji Mohd Yunus, President of the Kuala Lumpur War Crimes Tribunal (*delivering the judgment of the Tribunal*).

The Kuala Lumpur War Crimes Tribunal (Tribunal) reconvened¹ on 20 November 2013 to hear two charges against Amos Yaron (first Defendant) and the State of Israel (second Defendant). The first Defendant was charged with war crimes, crimes against humanity and genocide, whilst the second Defendant was charged with the crime of genocide and war crimes.

The charge against the first Defendant is as follows –

“The Defendant Amos Yaron perpetrated War Crimes, Crimes Against Humanity, and Genocide in his capacity as the Commanding Israeli General in military control of the Sabra and Shatila refugee camps in Israeli occupied Lebanon in September of 1982 when he knowingly facilitated and permitted the large-scale Massacre of the Residents of those two camps in violation of the Hague Regulations on Land Warfare of 1907; the Fourth Geneva Convention of 1949; the 1948 Genocide Convention; the Nuremberg Charter (1945), the Nuremberg Judgment (1946), and the Nuremberg Principles (1950); customary international law, jus cogens, the Laws of War, and International Humanitarian Law”

The charge against the second Defendant is as follows –

“From 1948 and continuing to date the State of Israel (hereafter ‘the second Defendant’) carried out against the Palestinian people a series of acts namely killing, causing serious bodily harm and deliberately inflicting conditions of life calculated to bring about physical destruction.

The conduct of the second Defendant was carried out with the intention of destroying in whole or in part the Palestinian people.

These acts were carried out as part of a manifest pattern of similar conduct against the Palestinian people.

¹ See Appendix “A” for Ruling on the adjourned Hearing dated 22nd August 2013.

1 *These acts were carried out by the second Defendant through the instrumentality of its representatives and agents including those listed in Appendices 1 and 2.*

5 *Such conduct constitutes the Crime of Genocide under international law including the Convention on the Prevention and Punishment of the Crime of Genocide 1948 ('the Genocide Convention') in particular Article II and punishable under Article III the Crime of the said Convention. It also constitutes the crime of genocide as stipulated in Article 10 of the Charter.*

10 *Such conduct by the second Defendant as an occupying power also violates customary international law as embodied in the Hague Convention of 1907 Respecting the Laws and Customs of War on Land, and the Fourth Geneva Convention of 1949.*

15 *Such conduct also constitutes War Crimes and Crimes against Humanity under international law."*

20 The charges (together with the particulars of the charges) had been duly served on the Defendants, and were read in open court by the Registrar as these proceedings commenced.

Neither Defendant was present in these proceedings, but both were represented by the *Amicus Curiae* Team.

25 **1. Preliminary objections and applications by the *Amicus Curiae* Team**

30 The *Amicus Curiae* Team filed two preliminary objections to these proceedings – the first contending that there are defects in the Charges preferred against the first Defendant, and the second contending that the State of Israel cannot be impleaded in these proceedings on the grounds of State Immunity.

35 In respect of its **first preliminary objection** the *Amicus Curiae* Team contends that the trend in modern international criminal tribunals is either to have jurisdiction for acts that have been committed after these tribunals have been constituted such as the International Criminal Court (ICC), or alternatively its jurisdiction is for a limited duration of time such as the International Criminal Tribunal for

Rwanda (ICTR) or the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The *Amicus Curiae* Team submits that this Tribunal came into existence on 6 June 2008, whilst the various acts allegedly committed by the first Defendant in charge no. 3 occurred in the month of September 1982, while the acts allegedly committed by the second Defendant in charge no. 4 occurred since 1948 and continue up to the present day.

In respect of its **second preliminary objection** the *Amicus Curiae* Team submits that there is no authority conferred by the Charter to hear any action against the government of a country, for example, the government of Israel. The *Amicus Curiae* Team also argued that international law does not allow the "State of Israel" to be impleaded as an accused. The State of Israel is a nation State, recognised by the United Nations, and as a nation State, it has rights under international law.

The *Amicus Curiae* Team further submits that the State of Israel has not entered appearance in these proceedings and has therefore not submitted to the jurisdiction of this Tribunal. The *Amicus Curiae* Team submits that the State of Israel enjoys immunity for the crimes of genocide and war crimes and therefore Charge 4 should be dismissed.

On behalf of the Prosecution Team, it was argued that with regard to the first preliminary objection, the jurisdiction issue must be established by reference to the Charter that sets up the Tribunal. The Charter states that the jurisdiction of the Tribunal shall be governed by the provisions of this Charter: **Part 1, Article 1**. There is no temporal limit. In particular, Article 7 sets no time limit. In this sense the Charter is identical to the 'open ended' temporal jurisdiction of the Military Tribunal at Nuremberg or the International Military Tribunal for the Far East.

The Prosecution Team also submitted that the Tribunal had convicted Bush and Blair of war crimes committed in 2003 – which also predates its setting up: *KL War Crimes Commission v George W. Bush and Anthony L. Blair*, *KLWCT Reports 2011*, p. 1. The verdict by the KLWCT against

Bush, Cheney, and Rumsfeld *et al* went back to torture committed from 2001.

With regard to the second preliminary objection, the Prosecution Team submits, *inter alia*, that these two Charges are international criminal war crimes being adjudicated by an international tribunal. States have no immunity for such crimes before such tribunals.

Before these proceedings began, the *Amicus Curiae* Team had also submitted two (2) applications to quash the charge against the two Defendants. The grounds of applications were as follows:

1. The charge is defective for duplicity, and / or latent duplicity.
2. The charge is defective for uncertainty.
3. The charge is an abuse of process and / or oppressive.

On behalf of the two Defendants, the *Amicus Curiae* Team sought for the Tribunal to make the following orders:

1. That the charge against the two Defendants be quashed.
2. That the Prosecution against the two Defendants be permanently stayed.
3. In the alternative, that the Charges be redrafted according to the principles of criminal law.

The *Amicus Curiae* Team contends that there were multiple offences within one charge and multiple forms of alleged instances of criminal conduct within one charge. The *Amicus Curiae* Team submits that the Rules against Duplicity must be strictly adhered to in a criminal proceeding.

In rebuttal, the Prosecution Team submits that this Tribunal is governed by its own Rules and these Rules are silent on the application of the Rule against Duplicity in drafting charges. This rule against duplicity, as it exists in national legal systems, does not, and cannot, apply in the same way in proceedings before international

criminal courts. More importantly, the Tribunal should take into account the heinous nature of these crimes and the scale they were alleged to be perpetrated.

On the *Amicus Curiae* Team's submission that the charge is defective due to uncertainty, the Prosecution Team submits that it is premature for anyone to say so without appreciating the particulars contained in the charge. The particulars in the charge are facts that the Prosecution seeks to prove in the course of the proceedings.

Having considered the Preliminary Objections raised by the *Amicus Curiae* Team and the Two Applications filed by the *Amicus Curiae* Team and the submissions by both the *Amicus Curiae* Team and the Prosecution Team in the several documents already filed with this Tribunal, and having considered further oral submissions by both parties, the Tribunal unanimously ruled that the Preliminary Objections and Two Applications have little merit and were accordingly dismissed.

A written ruling of the Tribunal was read out by Judge Tunku Sofiah Jewa on 20 November 2013.²

2. *Prosecution's Case*

The Prosecution's case against the first Defendant is that the first Defendant had committed War Crimes, Crimes Against Humanity and Genocide in his capacity as the Commanding Israeli General in military control of the Sabra and Shatila refugee camps in Israeli-occupied Lebanon in September of 1982 when he knowingly facilitated and permitted the large-scale Massacre of the Residents of those two camps. These crimes were in violation of, *inter alia*, the Fourth Geneva Convention of 1949, the 1948 Genocide Convention, *jus cogens*, International Humanitarian Law; and Articles 9, 10, and 11 of the Charter.

The Prosecution's case against the second Defendant is that from 1948 and continuing to date the State of Israel had systematically carried

² See Appendix "B" for Ruling on Preliminary Objections raised by the *Amicus Curiae* Team

out against the Palestinian people a series of acts namely killing, causing serious bodily harm and deliberately inflicting conditions of life calculated to bring about physical destruction – with the intention of destroying in whole or in part the Palestinian people.

These acts constitute the Crime of Genocide under international law including the 1948 Genocide Convention in particular Article II and punishable under Article III of the said Convention. It also constitutes the crime of genocide as stipulated in Article 10 of the Charter.

In his opening statement, the Chief Prosecutor Prof Gurdial Singh said that the Prosecution will adduce evidence to prove the counts in the indictment through oral and written testimonies of victims, witnesses, historical records, narrative in books and authoritative commentaries, resolutions of the United Nations and reports of international bodies.

3. Testimony of Witnesses

The Prosecution Team called 11 witnesses to testify on its behalf.

The Prosecution's first witness (PW1) was Chahira Abouardini, a 54 year old resident of Camp Shatila, Beirut, Lebanon.

She testified that when the Israelis invaded Lebanon in May 1982, they attacked the area near Camp Shatila, which was then the base of the Palestinian resistance. She also testified that her father and sister were shot and killed by the Lebanese Phalangist militia.

She also said that there were a lot of dead bodies everywhere, strewn all over – bodies of men, women, children and even animals. Armed militiamen had started the killing from the houses near the sports complex where the Israeli forces were based. They entered homes and killed people. Anyone who moved was killed.

PW1 also testified that at one location on the way to the stadium, she saw her cousin's daughter's body. The killers had opened her body and taken out her baby and then placed the baby on her dead body. PW1 testified that the victim was actually deaf and dumb and was living in a home for the disabled.

PW1 testified that there were bodies piled up everywhere because the militiamen had collected the people together and then shot them all at one time. As a result it was difficult to identify the dead victims, and families had to dig between dead bodies to find their relatives.

PW1 said that in the 36 hours of the attack, some 3,500 people from Shatila and Sabra had been massacred. She said that the Phalangist militia who committed these atrocities worked together with the Israelis. They were puppets of the Israeli forces.

When PW1 was offered by the Prosecution to the *Amicus Curiae* Team for cross-examination, the *Amicus Curiae* Team declined to cross-examine the witness.

The second Prosecution witness (PW2) called by the Prosecution Team was Bayan Nuwayhed al-Hout. She gave her testimony as an expert witness through Skype. She was not physically present before the Tribunal.

The Prosecution tendered (as an exhibit) excerpt of a book titled "SABRA AND SHATILA – SEPTEMBER 1982" written by PW2 where she said "For 40 continuous hours between sunset on Thursday 16 September and midday on Saturday 18 September 1982, the massacre of Sabra and Shatila took place, one of the most barbaric of the twentieth century".

When asked by the Prosecutor to give her comments on the published figure of 3,500 being the number of people killed, PW2 said that according to her research she estimated the figure to be around 1,350. She said that she had approached various international organisations to collect the list of victims, but she never received them.

When PW2 was offered to the *Amicus Curiae* Team for cross-examination, the latter also said that they have no desire to cross-examine the witness.

The Prosecution's third witness (PW3) was Mahmoud A.H. al Sammouni, a 15 year old resident of Sammouna Street, Gaza Zaitun, Gaza City. He gave his testimony through Skype.

PW3 testified that the Israeli forces attacked his place on January 3, 2009 with bombs and missiles. He said that he saw parachutists coming down and landing on the highest buildings.

He testified that more than 50 soldiers came to his house, all with weapons. They shot at the inner walls of the house and all over his home. They demanded the owner of the house to come out and when PW3's father came out, the soldiers shot him, killing him on the spot. The soldiers continued shooting into the house for 15 minutes, injuring his brother Ahmad and 5 other members of his family, including his sister Amal – who sustained serious injuries, including a shrapnel in her head. His brother Ahmad subsequently died.

PW3 was not cross-examined by the *Amicus Curiae* Team.

The Prosecution's fourth witness (PW4) was Salah Al Sammouni, a 34 year old resident of al-Zaytoun neighbourhood in Gaza City. He gave his testimony through Skype.

He said that on January 3, 2009, he received information from his father's cousin that Israeli military tanks had entered Gaza City and surrounded the al-Zaytoun neighbourhood and the surrounding areas.

He further testified that 21 members of his family were killed by the Israelis on January 5, 2009. He tendered as an exhibit a list of the names of these dead family members.

When this witness was offered to the *Amicus Curiae* Team for cross-examination, the *Amicus Curiae* Team declined to cross-examine him.

The Prosecution's fifth witness (PW5) was Paola Manduca, currently residing in Genova, Italy. She gave her testimony as an expert witness through Skype.

She told the Tribunal that she had conducted and co-ordinated in 2011 two research projects relating to the impact of weapons on reproductive health arising from the Israeli attacks on Gaza. The outcome of her research reveals the degradation of the reproductive health and increase in major structural birth defects.

She also testified that 66% of Gaza parents with a birth defect child had been exposed to bombing or white phosphorus shelling during Operation Cast Lead in 2008/2009.

Her research led her to the conclusion that there is a long term effect on reproductive health associated with metal contamination by exposure to weaponry during the war and by war remnants.

When PW5 was offered to the *Amicus Curiae* Team for cross-examination, the *Amicus Curiae* Team declined to cross-examine her.

The Prosecution's sixth witness (PW6) was Dr Ang Swee Chai, a consultant orthopaedic and trauma surgeon, currently residing in London, England. She was physically present during the proceedings and was orally examined by the Chief Prosecutor and subsequently cross-examined by the *Amicus Curiae* Team.

She testified that she arrived in Beirut in August 1982 as part of a British medical team, volunteering her services as an orthopaedic surgeon. She started work as an orthopaedic surgeon in Gaza Hospital on August 22. The Hospital was an 11 storey building in the Sabra and Shatila Palestinian refugee camps, officially opened on August 23, 1982.

PW6 gave a detailed account of the events that took place from 15-22 September 1982.

On 15 September, Israeli planes flew from the sea towards the direction of the camps, and then the shelling began in all directions, clearly seen from the Gaza Hospital. On 16 September, casualties poured into the hospital, whilst shootings and shelling continued outside. Shootings continued into the night.

On 17 September, the witness said that she operated on an eleven year old boy, shot with 27 members of his family. All 27 died, but the boy survived.

On 19 September PW6 said members of the hospital medical team were able to return to Sabra and Shatila camps, where they saw dead bodies everywhere, whole families obviously shot together. She said

that according to the International Red Cross, the total number of dead people was 1,500.

The witness testified that from the Israeli headquarters in the Kuwait Embassy most of the area of the massacre in the two camps could be easily seen. She was told by Palestinian survivors that they could not escape during the massacre because the Israelis had sealed off the camps. When the Norwegian Ambassador came in to try to evacuate the Norwegian medics, he told the witness that he had to get the Israeli authorities to agree.

The witness also said that from recently declassified materials from the British National Archives, she discovered that the death toll in the two camps was 3,500 people. When the Israelis surrounded and invaded the Akka Hospital on 15 September, they killed patients, nurses and doctors.

PW6 was cross-examined by the *Amicus Curiae* Team, but her testimony remained intact and unshaken.

The Prosecution's seventh witness (PW7) was Nabil Alissawi, a resident of Karkfa Street, Bethlehem.

The witness said that whilst he was a student of Ahliya University in 2008, he took part in a peaceful street demonstration near the Azah Refugee Camp and Paradise Hotel. At about 12.30pm whilst the demonstrators were thus engaged, he was shot by a sniper. He passed out and was taken to a hospital.

He later discovered that a dum dum bullet had pierced his stomach and then broke into 3 pieces, going into 3 different directions – 2 exiting his body but the third remained stuck in his bladder. He was hospitalised for 2½ months where he underwent 3 operations. He subsequently received treatment for another 2½ months where he underwent more surgical operations to repair his intestines.

As a result of his injuries, his life had been totally altered. He carried an abdominal scar, he cannot sit upright, nor can he swim competitively. He is prohibited from entering Israel, and is always in a state of fear and anxiety. He is a victim with no freedom in his own country.

The Prosecution's eighth witness (PW8) was Ilan Pappé, an Israeli historian and social activist. He gave his oral testimony via Skype. Author of 15 books, including "The Ethnic Cleansing of Palestine" (2006), "Gaza in Crisis" (co-authored with Noam Chomsky, 2010) he is one of Israel's New Historians who have been rewriting the history of Israel's creation in 1948 and the expulsion of 700,000 Palestinians in the same year. He has written that the expulsion was not decided on an *ad hoc* basis as other historians had argued, but constituted the ethnic cleansing of Palestine in accordance with Plan Dalet, which was drawn up in 1947 by Israel's future leaders.

The witness testified that the people behind Plan Dalet was a small group of people (about 30) comprised of generals in the Jewish military outfit, experts on Arab affairs, with the Chairman who would be the first Prime Minister of Israel. They turned this plan into a Master Plan with a blueprint for the systematic expulsion of the Palestinians from their country.

When asked by the Chief Prosecutor what happened to those Palestinians who refused to move, the witness said that in certain places, elder villagers were executed to intimidate the rest. And in some places, all male members were massacred. Palestine had some 800 villages. 530 villagers had their residents expelled.

The witness also testified that the villages that were occupied were wiped out physically and on the ruins they built settlements or recreational places. In the cities, the Palestinian neighbourhoods were repopulated by Jewish immigrants from Europe or from other countries.

Asked about Gaza, the witness said that Gaza is a huge prison, incarcerating 2 million people.

Cross-examined by the *Amicus Curiae* Team whether he would agree that the body of his work and his views "could be to assuage the guilt of being alive because of Zionism", the witness replied that he does not feel that way. He said that because his parents were victims of genocidal policies of the Nazi, he does not want be part of the new genocide.

Responding to another question from the *Amicus Curiae* Team, the witness said that the Jews who escaped from Germany and Europe

1 in the 1930s were indeed refugees looking for safe haven, but the
Jews who came in 1982 and in subsequent years came as colonisers.

5 The Prosecution's ninth witness (PW9) was Taghreeb Khalil Nimat,
a resident of Nablus, West Bank. She lives with her parents and 9
siblings.

10 The witness testified that in 1979 or early 1980, her father was arrested
by the Israeli forces and detained in prison for 18 days for singing a
song about Palestinian freedom. A year later, he was again arrested
and detained in prison for 21 days for the same offence.

15 In 1987 the witness applied for employment at the government
office but her application was rejected. It was commonly understood
that if any family member has a history of being detained by the
Israeli government, it would be difficult to seek employment at the
government office.

20 The witness testified that on 15 April 2004, whilst travelling from
Nablus to Bethlehem (a distance of 80 km) she was stopped by an
Israeli military car and then detained for 29 hours without food or
water. During detention, the witness was put under interrogation and
insulted verbally. Following the incident, the witness was stigmatised
by her community, including her friends and colleagues.

25 The Prosecution's tenth witness (PW10) was Dr. Walid Elkhatib, a
resident of Beit Jalla City, Bethlehem District, West Bank. He is a
qualified medical doctor, specialising in public health.

30 The witness testified that as a general practitioner, he worked at
an emergency clinic during the first *intifada*, where he saw many
patients with different kinds of injuries as a result of Israeli violence
– gun shot wounds, exposed to tear gas and physically abused by
Israeli soldiers. Over the last 17 years he had been in charge of child
35 health and protection, social health and Palestinian child law and
rights.

40 He also testified that the invasion of Palestinian cities by Israeli
forces (including the shelling and bombing, usage of tear gas, the
building of walls to separate Jerusalem and the West Bank, check
points which restrict the movement of the Palestinian people) have
affected Palestinian health and education, especially that of children.

The witness said that the first *intifada* (1987-1993) was not military in nature. It involved demonstrations against the Israeli occupation. There were then no roadblocks, no wall, no shelling and no airplane bombings.

The second *intifada* (2000-2009) began when Ariel Sharon went to the Al-Aqsa Mosque. The Palestinians protested against this visit. On that day, Israeli soldiers killed 20 people outside a mosque.

During the second *intifada*, the witness said that 77.8% of Palestinian families suffered mental problems. From 2001-2011, there were 2,282 cases of disability – mostly due to injuries sustained by those involved in the *intifada*, caused by live ammunition, shrapnel, rubber bullets and explosions. Disabilities means that many of these people have less opportunities for work and they end up in poverty.

The witness testified that poverty is rife in the West Bank and Gaza, increasing from an average of 20% (prior to *intifada*) to 51% (during the *intifada*). Anemia became prevalent amongst the children (42%) as a result of imbalanced diet and amongst pregnant women (21%).

On the subject of checkpoints, the witness testified that there were about 730 checkpoints between cities, towns and villages in the West Bank. There had been many cases of pregnant women (forced to stop and wait at these places) delivering their babies at these checkpoints. There had also been many emergency cases who had been stopped at these checkpoints and prevented from going through to hospitals. In such cases, people had died at these checkpoints.

The witness also testified that before the second *intifada*, he believed that Israel was looking for peace with Palestinians. After the second *intifada*, he no longer had that belief.

The Prosecution's eleventh witness (PW11) was Jawad Musleh, a resident of Beit Sahour, Bethlehem District. He is a programme coordinator in a travel agency.

The witness, a Christian, testified that he was arrested in August 1985 by the Israeli authorities and released 20 months later, in March 1987. He was first detained at a prison in West Jerusalem, and later

1 transferred to another prison in Haifa and finally to another prison
in the West Bank. He was then only 15 years old, a student of a
Catholic School at Beit Sahour.

5 The witness testified that he was tortured in the first prison in
West Jerusalem, during interrogation. The Israelis used mental
and psychological torture to make him confess to crimes he did
not commit – that he was a member of the Palestine Front for
the Liberation of Palestine (PFLP). He refused to confess but he
10 continued to be beaten, and if not beaten, put in confinement with
his hands tied behind his back and a hood over his head.

He finally confessed, after which he was detained for 20 months.
He continued to be tortured when he was incarcerated. He said that
15 there are now more than 5,000 prisoners in Israeli prisons.

The witness also testified that more Israeli colonies are being built
on lands in the West Bank and Jerusalem. There are now 700,000
Jewish settlers living in the West Bank and Jerusalem.

20 The West Bank is now divided into 3 Areas – A, B and C. Area A
are lands under the Palestinian authority and cover main cities and
towns like Bethlehem, Hebron, Nablus, Ramallah, Jenin and others.
Area B are small villages surrounding the main cities, where Israel is
25 in control of security whilst civil services like health and education
are the responsibility of the Palestinian authority. Area C, which is
the rest of the West Bank, is under the complete control of the Israeli
authorities. Checkpoints and roadblocks are set up throughout
Areas A, B and C. These checkpoints are often closed arbitrarily and
30 without prior notice, for long hours.

The witness further testified that Area C is the richest source of
water supply. Water supply is therefore under the complete control
of the Israeli authorities. Water is supplied to the Israeli settlers at
5 a cheaper price, and 5 times more in volume, compared to water
supplied to the Palestinians – which is often inadequate for their
daily use, causing great hardship and suffering.



*Scenes from the Kuala Lumpur War Crimes Tribunal
Hearing from 20 - 25 November 2013*

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