THE KUALA LUMPUR WAR CRIMES TRIBUNAL
20 - 25 NOVEMBER 2013

Case No. 3 - CHG - 2013

The Kuala Lumpur War Crimes Commission
Against
Amos Yaron

Case No. 4 - CHG - 2013

The Kuala Lumpur War Crimes Commission
Against
The State of Israel

Coram	Judge Tan Sri Dato' Haji Lamin bin Haji Mohd Yunus Judge Tunku Sofiah Jewa Judge Shad Saleem Faruqi Judge Mohd Saari Yusuf Judge Salleh Buang Judge John Philpot Judge Tunku Intan Mainura
Prosecution Team	Prof. Gurdial Singh Nijar Tan Sri Aziz Rahman Mr.Avtaran Singh Ms. Gan Pei Fern Mr. Nizamuddin Hamid Dr. Sharizal M Zin Ms. Rafika Shari'ah Ms. Mazlina Mahali Ms. Diyana Sulaiman
Amicus Curiae-Defence Team	Mr. Jason Kay Kit Leon Ms. Larissa Jane Cadd Dr. Abbas Hardani Prof. Dr. Rohimi Shapiee Dr. Rohaida Nordin Dr. Matthew Witbrodt

The Kuala Lumpur War Crimes Tribunal (Tribunal) reconvened 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 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 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.

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

Such conduct constitutes the Crime of Genocide under international law including the Convention on the Prevention and Punishment 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 of the Kuala Lumpur Foundation to Criminalise War.

Such conduct by the 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.

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

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-Defence Team.

1. Preliminary objections and applications by Amicus Curiae-Defence Team

The Amicus Curiae-Defence 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.

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

In respect of its **second preliminary objection** the Amicus Curiae-Defence Team submits that there is no authority conferred by the Charter on this Tribunal to hear any action against the government of a country, for example, the government of Israel. The Amicus Curiae-Defence 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-Defence 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-Defence 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 founding Charter or statute that sets up the Tribunal. The **Charter of the KL Foundation to Criminalise War** 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-Defence 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-Defence 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-Defence 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-Defence 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-Defence 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-Defence Team and the Two Applications filed by the Amicus Curiae-Defence Team and the submissions by both the Amicus Curiae-Defence 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. 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 of the Kuala Lumpur Foundation to Criminalise War.

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 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 of the Kuala Lumpur Foundation to Criminalise War.

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 testifed 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. PWI 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-Defence Team for cross-examination, the Amicus Curiae-Defence 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 approaced various international organisations to collect the list of victims, but she never received them.

When PW2 was offered to the Amicus Curiae-Defence 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 Al Samouni, 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-Defence Team.

The Prosecution's fourth witness (PW4) was Salah Al Sammouni, a 34 year old resident of al-Zaytour 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-Defence Team for cross-examination, the Amicus Curiae-Defence 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 to metal contamination by exposure to weaponry during the war and by war remnants.

When PW5 was offered to the Amicus Curiae-Defence Team for cross-examination, the Amicus Curiae-Defence 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-Defence 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-Defence 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 2 1/2 months where he underwent 3 operations. He subsequently received treatment for another 2 1/2 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 8th witness (PW8) was Ilan Pappe, 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 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 Defence – Amicus 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 Defence – Amicus Team, the witness said that the Jews who escaped from Germany and Europe in the 1930s were indeed refugees looking for safe haven, but the Jews who came in 1982 and in subsequent years came as colonisers.

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

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.

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.

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.

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.

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 health and protection, social health and Palestinian child law and rights.

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 2282 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 program co-ordinator 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 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.

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 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 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.

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 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 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 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.

4. Prosecution's closing submission

In his closing submission, the Chief Prosecutor said that he had called 11 witnesses (some of whom had testified through Skype), tendered 15 exhibits and furnished several documents and reports to the Tribunal during the course of the proceedings.

He urged the Tribunal to bear in mind that this is a Tribunal of Conscience and the case before it is an extraordinary case, which Winston Churchill used to call as a "crime without a name".

He said that the Prosecution had provided evidence of facts which, examined as a whole, will show that the perpetrators had committed acts against the Palestinians, with intent to kill, cause serious bodily or mental harms and deliberately inflict conditions of life calculated to bring about the physical destruction of the Palestinians as a whole or in part.

From the testimony of Prof Pappe (PW8) the Prosecution had shown that before 1948, before UN Resolution 47, there was already a plan in place to take over the Palestinian territory, and this plan would be activated the moment the British relinquished its mandate over the territory.

At that point in time, the Palestinians were on 94% of the land, with the Jewish population settling over a mere 6% of the land. Under the UN partition plan, more than 50% of the land was to be given to the Jews.

Plan Dalet might not legally be genocidal in form at its inception, but as it took shape the ethnic cleansing metamorphised into killing, massacre and creating impossible conditions for life for the Palestinians – either they leave or they die. The Prosecution submits this is genocide within the meaning of Article 2 of the Genocide Convention.

On Sabra and Shatila, prosecution witnesses (PW1 and PW6) had testified that the Palestinian refugees in those camps had been killed by the Phalangists, aided and abetted by the Israelis who were in complete control of the two camps.

According to the Kahan Report, all of Beirut was under Israeli control, and there was clear symbiotic relationship between Israel and the Christian forces (the Lebanese Maronite Christian militia or the Phalangists or *Keta'ib*).

On Operation Cast Lead in 2008, the Chief Prosecutor said that the Israeli Defence Force had used all kinds of weapons, including white phosphorus – which is an incendiary weapon. The use of incendiary weapons is prohibited under Protocal III on the Prohibitions or Restrictions on the Use of Incendiary Weapons.

As a result of the Israeli occupation of Gaza, nowhere in Gaza is safe for civilians. 1.5 million Palestinians are now trapped in despair, their fragile economy ruined. Under the Dahiya Doctrine (October 2008), the complete destruction of Gaza is the ultimate objective, the whole place must be flattened.

The Prosecution submits that the cumulative effect of the actions taken by the Israeli government, as shown by the Prosecution witnesses and the several documents tendered to the Tribunal, have shown beyond reasonable doubt that Israel is guilty of the crime of genocide under the Genocide Convention and the Charter of the Kuala Lumpur War Crimes Commission (The Charter).

Co-Prosecutor Tan Sri Abdul Aziz, submitting on the first charge against Amos Yaron, said that Amos Yaron was the commanding officer in charge of the Israeli Defence Force, in charge of the area of Beirut, and camps Sabra and Shatila. He said there were two issues which he has to deal with – first, whether or not there was a large scale massacre of the

residents of the two camps, and second, whether or not Amos Yaron facilitated and permitted such massacre, in violation of international law and Articles 9, 10 and 11 of the Charter?

On the first issue, he submitted there was a large scale massacre, as testified by PW1. She was there, and she saw the massacre with her own eyes. There was corrobating testimony by PW6, and further acknowledged in the Kahan Report.

On the second issue, Amos Yaron was in charge, to ensure that there would be peace and law and order. The Kahan Report itself concluded that anybody who knew about Lebanon would know that by releasing the Phalangists into Beirut, there would be massacre. Surely, Amos Yaron, the General in charge, must have known that by allowing the Phalangists to go into the two camps, the massacre would take place. But he decided to do nothing.

He received the reports of the killing of women and children, but he did not check the report. He did not pass the report to his superiors. The co-prosecutor submits that by ignoring all this despite knowing the circumstances, he himself had the intention of causing the death of the people in the two camps.

5. Whether the Prosecution has established a prima facie case

After the Prosecution Team had submitted its closing submission, the Amicus Curiae-Defence Team submitted there is no case to answer – as provided in Article 26 of Chapter V (Mode of Proceedings) of Part 2 of the Charter.

The Tribunal then had a short recess to enable the Judges to deliberate and consider the totality of the evidence adduced by the Prosecution.

When the Tribunal reconvened a short while later, the President of the Tribunal ruled that the Tribunal had unanimously agreed that a *prima facie* case had been established in both charges and the Amicus Curiae-Defence Team is therefore invited to present the defence case.

6. The Defence case

Mr. Jason Kay Kit Leon of the Amicus Curiae-Defence Team submitted that in the charges against the two Defendants, the Prosecution had listed war crimes, crimes against humanity and crimes against peace. Apparently the Prosecution had abandoned these charges, concentrating only on genocide.

He said that the offence of genocide is defined in Article 2 of the Genocide Convention 1948, whilst the OED defines it simply as "the deliberate killing of a large group of people, especially those of a particular nation or ethnic group".

He submitted that the charge of genocide is unique; it means that you don't like a group, you kill them; you kill them in a grand manner. Genocide means that at the end of the act, you have a lesser number of victims than before the genocide started.

He further submitted that when one talks of "massive killing", it is many hundreds of thousands to millions of people. To suggest that an isolated event, the unfortunate murder of 3,000 people (Sabra and Shatila) is the same as massive killing is almost disrespectful of the true horror of massive killing (as in Rwanda, where 800,000 people were killed in 100 days).

With regard to the Kahan Report, the Amicus Curiae-Defence Team said that it also identified other people as being responsible, with two other names other than Yaron still alive. The question is why only Yaron was charged? Why was Defence Minister Ariel Sharon spared?

He also submitted that the PLO had repeatedly violated the July 1981 cease-fire agreement. By June 1982, when the IDF went into Lebanon, the PLO had made life in northern Israel intolerable through its repeated shelling of Israeli towns.

On Cast Lead, the Amicus Curiae-Defence Team submitted that the IDF had come out with two reports. The point is if you are going to kill people nilly willy, you do not report it.

On the issue of the wall, the Amicus Curiae-Defence Team submitted that the primary consideration is one of security of the Israeli settlers. The State of Israel has a duty to defend their lives, safety and well-being.

On the issue of checkpoints, the Amicus Curiae-Defence Team said countries have a right to immigration laws.

With regard to Plan Dalet, the Amicus Curiae-Defence Team said that it is subject to divergent opinions, with historians on one side asserting that it was entirely defensive, while other historians assert that the plan aimed at an ethnic cleansing.

7. Finding by the Tribunal of the Charge against Amos Yaron

Sabra and Shatila Massacres

> Under Charge 3, the Defendant Amos Yaron is charged with War Crimes, Crimes against Humanity, and Genocide. As the Commanding Israeli General in military control of the Sabra and Shatila refugee camps in Israeli occupied Lebanon in September of 1982, 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; and their related provisions set forth in articles 9, 10, and 11 of the Charter of the Kuala Lumpur War Crimes Commission.

Israel invaded Lebanon beginning June 6, 1982. The Israeli siege and bombardment of West Beirut continued throughout the summer of 1982. In spite of the devastation caused to Lebanon and the civilian population, Israel did not succeed in its goal of defeating or dislodging the Syrian and P.L.O. forces.

An agreement was brokered on August 19, 1982 between Lebanon, the United States, France, Italy, Israel, and the P.L.O. for the evacuation of the P.L.O. and Syrian forces under the auspices and protection of a multi-national force. The agreement further provided that the Israeli Defense Forces would not attempt to enter or occupy West Beirut following the evacuation of the P.L.O. and Syrian forces.

Pursuant to that agreement, the multinational American, French, and Italian force oversaw the evacuation of the P.L.O. and Syrian forces until completed on September l, 1982. The multinational force left Lebanon from September l0-12, 1982, after the completion of the evacuation.

On September 14, 1982, Lebanese President Bashir Gemayel, a Phalangist, was assassinated in Beirut.

Israeli Prime Minister Begin, Prime Minister of Defense Sharon, and Chief of Staff Eitan decided that the Israeli Defense Forces (IDF) would immediately enter and occupy West Beirut.

Pursuant to the decision, on September 15, 1982, the IDF entered West Beirut under the command of Defendant Brigadier General Amos Yaron, the Defendant in this case. The IDF established a forward command post on the roof of a seven-story building southwest of the Shatila camp, and Defendant Brigadier General Yaron commanded IDF forces from that post. The area surrounding the two camps, Sabra and Shatila, was thereafter under the command and control of the IDF, and all forces in the area, including the Phalangists, were considered to be operating under the authority of the IDF and acting according to its instructions.

The Tribunal heard detailed testimony about the events occurring between September 16 and September 18, 1982. A horrible systematic massacre of defenceless Palestinian refugees occurred with the deaths of up to 3,500, largely women and young children in the two camps.

Brigadier General Amos Yaron was commander of the operation in Beirut. He was asked by Major General Drori to coordinate the entry of Phalangist force at the forward command post.[1]

> After these massacres, the Israeli government was under immense pressure set up a commission of enquiry under the chairmanship of Yitzuk Kahan ('the *Kahan Commission*'), to enquire into the massacre. This commission held 60 sessions hearing 58 witnesses.[2]
>
> The Kahan Commission made the following observations:
>
> (a) Defence Minister, Ariel Sharon and Chief of Staff, Eitan declared on Sept 16 1982 before the massacres began that all of Beirut was under Israeli control and the camps were closed and surrounded.[3]
>
> (b) There was a clear symbiotic relationship between Israel and the Christian forces (the Lebanese Maronite Christian militia) known as the Phalangists or *Keta'ib* assisted by the Israeli Mossad. Even the uniforms of the South Lebanese Army (SLA) and the Phalangists were the same as those of IDF – and provided by Israel.[4]
>
> (c) The Israelis exercised some degree of control of the SLA.[5]
>
> (d) The Phalangists' plan to use force to remove Palestinians was discussed at several meetings with Israel[6].

[1] The Kahan Report, Ariel Charon and the Sabra and Shatila Massacres in Lebanon : Responsablity Under International Criminal Law for Massacres of Civilian Populations, Linda A Malone, Utah Law Review, 373, herein after Malone

[2] Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut, herein after the Kahan Report. February 8, 1983, p.2

[3] Kahan Report. p. 16, Malone p. 402.

[4] Malone p. 381, Kahan Report p. 7.

[5] Malone p. 372, Kahan Report. P. 7

[6] Malone p. 382-383, Kahan Report p. 8

(e) Three key officials of the Israel cabinet decided that the IDF under the command of Brigadier General Amos Yaron would enter West Beirut: the PM Begin, Defence Minister Sharon and Chief of Staff Eitan. The IDF would not enter the camps but rather would delegate the entry in to the camps to the Phalangists. Eitan said that he and Sharon agreed on the entry of the Phalangists into the Sabra and Shatila camps: the operational order provided: "…Searching and mopping up of the camps will be done by the Phalangists-Lebanese army". [7] Also a summary of the Defence Minister's instructions: "Only one element, and that is the IDF, shall command the forces in the area. For the operation in the camps the Phalangists should be sent in".[8]

(f) The use of terms such as:

> "purifying and purging" (*NY Times, Sept 20 1982 at A6, col 5; Washington Post Sept 21 at A14, col 6);*
>
> "mopping up"(*NY Times, Sept 23, 1982 at A8, col 4);* and
>
> "cleaning up" (*NY Times, Sept 23 1982 at A8, col 6; Sept 26 1982, A11, col 2)* the camps

shows the actual intent of the Israeli officials' and its commanders[9]

(g) The camps were surrounded and under the complete control of the Israelis, preceding the killings[10]:

(h) The Chief of Staff Eitan, after acknowledging that the Phalangists 'had gone too far" gave the thumbs up to continue the "mopping up'

An International Commission was set up to enquire into the reported violations of international law by Israel during its invasion of Lebanon.

It produced a Report in 1983: Israel in Lebanon: *Report of the International Commission to Enquire into Reported Violations of International Law by Israel during its Invasion of Lebanon 196 (1983)*[11]:

(a) The Commission was chaired by Sean MacBride, former Irish Foreign Minister, and former United Nations Commissioner for Namibia and Nobel Peace Prize winner in 1974.

(b) Four of the Commission's six members concluded that Israel embarked on "deliberate destruction of the national and cultural rights and identity of the Palestinian people amounting to genocide".

(c) It concluded that:

> The massacres that took place at Sabra and Shatila in September 1982 can be described as genocidal massacres, and the term

[7] Malone p. 383, Kahan Report. P. 12
[8] Malone p. 386
[9] Malone p. 432
[10] Malone pp. 387-388
[11] The Sabra and Shatila Massacre : Eye-Witness Reports, Leila Shahid, Journal of Palestinian studies.Vol 32. No. 1. p. 36 at p. 43

"complicity in genocide" is wide enough to establish the responsibility of Israel for these acts."

(d) The Report placed the massacre in context:

> "[Sabra and Shatila] 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 underlying Israeli objective seems clearly directed at making the Palestinian camps uninhabitable in a physical sense as well as terrorizing the inhabitants and thereby breaking the will of the Palestinian national movement, not only in the war zone of the Lebanon, but possibly even more centrally, in the occupied West Bank and Gaza": p. 121[12],

(e) That this represents a comprehensive policy to destroy an entire ethnic group is again illustrated by Ammon Kapeliouk, *Sabra and Shatila* (p. 45-6):

> "Since the beginning of the war in June 1982, the Israelis have repeatedly used bulldozers to destroy homes and force the residents to flee. The refugee camps of south Lebanon were bombarded and then destroyed with explosives and bulldozers. In Israel, this operation was known as "the destruction of the terrorist infrastructure." The objective was to prevent the Palestinians from forming a national community in Lebanon. Therefore, it was necessary to destroy not only homes, but also Palestinian institutions such as schools, hospitals, and social service centers. In addition, the Israelis sought to deprive the Palestinian population of all males by arresting thousands of men and forcing thousands more to flee."[13]

The Defendant Amos Yaron

The Commander, Brigadier General Yaron, and the Phalangists agreed that a Phalangist Liaison Officer with communications equipment would be present at all times in the IDF command post with a Mossad Liaison officer at the Phalangist headquarters.[14]

Yaron knew about Phalangist combat ethics. He was pleased with his decision and was quite content to have the Phalangists participate and not leave the operation up to the IDF.

Yaron could not explain his lack of action or intervention by the Israeli army to protect civilians when he learnt on the first night, September 16, after the intervention of the Phalangists that massacres were occurring.[15]

Even when Israeli military authorities were well aware of the exactions by the Phalangists on Friday 17 September, they did not intervene to protect the Palestinian civilians but rather allowed them to bring in tractors to do what they wanted.[16]

[12] cited in Shahid at p. 43
[13] Shahid. P. 44
[14] Malone p. 388
[15] Kahan Commission p. 81.
[16] Malone p. 392

The following testimony confirms that from the command posts, the Israelis, including of course Brigadier Commander Amos Yaron, could see into the camps and observe the massacres:

(a) From the command post, it was possible to see into the camps, even into the narrow alleys. One could see the mass grave 300 meters away dug by the Phalangists and the bulldozer used to bury the hundreds of victims.[17]

(b) Similarly, the testimony of Dr Ang Swee Chai

(c) Reports of Senior Journalists. [18]

Washington Post, senior foreign correspondent, Jonathan Randal: noted this as an 'obviously wrongheaded factual error';

Israeli journalist, Ammon Kapeliouk;

Israeli newspaper *Yedi'at Aharanot* ridicules finding;

A *New York Times* article Sept 26 1982 at A9, col 2.

Loren Jenkins, *Washington Post* Beirut correspondent, Sept 20 1982: Israel aided and abetted.

(d) Doctors and nurses testified they heard constant shooting and shelling from Shatila and knew later that a massacre might be taking place: *NY Times Sept 20 1982 at A6, cols 3-4* [19]

(e) Leila Shahid quotes an Israeli officer saying that watching from the roofs of one of the buildings occupied by the Israelis was like watching '*from the front row of a theatre'*. [20]

(f) Israeli soldiers prevented Palestinian refugees from fleeing and returned them to the camps. Soldiers reported to their superiors that massacres were taking place.[21]

The United Nations condemned the Sabra Shatila killings... Security Council Resolution S/RES/521(1982): 19 September 1982 condemned the "criminal massacre. The General assembly went much farther than the Security Council. In the General Assembly Resolution 37/123: on 16 December 1982, it held:

Section D.1: Condemned in the strongest terms the large scale massacre of Palestinian civilians in the Sabra and Shatila refugee camps (Vote: 123 -0; 23 abstentions)

Section D.2: Resolves that the massacre was an act of genocide (vote: 98-19; 23 abstentions)

[17] Malone page 384-385
[18] Malone page 384-385
[19] Malone pa. 385, fn 52
[20] Shahid, p. 44
[21] Shahid, pp. 40-41

Legal Issues

Burden of proof

The burden of proof in this tribunal is beyond all reasonable doubt.[22] 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.

A person is guilty of genocide if he acts with an intention as described in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) at Article 2.[23]

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.

This intention is known as the *mens rea* of specific intention in criminal law as opposed to the concept of general intention. The expression *dolus specialis* has been adopted by the Ad Hoc Tribunals to describe this requirement with respect to the criminal state of mind. To convict, an accused must have the intention to destroy, in whole or in part the group described in the Convention.

Proof of genocidal intent can be done by inference in the light of all the facts and does not require a specific plan.[24] This intent must be proven beyond all reasonable doubt. If there is any alternative interpretation of the state of mind of the Defendant, the Prosecution will fail. The inference must be the only reasonable inference available on the evidence.[25]

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 Convention.[26]

---

[22] KLWCT Charter article 2, subsection (i)
[23] As adopted in Article 10 of the KLWCT Charter.
[24] Akayesu Trial Judgement, ICTR, para 560
[25] *Krstic,* ICTY, Appellate Judgment, 19 April 2004, para. 41
[26] Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide. I.C. J. Decision of 26 February 2007 para. 179

Evidentiary Conclusions

The findings below are only made if the Tribunal is convinced beyond all reasonable doubt of the finding.

The Status of the Israel Defence Force in Lebanon from 15 September 1982

The evidence described above shows that Israel had invaded Lebanon illegally and had become an occupying force for part of Lebanon. Defendant Yaron was in charge of the occupation. As discussed below, this amounts to a Crime against Peace incurring the criminal responsibility of the State of Israel and the Defendant Yaron.

The relationship between Lebanese militia and the Defendant

The evidence described above shows without doubt that the Defendant and the IDF collaborated with the Phalangist militias and used the militias to carry out Israeli policy of destroying the Palestinian people. The Defendant Yaron worked with the militias personally.

Victims

The evidence shows that a large number of men woman and children were killed. Most were Palestinian. There was little or no resistance to the invaders. This is a part of the Palestinian nation and as such satisfied the requirements of the Genocide Convention.

Knowledge by the Defendant and his acts and omissions

There is no room for doubt that the Defendant Yaron had a thorough knowledge of the exactions being committed by the associated militias. The Defendant actively sent these militias into the Sabra and Shatila camps knowing what they would do. As reports emerged of their killings of unarmed civilians: men, woman and children, he failed in his duty as commander of an occupying and invading force to protect civilian population.

Intention of Israeli State, Intention of Defendant Amos Yaron

This evidence shows beyond all reasonable doubt that the Defendant Yaron consciously refused to protect the Palestinian population in the Sabra Shatila camps. His responsibility however goes much farther. He and the Israeli army used the Militias to destroy the Palestinian population in the camps. There was almost no resistance. The massacres were fully observed by the Israeli army from its vantage points. No persons could escape from the area cordoned off by the Israeli army. He was informed throughout about the progress of the massacre. The only inference reasonably possible is that Amos Yaron intended mass murder and that the Palestinian population be destroyed.

The Defence argued that Yaron did nothing to commit the crimes in Sabra and Shatila and cited exculpatory findings of the Kahan commission to attempt to clear Yaron for the charges.

This Tribunal is not bound by the Kahan Commission but its factual observations are useful in the search for truth. The Kahan Commission findings were made in Israel whereas the Tribunal is an international tribunal of opinion independent of Israel and the major powers. The Tribunal does not accept Defence arguments concerning the acts and omissions of the Defendant Yaron.

The Defence argued that the Prosecutor erred in not accusing Ariel Sharon. As for the failure to accuse Ariel Sharon, it is up to the Prosecutor to decide whom to charge, and barring abuse or oblique motive by the Prosecutor, the Tribunal cannot intervene in Prosecutorial Discretion.

> The Defence objected to the use of General Assembly resolutions to prove genocide. The finding of intent (to commit genocide) by the General Assembly is soft law but is useful in the context to help to evaluate the intention of Israel and Amos Yaron.

The Tribunal considers the actions of Amos Yaron as engaging his personal criminal liability.

Command responsibility

Given the finding that Amos Yaron is personally responsible for the crimes committed, it declines to consider his liability for command responsibility.

Legal consequences

> The Tribunal will examine the facts proven in the light of the crimes provided for in the Charter, namely Crimes against Peace, Crimes against Humanity, Genocide and War Crimes, provided for in articles 8, 9, 10, and 11 of the Charter.
>
> **Cumulative convictions**
>
> The Tribunal recalls the law with respect to cumulative convictions. The Appeals Chamber of the International Tribunal for former Yugoslavia held at paragraph 168[27]:
>
> 168. The Appeals Chamber accepts the approach articulated in the *Čelebići* Appeal Judgement, an approach heavily indebted to the *Blockburger* decision of the Supreme Court of the United States.[28] The Appeals Chamber held that: [29]
>
> > *"fairness to the Defendant and the consideration that only distinct crimes justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.*
> >
> > *Where this test is not met, the Chamber must decide on the basis of the principle that the conviction under the more specific provision should be upheld".*
>
> The Tribunal will follow this principle.

Crimes Against Peace

Lebanon is a sovereign state which was invaded by Israel on 15 September 1982. Amos Yaron participated in this aggression of Lebanon and became Brigadier General of this occupation force. The Tribunal recalls the Nuremberg Principles I and VI

---

[27] *Prosecutor V. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. It-96-23& It-96-23/1-A, Judgement, 12 June 2002

[28] *Blockburger* v *United States*, 284 U.S. 299, 304 (1931) ("The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.").

[29] *^elebi}i* Appeal Judgement, paras 412-13. Hereinafter referred to as the *^elebići* test.

Principle I states, "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment".

Principle VI states,

"The crimes hereinafter set out are punishable as crimes under international law:

(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).

We recall the terms of the Nuremberg judgement under the pen of Mr Justice Birkett states:

"The charges in the Indictment that the Defendants planned and waged aggressive wars are the charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world.

To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from the other war crimes in that it contains within itself the accumulated evil of the whole".

The State of Israel has committed the mother of all international crimes by invading Lebanon and this has led Yaron to commit crimes against humanity and genocide.

Crimes against humanity

The Tribunal repeats the relevant parts of Article 9 of the Charter.

Crimes against humanity

For the purpose of this Charter, *"crime against humanity"* means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination…;

The crime of extermination is the act of killing on a large scale.[30] The expression "on a large scale" does not, however, suggest a numerical minimum.[31] In addition to the threshold *mens rea* requirements for all crimes against humanity, the *mens rea* of extermination requires that the Defendant intend to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths in a widespread or

[30] *Bagosora and Nsengiyumva* ICTR, Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185, *citing Ntakirutimana* Appeal Judgement, para. 516.
[31] *Bagosora and Nsengiyumva* ICTR Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185, *citing Ntakirutimana* Appeal Judgement, para. 516.

systematic manner.[32]

The Tribunal has found above that Amos Yaron (and the Israeli State) participated directly with the Lebanese Militias in the mass murder and destruction of the Palestinians in Sabra and Shatila camps.

For this reason, the Tribunal finds Amos Yaron guilty of a crime against humanity as charged.

Genocide charge

As found above, the Defendant Yaron intended the mass murder and the destruction of the Palestinian population at Sabra and Shatila. This population constituted a national group as envisaged by the Genocide conventions. Not only did Amos Yaron intend the mass murder of these Palestinian refugees and their destruction as a group, he succeeded in killing of up to 3,500 Palestinians.

Amos Yaron intended the destruction of this part of the Palestinian people and therefor had the specific intent as required by Article 10 of the Charter.

The Tribunal notes that as Brigadier General of the Israeli Army occupying force, he engages the Criminal responsibility of the Israeli State implying the guilt of the Israeli State as was found in the Chapter of this judgement on Charge 4.

The Tribunal finds Amos Yaron guilty as charged of genocide.

War crimes

This tribunal will decline to consider war crimes since the crimes against humanity are more specific. A war crimes conviction would be a cumulative conviction.

8. Finding of the Tribunal of the Charge against the State of Israel

In relation to the charges against the State of Israel for genocide and war crimes, the Tribunal is conscious of the novelty of the issues raised. It wishes to confront these issues head-on with a view to furthering the ideals of international law and to interpret existing precedents in such a way as to make them as good as can be from the point of view of justice and morality.

We take note that the Prosecution did not pursue the charge of war crimes vigorously and instead concentrated on the charge of genocide. The Tribunal too will, therefore, confine itself to the issue of genocide.

The main legal points raised before us were the following:

Preliminary Objection About Retrospectivity Of Laws

[32] *Brđanin* Appeal Judgement, ICTY para. 476; *Stakić* Appeal Judgement, paras. 259-260; *Gacumbitsi* Appeal Judgement, para. 86; *Ntakirutimana* Appeal Judgement, para. 522.

Learned counsel for the Defence argued that the general moral rule against retrospective laws prevents the Tribunal from hearing cases that occurred prior to its establishment on 6th June 2008. The charges against Israel relate to facts that occurred well before 2008.

This issue was raised by the Defence as a preliminary objection and was unanimously rejected by the Tribunal for the following reason: the offences of genocide and war crimes for which the State of Israel is being charged were not created by the Charter. These offences have 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 International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Extraordinary Chambers in the Court of Cambodia (ECCC) and the Special Court for Sierra Leone (SCSL).

Defence counsel was magnanimous to concede that open ended temporal jurisdiction did indeed exist for the Nuremberg Tribunal, the Tokyo Tribunal and under the US Military Commission Act 2006 for the Guantanamo detainees.

The Tribunal holds that as our Charter does not confine the Tribunal to any time frame, it is not prevented from adjudicating on events that occurred decades ago. The Tribunal notes that almost all international tribunals that deal with genocide are created to exercise jurisdiction over crimes committed well before the creation of the tribunal. The Tribunal holds that the jurisdiction of the Tribunal is open-ended and not confined to any time period. The Tribunal has full jurisdiction to try this case.

Preliminary Objection That Only Natural Persons Can Be Charged

Learned Defence counsel argued that there cannot be a charge against the State of Israel because under Article 2(1)(iii) of the Charter plus the Rules of Procedure and Evidence in Articles 2, 3, 4, 5, 11 & 12, the Charter envisages jurisdiction only over natural persons and not against nation states. However, Defence counsel conceded that the Charter in Article 2(1)(ii) permits jurisdiction over a "government". The Tribunal is of the view that being a tribunal of conscience, and created to investigate serious crimes, it must reject such technical and esoteric distinctions as between a "state" and a "government". States operate through their governments. The Tribunal will not refuse jurisdiction simply on this technical ground.

Further, it rules that Chapter III Article 6(b) of its Charter explicitly lays down that "if the charge involves a sovereign state, a current head of state/government or a former head of state/government, service of a copy thereof to any relevant embassy or High Commission shall suffice…" This is conclusive proof that under its Charter, the Tribunal is empowered to try States as well as individuals.

Preliminary Objection That Israel Has Sovereign Immunity

Defence counsel submitted that international law does not allow the State of Israel to be impleaded as an accused. It was submitted that no matter what the facts may be and how serious the alleged crime may be, the State of Israel enjoys absolute immunity in international law from being impleaded in a domestic court or tribunal unless it voluntary subjects itself to such jurisdiction.

To our mind, the impugned preliminary objection of the Amicus Curiae-Defence Team raises the need for an appraisal of the dichotomy between the concept of State Immunity on the one hand and the doctrine of *jus cogens* on the other.

The concept of State immunity stipulates that a State is immune from jurisdiction in a foreign court unless it consents.

On the other hand, the doctrine of *jus cogens* refers to that body of peremptory principles or norms recognised by the international community as a whole as being fundamental to the maintenance of an international legal order and from which no derogation is permitted.

As corollary to a study of these two doctrines, the following three questions need to be considered, namely:

(a) What principles of law, relevant to the issue at hand, constitute *jus cogens?*

(b) Can the doctrine of State Immunity be considered as having acquired the status of *jus cogens*?

(c) If there is a conflict between two principles of law, one being a *jus cogens* but not the other, which should prevail?

Well into the middle of the twentieth century, nations had accepted the proposition that a sovereign State could not be sued before its own municipal Courts. When that dogma ceased to exist, e.g. in the UK with the passage of the Crown Proceedings Act 1947, it was replaced by the equally unhelpful doctrine that a sovereign State was exempt from the jurisdiction of a foreign municipal court. The Latin maxim upon which the proposition is based was *par in parem imperium non habet,* i.e. an equal has no power over an equal.

This practice which provided *carte blanche* immunity to foreign States became known as the "*Absolute State Immunity* principle".

Support for the *Absolute State Immunity* principle can be found in most, if not all, of the cases, appearing in Bundle 3 of the authorities submitted by learned Amicus Curiae-Defence Team in support of their preliminary objection application. These cases include *The Schooner Exchange*[33]; *Mighell v. Sultan of Johore*[34]; *The Porto Alexandre Case*[35]; *Duff Development Co. v. Kelantan Government*[36]; *The Cristina Case*[37], *Commonwealth of Australia v Midford (Malaysia) Sdn Bhd & Anor* [38] and *Jurisdictional Immunities of the State (Germany v Italy)*[39].

Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening) was a 2012 International Court of Justice case where the Court, *inter alia,* found by a 14 to one majority, that the Italian Republic had violated its obligation to respect the immunity which the Federal Republic of Germany enjoyed under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945.

---

[33] *The Schooner Exchange v. McFaddon*, 11 U.S. 116, 136 (1812);
[34] *Mighell v. Sultan of Johore* (1894), 1Q149;
[35] *The Porto Alexandre Case* (1920);
[36] *Duff Development Co. v. Kelantan Government* 924] A. C. 797
[37] *The Cristina Case* (1938) AC 485
[38] *Commonwealth Of Australia V Midford (Malaysia) Sdn Bhd & Anor* [1990] 1 MLJ 475
[39] http://www.icj-cij.org/docket/files/143/16883.pdf

At page 10 paragraph 31 of their notes on Preliminary Objection, Amicus Curiae-Defence Team, quoted a passage from the second edition of Judge Tunku Sofiah's work, *Public International Law – a Malaysian Perspective*, as follows:

> *"Judgments of the International Court of Justice "are always considered as pronouncements of what the most authoritative international judicial body holds to be in international law on a given point, having regard to the given set of circumstances."*

The learned judge Tunku Sofiah, however, agrees with us that the outdated concept of absolute state immunity must be read along with other compelling considerations relevant to our times and especially to the situation before us.

Laws, unless they concern that of the Almighty, can neither be immutable nor static. And when justice so demands, through the passage of time, shifts and changes to laws that are unjust invariably take place.

In some countries, like China, for example, the State jealously guards the "absolute" concept of State Immunity and denies any attempt by anyone to implead a State unless that State consents.

Other States prefer a "restrictive" interpretation of the concept and allow immunity to States only in respect of the States' "public" acts as opposed to their "private" ones.

As evidence of state practice, one can point to the example of the United States. It is to the credit of the United States Government, that through a proposal made in a letter by the U.S. State Department's Acting Legal Adviser, Jack B. Tate, to the Acting Attorney-General dated 19 May 1952, there was a shift in policy of the U.S. Government from support for the absolute theory of State immunity to support for the restrictive theory.

Let us now briefly turn to the subject of *jus cogens*. What principles of law, relevant to the issue at hand, constitute *jus cogens?*

If one were to look into the jurisprudence of the ICJ as well as that of national courts, there are numerous instances where the prohibition on genocide as a *jus cogens* norm of international law has been recognised. See, for example:

(a) the ICJ judgment in the *Democratic Republic of the Congo v. Rwanda (2006)* at para 64;

(b) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, 26 Feb. 2007 (ICJ Judgment) at paragraphs 161, 162, 173 &174. A historical account of the Convention reveals many currents and cross-currents. But what is clear is that obligations relating to the prevention and punishment of genocide are part of customary international law (para 161). The undertaking is unqualified (para 162). There is dual responsibility on the part of individuals as well as the State. "Genocide is an international crime entailing national and international responsibility on the part of individuals and States" (A/RES/180(II)) (paras 161 &163). "Contracting parties are bound by the obligations under the Convention not to commit, through their organs or persons or groups whose conduct is attributable to them, genocide and the other acts enumerated in Article III. Thus if an organ of the State, or a person or group whose acts are legally attributable to the State, commits any of the acts proscribed by Article III of the Convention, the international responsibility of that State is incurred" (para 179).

(c) "Duality of responsibility continues to be a constant feature of international law. This feature is reflected in Article 25, paragraph 4, of the Rome Statute for the International Criminal Court, now accepted by 104 States: "No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law".

(d) "Where crimes against international law are committed by State officials, it will often be the case that the State itself is responsible for the acts in question or for failure to prevent or punish them. In certain cases, in particular aggression, the State will by definition be involved. Even so, the question of individual responsibility is in principle distinct from the question of State responsibility. The State is not exempted from its own responsibility for international wrongful conduct by the Prosecution and punishment of the State officials who carried it out" (ILC Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts, ILC Report A/56/10,2001 Commentary on Article 58, para 3).

(e) *Requests for Provisional Measures***,** 13 Sept. 1993 (ICJ Rep.325) Separate Opinion of Judge Lauterpacht at para. 100.

Eminent scholars of international law, such as M. Bassiouni[40], too, have confirmed the prohibition on genocide as a *jus cogens* norm of international law.

So has the influential *Restatement on Foreign Relations of the United States.*

We can find no legal authority which states that the doctrine of State Immunity has acquired the status of *jus cogens*, that Latin tag which, in English, simply means "compelling law".

On the other hand legal authorities abound that as a source of law, *jus cogens* is hierarchically higher.

It is also trite law that where there is a conflict between two principles of law, the one hierarchically higher in importance should prevail.

To our mind the international law doctrine against impleading a foreign state, being hierarchically lower in importance than that of the prohibition against genocide, resulted in the Charge against the State of Israel to be maintained for full trial.

Decline Of State Sovereignty: The Distinction Between Sovereign & Commercial Acts

By the so-called "Tate Letter", the United States confers immunity on foreign States only for their public and governmental acts, but not their commercial activities. It is worth observing that the commission of a war crime or genocide or crime against humanity can never be a sovereign or governmental act.

This preference for restrictive State immunity was given statutory effect in the United States by the Foreign Sovereign Immunities Act of 1976.

The United Kingdom came later in 1976 in adopting the restrictive immunity approach. That occurred in the case of The *Philippine Admiral* [41] where the Privy Council held that in cases

[40] M. Bassiouni, '**International Crimes: Jus Cogens and Obligatio Erga Omnes'** (1996) Law and Contemporary Problems 58(4), p.68
[41][1976] 2 WLR 214

where a State-owned merchant ship involved in ordinary trade was the object of a writ, it would not be entitled to sovereign immunity and the litigation would proceed.

In 1978 the State Immunity Act of 1978, adopting a restrictive approach, was enacted by the United Kingdom. Since then, these two legislations have been served as a model for the national legislations of other countries including Australia, Canada, Pakistan, Singapore, South Africa and Malaysia.

The Tribunal find it rather mind-boggling when some courts can consider commercial disputes as a reason for not allowing a State to be shielded by the State Immunity principle and yet strenuously protect such a State in cases of genocide or other war crimes. Human lives cannot be less important than financial gain!

Other Inroads Into The Concept Of State Sovereignty

There have been other inroads into the domain of the State Immunity principle including the following:

(a) In 1972, the *European Convention on State Immunity 1972* was executed. That became the first attempt to establish an international legal regime for State immunity on the basis of the restrictive doctrine. It is already in force amongst the signatory States.

(b) In 2004, the *United Nations Convention on Jurisdictional Immunities of States and Their Property* was adopted by the General Assembly but this has yet to come into force[42].

(c) And not too long ago, both the United States and Canada enacted legislation to permit their respective citizens or permanent residents to institute proceedings against States which harbour terrorists.

(d) In the law of the European Union, member States, can be subjected to hefty fines for violations of EU law. The consent or non-consent of the State is irrelevant. It is the State and not individual state actors who are defendants in EU courts. The subjection of the State to the jurisdiction of the EU courts flows automatically from membership of the EU.

(e) In a jurisprudential, Hohfeldian analysis, the concepts of legal right and legal duty are co-relatives of each other. If a state has legal duties under international law, then someone must have a corresponding legal right against the State. Defence counsel confirmed for us that the State of Israel is a signatory to the Genocide Convention. It has never repudiated the Convention. In fact it has its own law on Genocide that it enacted to conduct genocide trials in Israel like the one in the *Eichmann* case. We hold that Israel's voluntary subjection to the Genocide Convention imposes on it

[42]The Convention was open for signature by all States until 17 January 2007 and would have entered into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. As of 7 May 2013, there are 28 signatories to the Convention and 13 instruments of ratification have been deposited. (According to its Article 30, the Convention requires 30 state parties in order to come into force.)

enforceable duties that it cannot repudiate by simply refusing to give consent to a proceeding against it on a charge of genocide.

(f) Like all other areas of law, international law is not static and is evolving to meet the felt necessities of the times. The Tribunal is conscious that the concept of state sovereignty is in decline. In the human rights era in which we are living, state sovereignty is a shield against foreign aggression. It cannot be used as a sword against one's own nationals or the nationals of another territory. If a sitting head of a sovereign State like the President of Sudan (who personifies the State of Sudan) can be indicted for certain heinous crimes against international law, then it does not make sense to submit that a sovereign state can never be held accountable in international courts without its consent. This will not be in line with modern developments in international law. Witness for example the opinion in the *Bosnia* case which the Tribunal referred to earlier.

(g) It was submitted to us that the rationale for excluding the State from prosecution and instead directing the Prosecution at natural persons is that if a State is visited with a verdict of 'guilty' that verdict would be onerous to the entire, innocent population of the State. Touching though this argument is, it is not consistent with a large body of international law e.g. the Charter of the United Nations where measures are prescribed which would amount to collective punishment of the entire population. Under Article 41 the Security Council may authorise complete or partial interruption of economic relations. Embargoes that may devastate innocent lives may be imposed. Under Articles 42 and 44, war measures including the use of force may be employed against a nation. Under Article 5, membership of a nation to the General Assembly can be suspended. Under Article 6, a member can be expelled.

A system of law must have coherence. Its different parts must, in the words of the great jurist Ronald Dworkin, have a "fit". The idea of absolute State immunity from prosecution for grave crimes like genocide appears inconsistent with other wholesome developments in international law. Absolute state immunity is an antiquated doctrine and given the choice between precedents, this Tribunal is inclined to break free of the icy grip of this past dogma.

All these go to show that concerted efforts are taking place on the international scene to move towards a less restrictive State Immunity doctrine. In the words of Lord Denning:

> *The doctrine of sovereign immunity is based on international law. It is one of the rules of international law that a sovereign state should not be impleaded in the Courts of another sovereign state against its will. Like all rules of international law, this rule is said to arise out of the consensus of the civilised nations of the world. All nations agree upon it. So it is part of the law of nations.*
>
> *To my mind [so Denning continued], this notion of a consensus is a fiction. The nations are not in the least agreed upon the doctrine of sovereign immunity. The Courts of every country differ in their application of it. Some grant absolute immunity. Others grant limited immunity, with each defining the limits differently. There is no consensus whatever. Yet this does not mean that there is no rule of international law upon the subject.*
>
> *It only means that we differ as to what that rule is. Each country delimits for itself the bounds of sovereign immunity. Each creates for itself the exceptions from it. It is, I think, for the Courts of this country to define the rule as best they can, seeking*

guidance from the decisions of the Courts of other countries, from the jurists who have studied the problem, from treaties and conventions and, above all, defining the rule in terms which are consonant with justice rather than adverse to it[43].

Inequitable Enforcement of International Law

Another reason why the Tribunal wishes to reject the doctrine of absolute state immunity from prosecution in matters of 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, weak nations, mostly in Africa and Asia, are periodically subjected to devastating sanctions, military interventions and regime changes. At the same time, unbearable atrocities and brutalities that are inflicted on the militarily weak nations of Latin America, Africa and Asia by powerful nations in the North Atlantic and their allies go unscrutinised and unpunished.

We take note that the Israeli perpetrators of Sabra and Shatila were never punished and instead rewarded. We took note of the *Jerusalem Post* story of Nov. 22, 2013. On January 4, 2009, 100 members of the al-Samouni family huddled inside a house. In the morning mist, an Israeli airstrike killed 21 people inside. Yet last week the Military Advocate General of the IDF informed B'Tselem (human rights group in Israel) that he had decided to close the investigation into this incident without taking any measures.

In the light of this reality that horrendous wrongs go unpunished and instead the victim is demonised and brutalised, we feel that it is time for the legal world to bring some juristic balance to our exposition of state immunity and international rights and wrongs and to expose the truth. This is what the Charter requires us to do.

What Amounts To Genocide?

Simply put, genocide means any designated acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group as such. The definition of genocide as given in Article 2 of the Tribunal's Statute is taken verbatim from Articles 2 & 3 of the Convention on the Prevention and Punishment of the Crime of Genocide which states that the following acts may by themselves or cumulatively constitute the international crime of genocide:

a. Killing members of the group
b. Causing serious bodily or mental harm to members of the group
c. Deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part
d. Imposing measures intended to prevent births within the group
e. Forcibly transferring children of the group to another group

No significant evidence was introduced by the Prosecution Team in relation to acts (d) & (e) above, but we heard 11 witnesses and examined thousands of pages of documents relating to acts (a)-(c). The Prosecution repeatedly used the words "ethnic cleansing" and the tribunal regards ethnic cleansing as part of acts (a) to (c) above.

[43] *Trendtex Trading Corporation Ltd v. Central Bank of Nigeria,* (at p. 888)

Actus Reus

The central issue before us was whether genocidal acts took place contrary to Article 2 of the Convention (Part 1, Article 10 of the Charter).

The Tribunal heard 11 witnesses and examined documentary evidence that clearly indicated a long catalogue of incredible crimes conceived as long ago as 1945 and continuing till the present. What is significant is that these are not isolated acts in the heat of the moment but repeated pattern of atrocities committed against the inhabitants of Palestine.

- Forcible expulsion of more than 700,000 Palestinians from their homes.
- Massacres of those who refused to abandon the land of their birth.
- Repeated, periodic and massive killings through air and naval strikes using the most sophisticated weaponry over the last 65 years.
- Brutal assaults on many refugee camps as for example in Sabra and Shatila. Israel's military action in Sabra and Shatila was condemned by no other than the 1983 Israeli Kahan Report. The report found Brigadier General Yaron to be complicit in the atrocities and massacres committed by the Lebanese Phalangists. As Brigadier General Yaron was a commanding officer of the Israeli Armed Force, his culpability has to be attributed to the State of Israel. The IDF sealed the camps and prevented any Palestinians from leaving. It allowed the Phalangist militias to enter the camp and to commit mass murders. The Kahan Report notes (Prosecution document volume 3, page 291) that Brigadier General Yaron had no reservations about admitting the Phalangists into the camps; he testified that he was happy with his decision and explained his position in that "*We have been fighting here for four months already, and there is a place where they can take part in the fighting, the fighting serves their purposes as well, so let them participate and not let the IDF do everything*". Credible witnesses testified to us that women and children were shot in their homes; pregnant mothers were killed and their babies extruded from the womb. Among the witnesses the Tribunal heard was the internationally respected medical doctor, Dr. Ang Swee Chai who testified to the magnitude of the atrocities and the fatalities that she witnessed first hand.
- Periodic seizure of Palestinian lands and farms and conversion of them into Israeli settlements.
- Building of a 190km long wall/fence which has been condemned by the ICJ (but whose construction has been rationalised by 2 Israeli Supreme Court decisions).
- Apartheid like conditions of affluence in the illegal settlements and extreme depravation in the Palestinian ghettos. Some roads are for the Jewish population only.
- Use of white phosphorus which tears out the insides of human bodies on the civilian population.
- Detention without trial and ill treatment of prisoners.
- Torture.
- Denial of adequate food, stealing of water resources, supply of inadequate quantum of water, and building materials.
- Land and sea blockades of Palestinian areas, especially in Gaza.
- Use of excessive force on Palestinian combatants armed with crude weapons and in some cases against children throwing stones.
- Siege and imprisonment of an entire nation.
- Daily humiliations at hundreds of checkpoints on Palestinian territory and impossible conditions of life.

The Tribunal heard moving testimony from credible witnesses that what has happened to them has happened to thousands of their brethren.

The Tribunal also took note that many of the above atrocities committed by Israel over the last 67 years were, now and then, condemned by the UN Security Council, the UN General Assembly and other international organisations.

Chief Counsel for the Amicus Curiae-Defence Team presented to us an ingenious argument that there is no genocide in Palestine because the population of the Palestinians is continuing to grow. Unless there is a significant decrease in population, there can be no genocide he asserted. The Tribunal finds this submission totally insensitive and inhuman. It is internationally documented that nearly 700,000 Palestinians were driven from their home to lead nomadic and deprived lives in neighbouring lands where they are not generally welcomed. The fact that the remaining population of Palestine after the ethnic cleansing in the mid 1940s continues to show modest growth has not disproved the existence of periodic killings, humiliation, and dehumanisation.

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.

It is impossible for the members of the Tribunal to disregard clear cut evidence of brutalisation, demonisation and dehumanisation of an entire population. It is incredible that in an age of human rights, such atrocities can continue to rage for more than 6 decades and that there are people in nations who trivialise such inhumanity. The Tribunal unanimously holds that the acts committed against the Palestinians amount to genocide over the last 67 years.

The Tribunal must however clarify that it takes note of the violations of international humanitarian law by some members of the Palestinian community. Their prosecution and guilt is a separate matter.

Was There *Mens Rea*?

As the Tribunal has stated earlier, the Tribunal heard 11 witnesses and examined documentary evidence that clearly indicated a long catalogue of incredible crimes conceived as long ago as 1945 and continuing till the present. What is significant is that these are not isolated acts in the heat of the moment but repeated pattern of atrocities committed against the dispossessed inhabitants of Palestine.

What is also significant is that the above culpable acts are systematically directed against the same group and by the same offender over the last 67 years. The scale of atrocities committed and their general nature indicate a clear genocidal intention.

Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia stated that the specific intent of the crime of genocide "*... may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article IV or the repetition of destructive and discriminatory acts*". The Tribunal accepts evidence from various internationally respected social scientists among them Prof Ilan Pappe and John Pilger and Prof Noam Chomsky 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 wishes to state that the test that it employed in determining guilt was the test of "beyond reasonable doubt".

Was it a case of Self-Defence?

The Tribunal heard significant evidence from the Amicus Curiae-Defence Team that Israeli actions of bombing, killing, maiming, other military interventions, curfews, checkpoints and "apartheid walls" were in response to continuous Palestinian terrorism.

The Tribunal agrees that there is cogent evidence of Palestinian resistance to Israeli presence, incidences of suicide bombing, and firing of crude rockets into Israeli territory by Palestinian fighters. However it is our finding that much of the Palestinian generated violence is not on Israel's own territory, but from and on Israeli occupied Palestinian land. Much of the violence perpetrated by Palestinians is a reaction to the brutalities of the vicious racism, brutalities and genocide that is a tragic feature of Palestinian life.

Much as we condemn violence and pray for peace, it must be stated that no power on earth can douse the flame of freedom from the human spirit. As long as there is suppression, there will always be people prepared to die on their feet than to live on their knees.

We also hold that the force employed by IDF is excessive, totally disproportionate and a violation of international humanitarian law. The methods used are unspeakably inhumane and amount to war crimes.

We unanimously find the State of Israel guilty as charged.

9. Verdict

After considering the evidence adduced by the Prosecution and submissions by both the Prosecution and the Amicus Curiae-Defence Team on behalf of the two Defendants, the Tribunal is satisfied, beyond reasonable doubt, that the First Defendant, Amos Yaron, is guilty of Crimes Against Humanity and Genocide and the Second Defendant, the State of Israel is guilty of Genocide.

10. Orders

10.1 The Tribunal orders that reparations commensurate with the irreparable harm and injury, pain and suffering undergone by the Complainant War Crime Victims be paid to them. While it is constantly mindful of its stature as merely a tribunal of conscience with no real power of enforcement, this Tribunal finds that the witnesses in this case are entitled *ex justitia* to the payment of reparations by the two convicted parties. It is the Tribunal's hope that armed with the Findings of this Tribunal, the witnesses (victims in this case) will, in the near future, find a state or an international judicial entity able and willing to exercise jurisdiction and to enforce the verdict of this Tribunal against the two convicted parties. The Tribunal's award of reparations shall be submitted to the War Crimes Commission to facilitate the determination and collection of reparations by the Complainant War Crime Victims.

10.2 **International Criminal Court and the United Nations, Security Council** - As a tribunal of conscience, the Tribunal is fully aware that its verdict is merely declaratory in nature. We have no power of enforcement. What we can do, under Article 34 of Chapter VIII of Part 2 of the Charter is to recommend to the Kuala Lumpur War Crimes Commission, WHICH WE HEREBY DO, to submit this finding of conviction by the Tribunal, together with a record of these proceedings, to the Chief Prosecutor of the International Criminal Court, as well as the United Nations and the Security Council.

10.3 **Commission's Register of War Criminals** - Further, under Article 35 of the same Chapter, this Tribunal recommends to the Kuala Lumpur War Crimes Commission that the names of the two convicted parties herein be entered and included in the Commission's Register of War Criminals and be publicised accordingly.

10.4 The Tribunal recommends to the War Crimes Commission to give the widest international publicity to this conviction and grant of reparations, as these are universal crimes for which there is a responsibility upon nations to institute prosecutions.

10.5 The Tribunal deplores the failure of international institutions to punish the State of Israel for its crimes and its total lack of respect of International Law and the institutions of the United Nations. It urges the Commission to use all means to publicise this judgement and in particular with respect to the Parliaments and Legislative Assemblies of the major powers such as members of the G8 and to urge these countries to intervene and put an end to the colonialist and racist policies of the State of Israel and its supporters.

11. Conclusion

Having delivered its verdict and consequential orders, this Tribunal wishes to place on record its deep appreciation to both the Prosecution and the Amicus Curiae-Defence Teams for their efforts in ensuring that this resumed Hearing was able to be conducted in the best tradition of any Bar.

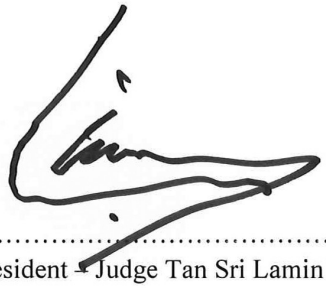
The Tribunal commends Co-Prosecutors Prof Gurdial Singh Nijar and Tan Sri Abdul Aziz Abdul Rahman and the other members of their team for their thorough preparation of their case.

The Tribunal also commends every single member of the Amicus Curiae-Defence Team for accepting their difficult assignment as friends of the court and for giving their all beyond their call of duty in the name of justice and fair play for their absent Defendants. Mr Jason Kay, Ms. Larissa Jane Cadd and Dr. Matthew Witbrodt, all of whom had addressed the Tribunal during the Hearing, meticulously presented the case for the Defendants with extraordinary fidelity even though none of them had met or had been instructed by the Defendants.

Finally, the Tribunal extends its thanks to members of the Malaysian public and other benefactors who had generously contributed to the Kuala Lumpur Foundation to Criminalise War in financing the holding of this adjourned Hearing.

Dated this 25th November 2013

THE KUALA LUMPUR WAR CRIMES TRIBUNAL



.....

President – Judge Tan Sri Lamin bin Haji Mohd Yunus

.....

Judge Tunku Sofiah Jewa

.....

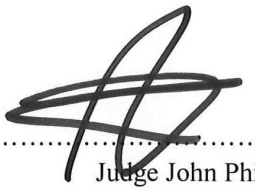
Judge Salleh Buang

.....

Judge Shad Saleem Faruqi

.....

Judge Mohd Saari Yusof



.....

Judge John Philpot

.....

Judge Tunku Intan Mainura