

Kuala Lumpur Tribunal: Genocide and War Crimes Charges against the State of Israel

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TRIBUNAL HEARING AGAINST ISRAEL AND YARON BEGINS

KUALA LUMPUR, 20 November 2013 – The Kuala Lumpur War Crimes Tribunal (KLWCT) commenced hearing of genocide and war crimes charges against the State of Israel and Amos Yaron, a retired Israeli army general today.

In the prosecution's opening statement by Prof Gurdial S. Nijar, he stated that this trial is significant as it charges a nation that thumbs its nose at UN resolutions; decisions of the ICJ and shakes our confidence in the meaning of civilisation.

Prof Gurdial stated, that the prosecution intends to give incontrovertible proof of the incredible crimes conceived since 1945 and which still continues until today. He stressed in his statement that for the Palestinians, it is a continuing tragic saga of huge proportions. What they term as Nakba or 'catastrophe' which started in 1948 with their forced dispossession and eviction from their homeland is a history of the present: an on-going dispossession, dislocation, massacres, ethnic cleansing and all else. In short, the continuity of the trauma is not just the result of 1948 but an on-going process, and continuing into the present and linked to current Israeli policies and practices.

He further added that it will show a gruesome tapestry of sustained acts of ethnic cleansing, followed where necessary by killings, arrests, imprisonment without trial, torture, denial of adequate food, quantum of water, usurpation of lands, incessant bombardment including by phosphoric bombs, which tear out the insides of human bodies upon contact and the siege and imprisonment of an entire nation and peoples: who are then subject to daily humiliation and impossible conditions of life. Such acts of evil represent a continuation of previous such acts. And they have not ceased since. They have further intensified and metamorphosed into acts so grave as to fall within the ambit of the Genocide Convention.

He further stressed that taken cumulatively they show the establishment beyond doubt of the crime of genocide; a pattern of a clear intent to kill, injure and create impossible conditions of life designed to destroy the Palestinian populace, its spirit and determination to survive as a people, as a nation.

The prosecution's first witness, Chahira Abouardini, a Palestinian refugee living in Camp Shatila, Beirut, Lebanon related the events that took place at Camp Shatila in September 1982 in what is now known as the infamous Sabra & Shatila massacre.

"On September 16, 1982, at dusk around 5 pm, we heard shooting and screaming all around

the place, especially at the entrance of the camp. We did not know what was happening outside. Inside the camp there were only civilians and they were running all over the place. We didn't realise that a massacre was going on," said the 55-year-old mother of three, who lost her 17-year-old sister and father on that fateful day. They were shot by the Lebanese Phalangist militia.

She further stated that on the following morning of September 17, 1982, the soldiers entered her home and shot her husband, brother and cousin dead in front of her and the children. She related that militiamen entered homes and shot everyone including children and animals.

On the way to the stadium where they were herded towards, she saw her cousin's daughter who was pregnant lying dead. She said, "The murderers had opened her body and taken out her baby and put the baby on her. The child was dead as well. She was lying on the street."

She added, "Along the street there were a lot of dead bodies. Hundreds of bodies were strewn all over. We climbed a hill to the stadium. At the nearest houses, I could see bodies of children. Between the houses, which had been half destroyed, there were bodies of men, and also women and children and animals."

She stated that in the 36 hours, up to 3500 to 5,000 people from Shatila and Sabra had been massacred. There are also people unaccounted for who had disappeared. She stressed that the Phalangist militia were assisted by the Israelis. She said, "We were handed to the Israeli forces. The Israelis had used them to go into our houses, because these soldiers knew the place, and could speak Lebanese. The Israelis were afraid to go in themselves."

The prosecution's second witness of the day was Lebanese national Bayan al-Hout who resides in Beirut. Ms Bayan, author of the book *Sabra and Shatila September 1982* that covers the history of the massacre, which took place over three days in the Lebanese capital of Beirut in September 1982, was a Professor at the Lebanese University at the time of the massacre.

Bayan had interviewed survivors and set up an oral history project immediately after the massacre to preserve testimonies, which eventually resulted in the book, which is the most comprehensive, authoritative account of what had happened and who was responsible. She confirms that the massacre that was committed against the Palestinian refugees was carried out by the Lebanese militias, aided and supervised by the Israeli Army.

Earlier in the day, several preliminary objections were raised by the amicus curiae Mr Jason Kay and Ms Larissa Cadd that:

1. The tribunal has no temporal jurisdiction for acts committed before the creation of the tribunal in the subject matter of the charges before the tribunal.
2. The State of Israel enjoys immunity from prosecution.
3. Duplicity and uncertainty of charges against both accused and delay as abuse of process since the charges are being brought for acts that occurred 30 to 67 years ago.

The Tribunal after hearing submissions, in a unanimous decision, dismissed the preliminary objections stating that the objections had little merit. It was decided as follows:

1. Jurisdiction governed by the KIWCC Charter that does not provide a time frame and is similar to the Nuremberg Tribunal, which had no time limit prescribed. This trial is not criminalising what was not criminal before. The KI Charter empowers the Tribunal to take cognisance and to adjudicate on such crimes.

2. On the issue of immunity from criminal prosecution the Tribunal referred to the decision of the Genocide Convention 1948 in the ICJ Case: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia & Montenegro), Judgment, I.C.J.

Where the court ruled that:

“ 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.”

3. On the duplicity, uncertainty and abuse of process objection, the Charter and its Rules are silent on the rule against duplicity in charges and does not apply in international tribunals. The particulars contained in the charges were facts to be proven by the prosecution in the proceedings. And the lapse of time in filing these charges does not prejudice the accused as such charges can be filed at any time.

The judges of the Tribunal are headed by retired Malaysian Federal Court judge Tan Sri Dato Lamin bin Haji Mohd Yunus Lamin, who also served as an ad litem judge at the International Criminal Tribunal for the former Republic of Yugoslavia. The other judges in the Tribunal include notable names such as Tunku Sofiah Jewa, practising lawyer and author of numerous publications on International Law, Prof Salleh Buang, former Federal Counsel in the Attorney-General Chambers and prominent author, and Prof Emeritus Datuk Dr Shad Saleem Faruqi, prominent academic and professor of law, Dato' Saari Yusof, former Appeal Court judge, Mr John Philpot, a senior litigation lawyer from Canada and Tunku Intan Mainura from the Faculty of Law, UiTM and a specialist in international law.

The Tribunal will adjudicate and evaluate the evidence presented as in any court of law. The judges of the Tribunal must be satisfied that the charges are proven beyond reasonable doubt and deliver a reasoned judgement.

In the event the tribunal convicts any of the accused, the only sanction is that the name of the guilty will be entered in the Commission's Register of War Criminals and publicised worldwide. The tribunal is a tribunal of conscience and a peoples' initiative.

The prosecution for the trial is led by Prof Gurdial S Nijar, prominent law professor and author of several law publications and Tan Sri Dato' Sri Abdul Aziz Bin Abdul Rahman, senior barrister, and assisted by a team of lawyers.

The trial, which is open to the public, is being held from November 20 to 25, 2013 at the premises of the Kuala Lumpur Foundation to Criminalise War (KLFCW) at 88, Jalan Perdana, Kuala Lumpur.

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