Will the ICC Remedy Sharon's War Crimes?

by Dean Andromidas

The opening day of the International Criminal Court (ICC) was met by a mobilization of the Bush Administration and Israel's Sharon government to scuttle it. The "Rome Statute" entered into force on July 1, establishing the first permanent court mandated to bring to justice individuals accused of committing violations of international humanitarian law, including war crimes, crimes against humanity, and genocide. Using blackmail, the United States threatened to pull out of United Nations peacekeeping missions, or even to veto their renewal, unless its soldiers are guaranteed immunity from the ICC. Congress joined the administration, passing the American Service Members' Protection Act, which authorizes the President to use force to free any American who has been arrested and brought before the court.

There are very good reasons to oppose the International Criminal Court, on grounds that it would violate natural law as well as national sovereignty. But the Bush Administration is opposing it for all the wrong reasons.

The United States has been instrumental in establishing the court, as it has been in establishing the tribunals convened to try war crimes committed during the Balkan wars and the invasions and wars in Rwanda. The Bush Administration itself played the crucial role in ensuring that the government of Yugoslavia turned over its former President, Slobodan Milosevic, to The Hague. If the United States attacks Iraq, it will no doubt call for Saddam Hussein to be brought before an international war crimes tribunal. The attempt to abort the ICC escalated at the time the administration revealed its policy of "pre-emptive" attack on "rogue states" allegedly seeking to acquire weapons of mass destruction, and prepared for an unjustified war against Iraq.

Furthermore, in May the United Nations was preparing a commission of inquiry to investigate the broad allegations of massive war crimes in the Israeli Defense Forces (IDF) attack on the West Bank refugee camp of Jenin. With the help of the Bush Administration, Israel successfully scuttled the effort.

Israel Is the Key Case

Israel, an ally of the United States, as a matter of state policy, is committing massive war crimes, violating the Geneva and Hague Conventions. Moreover, the political forces within Israel most responsible, Prime Minister Sharon, his political cronies, and the senior officers of the IDF, are intimately linked to the war party in Washington which is now preparing for an attack on Iraq.

The Geneva Conventions have been signed by over 100 states, most of which have incorporated them into their national criminal law, as have the United States and Israel. The violation of these conventions should not only be the concern of the state where the violation is occurring, but also the international community as a whole. Actions by nation-states are the best means by which to deal with these crimes. But national sovereignty cannot be used to shield perpetrators from an international effort to remedy these violations.

The most efficient means to deal with such violations is through a nation or concert of nations that has the capability and moral authority for taking responsibility to act, and therefore use the political, diplomatic, and economic means to bring to justice not only those individuals accused of these crimes, but most emphatically by a just resolution of the conflict in which these crimes are being committed. The Treaty of Westphalia of 1648, which brought to a close the Thirty Years' War, presents the ideal model of a just resolution that conforms to natural law.

A formally constituted international criminal court that seeks to conduct its affairs outside of an effort by nations to remedy these violations as defined above, should be seen as an obvious violation of natural law.

That Israel has been committing war crimes and has gone unpunished, or has been denounced by the major sponsors of this court, underscores its hypocrisy. The political reality is that the United States refuses to denounce Israel as a matter of policy, and the Europeans refuse to effectively challenge that policy.

Ariel Sharon: Serial War Criminal

The case of Israel and its Prime Minister, Ariel Sharon, is most illustrative of the problem and the solution. Sharon has a proven record as a serial war criminal, who continues unrestrained and unrepentant. His first war crime was committed in 1953 in the West Bank village of Kibya. After a Palestinian raid that left several Israelis dead, Sharon, as commander of the infamous 101 Battalion, raided the village and blew up all the houses, knowing that women and children were in the homes. He conducted the raid under orders of the Israeli government, which never saw fit to remedy this violation. There were other crimes during the 1956 invasion of the Sinai, where Sharon reportedly ordered 24 Egyptian prisoners to be killed. Then of course, there was the Sabra and Shatila massacre during the Lebanon war of 1982.

A group of Palestinian refugees attempted to remedy that war crime, availing themselves of the good offices of the Belgian judicial system, which was given the capability by an act of Parliament to try crimes against humanity carried out outside Belgian territory. The claiming of universal jurisdiction by a nation, to prosecute violations of crimes against humanity, is within the bounds of natural law.

On June 26, a Belgian appeals court dismissed the case, on the grounds that Sharon was not on the territory of Belgium, an extremely narrow interpretation of the law, which smacked of outside political intervention. Michael Verhaeghe, one of the lawyers representing the Palestinian plaintiffs, said, "We are not satisfied with this. It completely undermines the scope of universal jurisdiction. We are appealing to the Supreme Court. The fight goes on, that's clear." Despite this ruling, moves are being made to change Belgian law so as to ensure that those not in Belgium can be prosecuted.

While his past crimes continue to go unpunished, Sharon is responsible for ongoing war crimes. Since the ICC's mandate began on July 1, 2002, these crimes can come within its purview. Sharon's government voted on June 30, one day before the court's opening, not to cooperate in any way with the ICC, nor to ratify Israel's initial signing of the Rome Statute.

To be sure, Israel is not concerned whether principles of national sovereignty are being violated, since it is famous for its international kidnappings, starting with the Nazi Adolf Eichmann, and for its numerous assassinations conducted in foreign countries. Israeli Attorney General Elyakim Rubinstein opposed the ratification of the ICC treaty in a letter to Justice Minister Meir Sheetrit, stating, "The reasons for this are connected to the danger of politicization that threatens the court, and the article that is largely directed against Israel on the matter of settlements. . . . The U.S., which Israel followed in signing the court's constitution, officially informed the UN recently that it has no intention of ratifying the covenant."

Israel's claim—that the settlement of a country's citizens on occupied land was added to the Rome Statute specifically because of Israel—is without foundation. This is a war crime under the Geneva Conventions of 1949, adopted because of the horrors of World War II and its aftermath which saw millions of people displaced, "ethnically cleansed" and victims of genocide.

War Crimes Detailed

The following war crimes are being committed by Sharon's government in breach of the Geneva Conventions of Aug. 12, 1949. (In ICC's the Rome Statute, Article 8, War Crimes):

- "Willful killing": Under this category one can include the targetted assassinations, which are blatantly illegal and can in no way be justified as "self-defense." Three such assassinations have taken place since July 1, 2002.
- "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Under this, comes the seizure of 35% of the land of the West Bank, and the destruction of houses of the families of suicide bombers and those arrested for terrorism.
- "Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial." Palestinians arrested by Israeli military are brought before military tribunals comprising three "judges," two of whom generally have no judicial experience whatsoever, a point complained of by Israeli reservists called up to perform these services. Israel now holds up to 10,000 Palestinians in several detention centers under reportedly deplorable conditions (see *Documentation*).
- "Unlawful deportation." Prior to the Oslo Accords, Israel did this on a routine basis, but since the Oslo Accords, it has refrained. Sharon wants to resume deportations.
- "Transfer, directly or indirectly, by the occupying power, of parts of its own population into the territory it occupies, or deportation or transfer of all or parts of the population of the occupied territory within or outside this territory." The former part of this clause is violated in the most blatant fashion in the case of the Jewish settlements in the West Bank, Gaza, and the Golan Heights. The second part is arguably being violated by ongoing operations, which have forced internal transfer of people where military operations are being carried out.
- "Committing outrages upon personal dignity, in particular humiliating and degrading treatment." These crimes are being committed daily at the road blocks.
- "Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war." This would include the network of informants, who have been compelled to aid in directing the "targetted killings."
- "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions." The brutal use of "closure," where a locked-down curfew is imposed, in some cases for as long as two weeks, has been a matter of Israeli policy. During these curfews, individuals are unable to leave their homes for any reason and risk being shot; emergency medical services have been unable to operate; entire families have been left suffering for lack of food and vital services. During the Israeli attack on Jenin, the Israeli authorities refused to allow Palestinians to even remove the many corpses from the homes in which they were killed. Since July 1, over 800,000 Palestinians have been subjected to these closures, which also constitute "outrages upon the personal dignity, in particular humiliating and degrading treatment."

These are only the statutes that are openly being violated as a matter of policy. There are other acts which, while having been committed, sometimes on a wide scale, are "arguably" not a matter of official policy. This includes "pillaging a town or place, even when taken by assault" and "willfully causing great suffering, or serious injury to body or health."

Under Article 28, "Responsibility of commanders and other superiors": The military command structure, starting with Ariel Sharon and Defense Minister Binyamin Ben-

Eliezer, are open to indictment. "A military commander or person effectively acting as military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces where: The military commander or person either knew or . . . should have known that the forces were committing or about to commit such crimes . . . or failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Growing Outrage Within Israel

There is a growing revolt within the Israeli military itself over the fact that soldiers are being asked to commit war crimes as a matter of state policy. This is being led by the famous "Courage To Refuse" organization of at least 468 reserve soldiers and officers, who refuse orders to serve in the occupied territories. Most belong to elite combat units and have chosen to stop war crimes and injustices now being inflicted on the Palestinians, and to prevent Israel from becoming a fascist state. These soldiers hold the occupation itself to be the central war crime from which a multitude of others flow. They see their action as a defense of Israeli law. This is based on an Israeli Supreme Court ruling, that a soldier is obligated to refuse any order that has a "black flag" over it, i.e., constitutes a war crime.

Already over 80 reservists have been sent to serve up to 35-day sentences in military prisons; they are being given the longest military-administrative prison sentences that can be handed down for refusing an order; they are not being court-martialled before a full military court, where they could defend themselves and be represented by an attorney. The motivation of the government is obvious. If these cases go to court, it is the government which will soon find itself on trial.

Now one of those serving a 35-day sentence, David Zonsheine, a 29-year-old software engineer and reserve officer in an elite paratroopers unit, has petitioned the Supreme Court, demanding a full court martial—which carries the threat of a three-year sentence—so as to present his case before an open court, while represented by an attorney. Zonsheine's attorney, Michael Sfarad, countered the claim that his client's refusal is a "disciplinary matter," arguing, "This involves a refusal to carry out a command that the petitioner regarded as blatantly illegal. He is entitled to a defense of necessity, both from the normal criminal perspective and the constitutional perspective, according to which necessity of conscience is part of human dignity. . . . The danger to which the petitioner was exposed must also be taken into consideration, a danger that the Honourable [Supreme Court] President [Aharon] Barak recently noted—the possibility of being brought to trial before an international criminal court that is soon to be established." Zonsheine won a small victory, when, on June 24, the Supreme Court ordered his release from prison pending the court's decision.

These troops, though supported by the growing Israeli-Palestinian peace movement, are nonetheless not strong enough to remedy these war crimes. What, then, is the most efficient means of remedying them? Although an International Criminal Court might serve as a rallying-point for the morally outraged, unless it acts in the context of a concert of nations willing to act and intervene, its effect will be minimal. The countries of the region—Egypt, Syria, Jordan—are far too weak, and should they intervene, their weakness would lead to war.

Yet these crimes could be remedied in a matter of days if the United States, in concert with Western Europe, used its and its allies' substantial political, diplomatic, and economic means to bring Israel to its senses. Then a negotiated settlement between Israel and the Palestinians could be based on the model of the Treaty of Westphalia.

Since, in the current state of affairs, President Bush's June 24 Middle East policy statement has made the United States an accomplice in these crimes, the entire question belongs on Washington's doorstep.

Documentation

The Truth About Israel's 'Administrative Detention'

Ariel Sharon's government is currently holding up to 10,000 Palestinian prisoners, mostly under so-called "administrative detention," which means no charges have been filed. The conditions of their detention constitute actionable violations of the Geneva Conventions.

Knesset (parliament) member Zahava Gal-On, after the Attorney General failed to release the findings of lawyers from his office who investigated detention camp conditions, went to a camp near Jerusalem, to see for herself. Here are excerpts from her findings, which first appeared in the July 4 issue of Israel's daily Ha'aretz. *She reminded the Attorney General that the Supreme Court has ruled that administrative detention is applied only if the suspect poses an immediate danger. "I wonder," she asked, "if all 1,000 prisoners in Ofer camp and the thousands of other detainees in administrative detention, all pose immediate future danger. . . . The large number of detainees in administrative detention raises suspicions that it has become a system for punishment without trial. It seems to me that even in the state of war we find ourselves,*

clear instructions must be given that either the detainees are put on trial or immediately freed."

On June 6, 2002 I toured the Ofer camp—a detention center opened in the wake of Operation Defensive Shield, which is located between Ze'ev and Bitunya. On the morning of my visit, there were 913 prisoners. . . .

The camp is divided into two companies. . . . Each tent has 22 sleeping places. The companies are separated by barbed wire. The Lockup tent is filthy, with overflowing garbage cans and flies everywhere. It is very crowded and hot in the tents. One tent has 20 prisoners who sleep on wooden boards, and they are forced to sleep side by side, mattress to mattress. . . .

The prisoners are dressed in torn clothes and shoes, often improvised from rags, some without shirts or trousers. Many detainees are barefoot and forced to line up for roll call on the boiling asphalt. [They say] that since the day of their arrival, they had not received any clothing and they had not been able to change clothes. According to the camp commander . . . 300 or more pairs of shoes were given to detainees, and more than 1,800 uniforms were handed out. . . . (A reminder—there were more than 900 people in the camp).

There are prisoners who were seriously wounded when they arrived at the camp. They were given first aid and transferred to hospitals for operations. Their wounds require daily monitoring, and anti-infection treatment. Being in an open camp, exposed to the sun, dust, and dirt is not good for them. . . .

According to detainees, their lawyers are allowed to meet with them for three or four minutes at most. Since every meeting includes four or five detainees, each gets very little time. . . .

One judge approved the administrative detention of more than 30 prisoners in a matter of a few minutes. Some detainees said they received sentences of several months of prison without being brought to a judge, and others complained . . . they were arrested because they had past offenses for which they had already served prison sentences. In many cases, the judge approved the administrative detention, but the time spent in detention until sentencing—sometimes weeks and even months—was not taken into account. . . . Many detainees claimed that after they finished their administrative detention period they are transferred to the Shin Bet, where they are given more administrative detention.