الثورة الفلسطينية

THE PALESTINIAN REVOLUTION

MacBride, Sean et al. *Israel in Lebanon*: *Report of the International Commission to Enquire into Reported Violations of International Law by Israel During its Invasion of the Lebanon*. London: Ithaca Press, 1983.

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underlying Israeli objective seems clearly directed at making the Palestinian camps uninhabitable in a physical sense as well as terrorising the inhabitants and thereby breaking the will of the Palestinian national movement, not only in the war zone of Lebanon, but possibly even more centrally, in the occupied West Bank and Gaza.

This kind of war effort tends to obliterate the very idea of innocence as fully in its own way as does nuclear war. Here, often the belligerent objective is 'the people' as a whole; in truth 'the fighters' are not posing much of a threat and in purely military terms are hardly a match, at least not until late in a national struggle when the government and its allies are confronting a fully mobilised and hostile population. This was the situation late in 1978 during the last stages of the Iranian revolution. The Shah had, finally, no option but to relinquish power or to engage the armed forces in the mindless slaughter of the Iranian people. His abdication may have saved, at the time, several hundred thousand lives. It must also be understood that the liberation side may contribute by its tactics and methods to the erosion of 'innocence', if not in war itself, then assuredly in its background. Recourse to 'terrorism' by liberation groups, especially to the extent it is relied upon within a framework of struggle and war is relevant to an understanding of charges and counter-charges. In this instance, we are mindful of attributions of terrorism to the Palestine Liberation Organisation, as well as allegations that the PLO was using Lebanese soil to train a wide array of foreign terrorist groups. We note these arguments, but would separate their assessment from our enquiry into the main allegations arising from the Lebanon war, that is, those directed against Israel. We will take into account allegations concerning PLO conduct to the extent they bear on a specific line of defence by Israel.

The point here is that the traditional law of war needs to be brought to bear with particular strength in relation to this species of war. States have been slow to adapt the law of war explicitly to the subject matter of national revolution, and yet 'wars of national liberation' enjoy a special legitimacy as a result of their endorsement by law-making United Nations resolutions. The Algiers Declaration of the Rights of the People (1976) furthermore expressly asserts in its Article 29 that 'Liberation movements shall have access to international organisations and their combatants are entitled to the protection of the humanitarian law of war'.

The scope of the Commission's enquiry embraces both recourse to war and the conduct of war (including the occupation of any territory acquired). The initial, basic allegation considered by the Commission concerned Israel's invasion of Lebanon. Did this invasion satisfy the requirements of international law governing recourse to force across an international boundary? The international law here is quite simple, although its application can often be controversial, given different appreciations of the underlying facts and variant interpretations of the content of the basic legal ideas. In essence, by virtue of the Pact of Paris (1928) states renounced the

accountability on them for acts performed in the line of official duty seemed unrealistic in a world of sovereign states.

These are formidable criticisms, but only one small part of the story. The basic justification for Nuremberg was that it was a serious start of the foundations of a more serious framework of law and responsibility bearing on the subject-matter of war. Furthermore, the prosecutions after World War II did perform a valuable educative role. The public became aware, especially in the German cases, of the full extent of Nazi depravity in and out of war. And most important of all, the broad issues of individual responsibility for violations of law in relation to war were fully explored. The General Assembly of the United Nations at its first session unanimously endorsed a set of principles drawn from those judicial proceedings; these formulations were then put in more authoritative form in 1950 by the expert legal body of the United Nations, the International Law Commission.

Principle VI usefully specifies the scope of this Commission's undertaking, conceived in its broadest sense:

(a) Crimes against peace:
(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War Crimes:
Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of, or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:
Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with, crime against peace or any war crime.

The distinguished American prosecutor at Nuremberg, Robert H. Jackson, formerly a US Supreme Court Justice, made this famous assertion in his opening statement: 'And let me make clear that if this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by other nations, including those which sit here now in judgment.' This crucial promise to the future has not

to prisoners of war; IV relating to treatment of civilians. Additional steps to codify the modern law of war occurred subsequently. Especially notable were the two 1977 Geneva Protocols on victims of armed conflicts and the 1981 UN Convention on specific conventional weapons.

The rapid development of the international law of human rights and the passage of numerous United Nations resolutions and declarations bearing on the law of war have also clarified guidelines for permissible behaviour.

It is important to note the continuity of judgment by major governments that it has been worthwhile to put in writing the obligatory content of international law pertaining to war. As a result, a vast corpus of rules, principles and guidelines now exists. Virtually every government acknowledges the obligatory character of the law of war and none claims the authority to conduct a war without adherence to this legal framework. That is, the law of war enjoys a universal acceptance, at least on an ethical and psychological level, and this acceptance has formal significance. Governments, regardless of ideological or cultural background, do not claim discretion to interpret state sovereignty in absolute terms when it comes to war, and have even endorsed the revolutionary idea that the leaders of sovereign states responsible for serious breaches of the law of war should be held personally and criminally accountable.

It is necessary to point out that there are special problems associated with wars involving at their core issues of national revolution. Governments that designate their enemies as 'terrorists' or 'criminals' tend to treat the conflict as outside the law. The irony here is very great because it is in these conflicts where the need for law is the greatest – that is, where battlefield tactics often tend to concentrate their firepower on civilians, civilian sanctuaries (hospitals, churches, schools) and cultural centres, and to ignore the distinction between military and non-military. This refusal to be bound by law partly reflects the ideological struggle for legitimacy that lies at the centre of such conflicts and, partly, it involves a perverse or extremist view as to the requirements of 'military necessity' for the high technology guarantors of the *status quo*. Such an orientation is pertinent to our enquiry into the general denial by Israel of the applicability of the laws of war in its warfare with the PLO.

This refusal by governments to be bound by law in a certain category of conflicts underscores the extent to which we are still dealing with a 'voluntary' system of law at the state level. If the perception of mutual self-interest is not present, then either the legal guidelines cannot be negotiated or states will ignore them under the pressures of expediency. This generalisation is illustrated by the failure of the law of war to restrict technological innovations in weaponry and tactics during this century: submarine and air warfare, rockets and projectiles, and nuclear weapons are the most spectacular instances. The only record of success, and even this is mixed, is the effort to restrict the use of poisons and bacteria as battlefield weapons. Governments have become creatures of their doctrines about the

more effective implementation of the existing law of war. Further extensions by way of legal codification and procedures can come later, and would provide useful clarification and authority. For now, what counts is the law on the books, and there is plenty.

In essence, the fundamental effort of law in this area is to prohibit aggressive recourse to war in the first instance, and then should war occur, to regulate the conduct of the war to protect the innocent, minimise the suffering caused to combat personnel and restrict overall damage. The basic effort of international law has been to prohibit all recourse to war except in compelling circumstances of self-defence. Article 51 of the UN Charter embodies this conception in its authorisation that force can only be used by a state in self-defence against a prior armed attack, and even then only provisionally until the Security Council gives its stamp of approval. The central importance accorded to the outlawry of aggression was well stated in the Nuremberg Judgment: 'To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole'.

Once war ensues, regardless of which side should be viewed as aggressor, the role of law relative to combat circumstances is pervasive. Hugo Grotius, the founder of modern international law, was inspired in the early seventeenth century to write his great treatise on war by the various outrages committed in the name of war that he directly observed in the Thirty Years' War, then raging in north-central Europe. It is that resolve to resist unrestricted violence and cruelty, even if justified by the State in the name of war and military necessity, that continues today to give force and authority to the case for upholding the law of war, for publicising violations as a form of censure, and for calling upon states and international institutions to do their legal and moral duty to apprehend and punish those responsible for violations so as to build a tradition of greater respect for law.

There is one kind of contemporary war that particularly tempts the militarily more sophisticated side to depart from the more elementary, minimum content of the laws of war – namely, wars fought in the Third World against movements of national revolution. In these wars, the high technology tactics and weaponry of the counter-revolutionary or *status quo* actor is almost inevitably directed against the people themselves. This process became very evident in the course of the American involvement in the Vietnam war. This Commission believes it is a salient feature of the Israeli campaign in Lebanon, and culminated in complicity by Israeli military and civilian officialdom in the massacres carried out by the Lebanese militias (Phalange, Haddad) in the Beirut camps of Chatila and Sabra between 16 and 18 September 1982. These massacres were low-technology sequels to earlier high-technology saturation bombardment by Israel from land, sea and air of every major Palestinian camp situated anywhere near the combat zone throughout southern Lebanon. The

complete what has been written and accepted in treaty forms was explicitly recognised in the so-called Martens Clause, appearing in the Preamble to the 1899 Hague Convention II:

> Until a more complete code of the laws is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result *from the usages established between civilised nations, from the laws of humanity, and the requirements of the public conscience.* (emphasis supplied)

Note the three sources of supplementary content for the international law of war enumerated above. The status of this general conception was reaffirmed in an extraordinary manner in 1949 by the inclusion of a treaty provision in each of the four Geneva Conventions on the humanitarian dimension of the law of war adopted at that time, declaring that even if a state denounces the agreements this shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfill by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity, and the dictates of public conscience. (The same language is repeated in the preamble to the 1977 Geneva Protocols and the 1981 UN Weapons Convention).

The more specific and applied content of the law of war can be deduced from four basic principles that comprise the content of general international law (that is, the three Martens categories and customary international law):

1. Principle of Necessity
A prohibition upon methods, tactics and weapons calculated to inflict unnecessary suffering, death or destruction; the content of necessity is associated with the belligerent destruction of enemy armed forces and military targets;

2. Principle of Discrimination
A requirement that methods, tactics and weapons employed are used in such a way as to discriminate between military and non-military targets and between combatants and civilians; the emphasis on discrimination is designed to uphold in the course of war the ideas of innocence and of sanctuary or protected places;

3. Principle of Proportionality
A requirement that the military means used bear a reasonable relationship to the military ends being pursued; this requirement is designed to give real force to the prohibition upon excessiveness in the use of force;

right to use force in international disputes except for purposes of self-defence. This obligation was originally a treaty rule binding only on the parties to the Treaty but has since been construed by virtually all commentators on international law as having acquired the status of general law, and even more of having acquired the status of what international lawyers call *jus cogens* (a rule that takes precedence over other valid rules of international law and can never be changed). This underlying conception has been embodied in the Charter of the United Nations which is itself a treaty binding on all members, including Israel, Lebanon and Syria. Article 2(4) of the Charter contains a general prohibition on recourse to force and Article 51 affirms the right of self-defence in the limited circumstance of response to a prior armed attack. The legal argument is somewhat more complicated than this distinction between aggression and self-defence, but not much more so. In essence, the first concern of the Report involves an investigation of the central allegation that Israel's invasion of and attacks upon the Lebanon on 6 June 1982 constituted the initiation of aggressive war for which no adequate legal defence is available.

What is most necessary is to restore the basic framework of law to govern the conduct of all combatants in war, but especially the high technology combatants. This basic framework consists of a long list of treaties that try to set down basic rules applicable to conflicts with respect to tactics; weaponry; treatment of prisoners, wounded and civilians; belligerent occupation. These treaties balance off the pressures to accommodate military necessity with the protection of innocents, civilian values and artefacts and the human rights of soldiers. Putting the law of war in the form of written declaration or agreement commenced in the mid-nineteenth century and has proceeded continuously up to the present time: the 1864 Geneva Convention on wounded and sick; the famous 1868 St Petersburg Declaration on the laws and customs of war. The most celebrated series of treaties comprising the law of war were negotiated at the two Hague Conferences of 1899 and 1907, which in all produced sixteen agreements and four declarations, dealing with a variety of topics, including the means of conducting warfare and detailing, in particular, the law of land and maritime warfare. There were additional treaties negotiated in the 1920s that have some importance, including the 1925 Geneva Protocol on gas and bacteriological warfare, the 1929 Geneva Convention on wounded and sick, the 1929 Geneva Convention on prisoners of war, the 1930 London Treaty on naval armaments and warfare, and the 1936 London *Procès-Verbal* on submarine warfare. Each of these agreements was signed and entered into force.

After World War II, a further series of agreements and declaratory documents pertaining to the law of war have been concluded. In 1948 the Genocide Convention was adopted. Then in 1949 at a large diplomatic conference the four very basic Geneva Conventions dealing with humanitarian law were drafted after eleborate negotiations and finally adopted: I, II relating to the treatment of the wounded and sick; III relating

be substantiated sufficiently to satisfy our sense of its having been established as true beyond a reasonable doubt; one element operating here was our inability to confirm in a tangible way the allegations made.

An additional concern arose out of the tense atmosphere surrounding our evidence-taking in both Lebanon and Israel. We granted witnesses whatever confidentiality they requested. Many witnesses or potential witnesses were fearful of recriminations or punishments that might be visited upon them at a later stage if it became known that they contributed to the work of the Commission. In some situations, the Commission has withheld the identity of a witness despite the absence of such a request because of our own sense that jeopardy could result.

As the official policies of the State of Israel were the centre of our concern we sought in every way to give the Israeli authorities a full opportunity to be heard. As noted in the Preface, the Chairman of the Commission wrote a letter to Prime Minister Begin, formally requesting Israeli cooperation with the work of the Commission. The request was denied and the Israeli Foreign Ministry issued a statement advising Israeli citizens not to cooperate. Hence, the Commission was unable to obtain direct testimony from leading Israeli officials. The Commission did advertise its existence in leading newspapers in Israel, inviting anyone in Israel with any evidence bearing on the allegations or their refutation to come forward. Several Israeli witnesses favourable to government policies in the Lebanon War did come forward and were fully heard. The Commission also developed contacts of its own to receive as full a presentation of Israeli perspectives as possible. We do not pretend that the Commission's hearings cover fully the official lines of Israeli defence against the allegations covered in our Report. Extensive documentary and journalistic sources were available and used widely to complete the picture. The Commission has considered the best legal defences open to Israel with respect to these allegations, regardless of whether such a defence has been in fact directly relied upon by Israel. In this respect the Commission has proceeded by giving Israel as much protection as possible against these very serious allegations.

A commission without a formal mandate from a government or an international institution is a very specific kind of legal creature. It owes its legitimacy to its performance and to the integrity of its sponsoring and disseminating process, as well as to the reputation and abilities of its members and sponsors.

In the fullest sense, all peoples share an interest in achieving a more lawful world. The failure of governments to uphold the law of war, either with respect to recourse to war or to its conduct, creates a normative vacuum in relation to the most serious questions confronting humanity. This Commission, through its Report, seeks to tell the legal story of one notable war directly involving Israel, Lebanon, Syria and the Palestine Liberation Organisation. The Commission has ambitions that are even broader. In calling attention to serious Israeli violations of international law, we believe

primacy of state interests when it comes to national security policy. Everything gives way to the effort to prevail in war, the true heritage of Machiavelli, Hobbes and Clausewitz.

Yet, even the law itself upholds a reaction against such excess. There is built into the idea and history of the law of war a powerful influence from natural law thinking that preceded the specific agreements. The just war tradition on recourse to war and the ancient and mediaeval ideas of decency and chivalry regarding the conduct of war recognise certain elementary principles of justice and fairness as immutable, binding on all human activity quite independently of any further show of governmental consent by way of explicit agreement. One task of citizen groups and international organisations is to insist that this natural law content not be abridged by states. This Commission has acted on the basis of this understanding of international law.

In actuality, customary international law provides the bridge between specific agreements and natural law. Even governments accept the view prevailing among specialists that agreements on the laws of war generally reduce to more precise written form principles of law already deemed binding through a combination of diplomatic practice, expert commentary, consensus as to natural law content and, more recently, the acts and resolutions of international and private bodies, especially the General Assembly of the United Nations, expressing the collective will and conscience of the international community. Agreements may reflect their tendency to embody pre-existing law by their textual language. For instance, in Article 1 of the Genocide Convention the parties to the agreement '*confirm* that genocide . . . is a crime under international law' (emphasis added), adverting to the fact that genocide was a crime *before* it was textually declared to be so. This organic link between written and unwritten guidelines for the law of war has a number of consequences. For one thing, it may make the signature and ratification of a particular agreement by a given government less important, or even unimportant, in relation to the assessment of obligations to be bound. Secondly, it can make new subject-matter – conflicts, tactics, weapons – subject to legal guidelines *prior* to explicit agreement. For instance, Article 36 of the Geneva Protocol I of 1977 declared: 'In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all other circumstances, be prohibited by this Protocol or by any other international law to the High Contracting Party.' Thirdly, it means that some issues are more susceptible to modification or control by expression of objections to proposed guidelines or prohibitions by governments of states.

It is crucial to understand, however, the extent to which customary international law provides a comprehensive framework for assessing all aspects of contested behaviour in a war.

This special reliance on the general background of international law on

Section I The Recourse to War

Chapter One Israel's justification for the Invasion

The terms of reference of the International Commission of Enquiry oblige it to discuss and evaluate Israel's justification 'under international law for its invasion of the Lebanon, for the manner in which it conducted hostilities, or for its actions as an occupying force'.

But more important than the Commission's terms of reference is the fact that, by the very nature of international society, with its decentralised process of decision-making and the absence of international machinery for assessing claim and counter-claim automatically, it becomes necessary to turn to a state's reasons in order to enable it to explain contested actions so that the justifications can be tested against the appropriate rules of law, especially in relation to the plea of self-defence under the Charter of the United Nations.

In pursuit of these obligations, the Chairman of the International Commission has explained, in the Preface, the way in which the Commission set about its work. In addition to these activities, the Commission has also endeavoured to establish the intentions and aims of the Israeli Government from the official statements, interviews and correspondence of Israeli officials and diplomats in order to distil Israeli motives or justifications that may justify, under international law, the invasion of Lebanon.

The Commission is mindful that the pattern of justification put forward on behalf of Israel is deeply influenced by the Israeli perception of Arab hostility to Israel's existence as a State and Israel's supporters point to the armed attacks after the 1948 partition of Palestine and the subsequent refusal of those Arab states to establish peaceful relations with it. This approach is strongly reaffirmed by Israeli feelings concerning the Palestine Liberation Organisation's continued adherence to the goals of the Palestine National Covenant.

It is in this context that the Israeli justifications have been put forward in relation to the invasion of the Lebanon.

Following the attempt on the life of the Israeli Ambassador to Britain, Mr Shlomo Argov, on 4 June 1982, Israeli jets struck at Palestinian positions in southern Lebanon and in West Beirut. On the following day, Israeli jets and gunboats bombed and strafed PLO positions along the highway between Beirut and South Lebanon. For the first time since July 1981, artillery

4. Principle of Humanity
An absolute prohibition upon methods, tactics and weapons of warfare that are inherently cruel and that have been identified as such by an international ethical consensus; this prohibition is unconditional to underscore the forbidden status of certain practices (e.g. torture), regardless of alleged battlefield justifications.

It should be obvious that such broad principles of law are not self-defining. A considerable battlefield and command discretion as to what is necessary and proportional is allowed. At the same time, it needs to be understood that claims of 'military necessity' do not enlarge upon this discretion or abridge other requirements and prohibitions of the law of war. The doctrine of military necessity has been taken into account in fashioning treaty rules and crystallising the general principles of customary international law. Hence, no separate grounds exist for the suspension of legal obligations due to political or military pressures. Nor are conduct rules and appraisals influenced by the legality, or not, of the underlying or initiating use of force. The aggressor and the victims of aggression are on the same legal footing when it comes to the conduct of war, and the applicability of its rules.

International law, like all law, develops through experience. Its specific content needs to be assessed in the context of controversy and concern. It is up to those making the legal appraisal to exhibit objectivity, respect for the evidence, for adverse perceptions of law and fact, and for the complexities of circumstances. This Commission has sought to be especially sensitive to these considerations in view of its special character. Our claim in this Report is that we have made every effort to gather evidence now available, to appraise it fairly and to balance the incompleteness of the evidence against the importance we attached to the issuance of a report at the earliest possible time.

The Commission operated within constraints of skills, resources and capabilities. Unlike, for instance, the Israeli Judicial Enquiry into the Chatila and Sabra massacres, our Commission lacked any formal competence to compel testimony or even to administer oaths. Our proceedings were not shaped, either, by any technical conception of the admissibility or the relevance of testimony. At the same time, we sought to validate the information available to us, partly by obtaining confirmatory evidence from distinct and diverse sources whenever possible, partly by checking with a vast corpus of documentary and journalistic material (a task facilitated by the Research Staff and the Commission Secretariat in London), partly by extensive cross-questioning of witnesses by Commission members, and partly by a requirement that any major witness or presentation of evidence be heard by two or more Commission members. The Commission also refused to validate certain allegations despite receiving uncontested evidence (e.g. an alleged use by Israel of weapons designed to be picked up as 'toys') because the nature of the charge could not

Terms of Reference of the International Commission of Enquiry

The terms of reference of the Commission, as agreed at its constituting session in London on 28 August 1982, are to answer, among others, the following questions, which seem to be the principal questions arising from the invasion of the Lebanon by Israel:

1. Has the Government of Israel committed acts of aggression contrary to international law?
2. Have the Israeli armed forces made use of weapons or methods of warfare forbidden by international law, including the laws of war?
3. Have Palestinian and Lebanese, or other, prisoners been subjected to treatment forbidden by international law, including inhuman or degrading treatment? Has there been a violation of international law arising out of the classification of or denial of status to Palestinian prisoners or detainees?
4. Has there been deliberate or indiscriminate or reckless bombardment of a civilian character, for example: hospitals, schools, or other non-military targets?
5. Has there been systematic bombardment or other destruction of towns, cities, villages or refugee camps?
6. Have the acts of the Israeli armed forces caused the dispersal, deportation, or ill-treatment of populations, in violation of international law?
7. Has the Government of Israel valid reasons under international law for its invasion of the Lebanon, for the manner in which it conducted hostilities, or for its actions as an occupying force?
8. To what extent, if any, were the Israeli authorities or forces involved, directly or indirectly, in the massacres or other killings that were reported to have been carried out by Lebanese militia men in the refugee camps of Sabra and Chatila in the Beirut area between the dates of 16 and 18 September?

In examining these questions the Commission will consider and determine whether any acts which they may find to have been committed are such as may be characterised as crimes under international law.

that public opinion and official bodies should not only support the Conclusions and Recommendations we put forward, but also become alert to the urgency of bringing law far more effectively to bear on the initial decision of a government to use force as an instrument of national policy, and then on the subsequent use of force in the course of combat. We regard these wider ambitions of our Commission's Report to be a fulfilment of the original intentions of the United Nations Charter, as well as carrying out the solemn promise to the future contained in the Nuremberg Judgment and Principles.

The Commission is painfully aware that it lacks any capability to implement its Recommendations. International law as a whole is notoriously weak when it comes to sanctions and enforcement.

This Commission makes no pretence to enforce anything. Its Report is in the nature of a public document, an international citizens' White Paper: that is – in the final analysis – an appeal to the conscience and wisdom of the governments involved, of international society as a whole, and of the conscience and concerns of peoples throughout the world.

Finally, the Commission is concerned with peace and justice for all the parties to this conflict. Its Report is offered as a contribution to this end.

70. Testimonies to the Commission of Janet Stevens, Rosemary Sayigh and Dr Ang, Beirut, 4 October 1982.
71. The Times, London, 20 September 1982.
72. Testimony to the Commission of Ralph Schoenman and Mya Shone, Oslo, 31 October 1982.
73. Israeli Home Service, 18 September 1982.
74. Testimony to the Israeli Commission of Menachem Begin, Jerusalem, 8 November 1982.
75. Testimony to the Israeli Commission of Major Haddad, 17 November 1982.
76. Testimony to the Commission of Dr Ang, Beirut, 4 October 1982.
77. See Chronology of the Massacre above.
78. Ellen Siegel testimony to Israeli Commission, Jerusalem, 1 November 1982.
79. See Appendix I on Genocide and Ethnocide.
80. Le Monde, 12 September 1982.
81. See Chronology of the Massacre (above), especially Deputy Prime Minister, David Levy and General Drori.
82. Testimony to the Israeli Commission of Ariel Sharon, Jerusalem, 25 October 1982.
83. See Occupation Policy.
84. See Chronology of the Massacre, above.
85. See Chronology of the Massacre, above.
86. See Chronology of the Massacre, above.
87. See Occupation Policy.
88. Haolam Haze (Israeli Hebrew newspaper), 22 September 1982.

there is a 'threat to the peace, breach of the peace or act of aggression'. Such a determination by the Security Council has not been made because of the use or threat of the use of the veto by the United States. However, Israel is obliged to carry out the decisions of the Security Council which fall within the competence of the appropriate organ of the United Nations.

The refusal by Israel to withdraw from Lebanon, to lift the blockade of Beirut and to allow free movement to UN Observers as requested by the United Nations, especially as these illegal activities were taking place in the territory of another sovereign state, Lebanon, are serious attacks on the integrity of the United Nations.

Israel, in addition, has systematically refused to settle its disputes peacefully, contrary to the international obligations undertaken under Article 2(3) of the Charter of the United Nations.

The Commission draws the attention of States to the important legal duty not to recognise in any way the consequences of Israel's illegal action in the Lebanon, especially as they may relate to the continued illegal occupation of Lebanese territory.

As the commission of an intentionally wrongful act entails a State's international responsibility, Israel is under an obligation to make reparation for the consequences of its wrongful actions. The International Law Commission has described this proposition of law as 'one of the principles most deeply rooted in the doctrine of international law'. Reparation or compensation is an indispensable complement of a failure to respect rules of law. Israel therefore owes a duty of reparation to the State of Lebanon for the physical destruction, loss of lives and general damage caused. In addition it is obliged to compensate the Palestinian people for the direct and indirect consequences of the war of aggression.

2. Have the Israeli armed forces made use of weapons or methods of warfare fobidden by international law, including the laws of war?

The Commission concludes that the use made of fragmentation and incendiary weapons by the Israeli armed forces violated the international legal principles of proportionality and discrimination. Acts of violence were directed against refugee camps, hospitals, schools, cultural, religious and charitable institutions, commercial and industrial premises, Lebanese Goverment and PLO offices, diplomatic premises and urban areas generally, which were not justified by the principle of military necessity. The damage and destruction to civilian objects and the casualties among the civilian population were, in the Commission's view, the consequence of violations by the Israeli forces of the legal principles governing the conduct and methods of war.

3. Have Palestinian and Lebanese, or other, prisoners been subjected to treatment forbidden by international law, including inhuman or

The Commission concludes that one of the principal aims of the invasion of Lebanon was to ensure the dispersal of the Palestinian population which was pursued through the destruction of the refugee camps and the massacres at Sabra and Chatila. The terror bombing of civilian areas, especially in Beirut, was partly motivated by a desire to ensure the dispersal of the population. As for the ill-treatment of the population, the practice of the forcible assembly of the population on the beaches at Tyre and Sidon resulted in the deprivation of food, water and medical attention for days and exposure in the sun. Thousands of persons, especially males between 14 and 60 were systematically detained, many of whom were deported to Israel to be imprisoned. These practices are in serious breach of the Geneva Conventions and Protocol I.

7. Has the Government of Israel valid reasons under international law for its invasion of Lebanon, for the manner in which it conducted hostilities, or for its actions as an occupying force?

The Commission considers that the invasion of Lebanon by Israel is one of the most serious breaches of the international legal order in recent years. It has been attended by violence, death and destruction of enormous proportions and the gruesome massacres of September that followed the invasion are the direct consequence of the invasion. The invasion has no validity in international law as Israel did not have any grounds to rely on the provision of the Charter of the United Nations concerning self-defence, while the means used to effect the invasion totally lacked proportionality. The cease-fire of July 1981 had been observed scrupulously. The objective of the war, therefore, was to achieve certain political and strategic aims at a high cost, which included breaches of some of the most fundamental rules of international law.

As for the Israeli justification for the conduct of hostilities, the principle of military necessity cannot excuse the massive destruction of buildings and the number of civilian casualties which resulted from Israeli operations. As for its actions as an occupying power, Israel's need for security does not justify its violation of the territorial sovereignty of Lebanon or its ill-treatment of the civilian population and protected persons such as prisoners-of-war.

8. To what extent, if any, were the Israeli authorities or forces involved, directly or indirectly, in the massacres or other killings that were reported to have been carried out by the Lebanese militiamen in the refugee camps of Sabra and Chatila in the Beirut area between the dates of 16 and 18 September?

The Commission concludes that the Israeli authorities bear a heavy legal responsibility, as the occupying power, for the massacres at Sabra and

8. Israeli authorities or forces were involved, directly or indirectly in the massacres and other killings that have been reported to have been carried out by Lebanese militiamen in the refugee camps of Sabra and Chatila in the Beirut area between 16 and 18 September.

RECOMMENDATIONS

1. The Commission recommends the immediate withdrawal of all foreign armed forces present in Lebanon without the consent of the Government of Lebanon and recommends the replacement of the United States/France/Italy multilateral force by an adequate security arrangement under United Nations auspices.

2. The Commission recommends that all refugee camps in Lebanon be protected in the future by adequate United Nations forces. The Commission considers that the international community through the United Nations should urgently examine what further measures are necessary to ensure the better protection of refugees, especially those who are victims of armed conflicts, by such means as the clarification and elaboration of principles of refugee law. The recognition of the special status of refugee camps will provide greater protection, as would the wider acceptance of the basic principles for the protection of civilian populations in armed conflicts as laid down by General Assembly resolution 2675 of 9 December 1970.

3. The Commission recommends, in the spirit of the Geneva Conventions and Protocols, that adequate steps be taken to implement the solemn obligation of States to uphold the law of war in all its aspects. In pursuit of this end, given the grave breaches of the laws of war committed by Israel during the Lebanon War, it is recommended that the Secretary-General of the United Nations appoint a special expert body to advise on the best steps to improve compliance with the existing law of war by all States.

4. The Commission recommends that all Parties to the Geneva Conventions carry out their legal obligation to prosecute individuals guilty of grave breaches of the laws of war. Such obligations seem particularly relevant to the apprehension of Israeli and Lebanese political and military leaders and participants involved in the massacres at Chatila and Sabra. The Geneva Conventions require the Parties to use their national courts to carry out this responsibility and the Commission recommends that this requirement be honoured in the present instance.

5. The Commission recommends that the Government of Israel make reparation for all damage done in Lebanon by violation of international law.

CONCLUSIONS

The principal and essential judgments of the Commission are concerned and connected with the eight questions which constituted the Terms of Reference of the Commission. In addition, evidence presented to the Commission has led it to formulate additional conclusions. The general conclusions are first related to the eight questions, with the additional conclusions following:

1. Has the Government of Israel committed acts of aggression contrary to international law?

The Commission considers that Israel has been guilty of aggression against the sovereignty of Lebanon and the rights of the Palestinian people. Such aggression has taken place contrary to the provisions of the Charter of the UN and other fundamental principles of international law. Such a violation of international law has been described by the principal legal body of the UN, the International Law Commission, as a crime under international law, since the wrongful act results from a breach of an international obligation 'essential for the protection of the fundamental interests of the international community as a whole.'

The Commission considers that Israel is also in breach of the international obligation to safeguard the right of self-determination of the Palestinian people and of the rules of law prohibiting the establishment or maintenance by force of colonial domination. The Commission is convinced that until Israel recognises the legitimate rights of the Palestinians, including the right of self-determination, there can be no lasting peace in the Middle East or an end to the Arab–Israeli conflict. These crimes of State give rise to criminal liability as far as the State of Israel is concerned. The Commission wishes to draw attention to the legal and political responsibility of other states, international bodies and public and private organisations which assist in the commission of various crimes, but especially the crime of aggression.

Israel has persistently violated the principles of the Charter of the United Nations and has systematically refused to 'agree to accept and carry out the decisions of the Security Council' in accordance with Article 25 of the Charter. Decisions of the Security Council are not limited to the provisions of Chapter VII of the Charter where the Security Council determines that

degrading treatment? Has there been a violation of international law arising out of the classification or denial of status to Palestinian prisoners or detainees?

The Commission concludes that Israel violated international rules dealing with prisoners, both civilians and fighters, particularly by denying Palestinian and Lebanese fighters prisoner-or-war status, as provided under Geneva Convention III of 1949 and the Additional Protocol I of 1977, and by subjecting these prisoners to unlawful treatment which included degrading treatment and brutality, on occasion leading to death, during arrest and transportation. Forbidden interrogation of detainees, both of prisoners-of-war and civilians, was often conducted with violence and sometimes torture, contrary to the Geneva Conventions. Detainees were intentionally deprived of medical care in camps both in Israel and at Al-Ansar in Lebanon and have been kept in degrading conditions, all of which are contrary to the Conventions and the Protocol.

4. Has there been deliberate or indiscriminate or reckless bombardment of civilian targets, for example: hospitals, schools or other non-military objectives?

The Commission concludes that the bombardment by the Israeli forces displayed at best a disregard for civilian objects such as hospitals, schools and dwellings; that on many occasions, the Israeli forces were careless in their bombardment of any distinction between military and civilian targets; and that at least some of the damage and destruction wrought was a consequence of deliberate and intentional bombardment of objects which could only have been perceived as civilian in nature. There were, therefore, clear violations of the laws of war.

5. Has there been systematic bombardment or other destruction of towns, cities, villages or refugee camps?

The Commission's view is that the attacks and the bombardment by the Israeli forces of centres of population were, in many cases, disproportionate in their effects on civilian objects and population relative to any military advantage gained. The Commission concludes that there were violations of the principle of proportionality and acts of violence contrary to the laws of war. The responsibility for these violations lies upon those commanders of the Israeli forces and their political superiors who planned and decided upon attacks which could be expected to and did cause civilian casualties and damage and destruction to civilian objects excessive in relation to the military advantage, if any, anticipated.

6. Have the acts of the Israeli armed forces caused the dispersal, deportation, or ill-treatment of populations, in violation of international law?

Chatila. 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.

The Commission draws attention to the fact that unlike crimes of State, such as the crime of aggression, where only the State is liable, crimes against peace, war crimes and crimes against humanity, as identified in paragraphs 1–8 above, invite individual responsibility, with an obligation on States to punish individuals or organisations in accordance with the rules of their internal law.

The Nuremberg Principles, which are now part of customary international law, identified 'leaders, organisations, instigators and accomplices, participating in the formulation or execution of a common plan or conspiracy to commit' these crimes, as responsible for all acts performed by any persons in execution of such a plan.

Under the Geneva Conventions of 1949, as supplemented by Protocol I of 1977, States party to the Conventions are obliged to prosecute individuals, regardless of nationality, for serious breaches of specific provisions of the Conventions.

The Commission, having considered the evidence and the relevant rules of law, concludes, in relation to the questions posed in its terms of reference, that:

1. The Government of Israel has committed acts of aggression contrary to international law.

2. The Israeli armed forces have made use of weapons or methods of warfare forbidden by international law, including the laws of war.

3. Palestinian, Lebanese and prisoners of other nationalities have been subjected to treatment forbidden by international law, including inhuman and degrading treatment. In addition, there has been a violation of international law arising out of a denial of prisoner-of-war status to Palestinian prisoners or detainees.

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.

6. The acts of the Israeli armed forces have caused the dispersal, deportation and ill-treatment of populations, in violation of international law.

7. The Government of Israel has no valid reasons under international law for its invasion of the Lebanon, for the manner in which it conducted hostilities or for its actions as an occupying force.

This obligation includes a duty to compensate victims and the survivors.

6. The Commission recommends the payment by Israel of a full indemnity to the Government of Lebanon in respect of the damage inflicted on Lebanese property arising from and incidental to the invasion and occupation of Lebanese territory by Israeli forces. In default of agreement as to the amount payable to the Government of Lebanon, the matter should be submitted to international arbitration.

7. The Commission recommends that Israel should pay to the International Committee of the Red Cross and other voluntary bodies compensation adequate to reimburse such voluntary organisations for the cost of supplies and services provided by them arising from the Israeli invasion and occupation of the Lebanon. In default of an agreement, the amount in each case should be determined by an assessor appointed by the Secretary-General of the United Nations.

8. 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 Chatila and Sabra massacres. Such prosecutions should be carried by due legal process and with fairness to the accused.

9. The Commission recommends that a competent international body be designated or established to clarify the conception of genocide in relation to Israeli policies and practices toward the Palestinian people.

10. The Commission proposes the suspension of all financial support and of all supplies, direct or indirect, to Israel of any arms or other military equipment (including aircraft, tanks, ammunition, bulldozers etc.) by any member state of the United Nations until the Government of Israel accepts and complies with such of the Commission's recommendations as are applicable to Israel.

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