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A lawsuit sprouts in Brussels

Civil rights lawyer Michele Hirsch has been retained to defend Ariel Sharon in the lawsuit filed against him by survivors of the Sabra and Chatila massacre. If she doesn't get the judge to drop the case, it's expected to be a long, bloody battle

By Sara Leibovich-Dar Aug.08, 2001 | 12:00 AM

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Attorney Michael Verhaeghe is delighted at the way the affair is unfolding. Together with another attorney, Luc Walley from Brussels, and Chibli Mallat from Beirut, he filed a lawsuit in the Belgian capital against Prime Minister Ariel Sharon, over Sharon's part in the massacre of residents of the Sabra and Chatila refugee camps in Beirut in September 1982. Last week, about six weeks after the suit was filed, Israel hired a Belgian lawyer, Michele Hirsch, to defend Sharon. Hirsch is known as a civil rights advocate in her country; sources at Israel's foreign and justice ministries crowed that obtaining her services was a "brilliant" stroke by the government.

Israel is pinning great hopes on Hirsch. However, the lawyers who filed the suit are not unduly upset. Walley went on vacation, Verhaeghe said in a telephone interview that he is pleased that "at last the suit is becoming a legal battle. This is the only battle we want to see happen. We have no interest in turning the matter into a political struggle. We are happy that Sharon at last understood that this is a legal battle, and that it has to be waged accordingly."

Sharon's aides in fact understood this immediately. The suit was filed in the middle of June as a private criminal complaint. Twenty-three plaintiffs, all of whom are survivors of the massacre, signed the suit; they were joined by 14 other witnesses, among them Robert Fisk, a British journalist who was one of the first correspondents to enter the camps after the massacre, and Jean Genet, the French poet and playwright, who visited the camps at the same time. The suit has gone through several stages, beginning with its formal procedural acceptance. An earlier attempt by human rights activists to file a similar suit, but without the testimonies of survivors of the massacre, was rejected on the

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grounds that the activists were not directly involved. The suit filed by the three lawyers got around this initial hurdle. Two weeks later, the Belgian prosecution declared that the suit was admissible. Mallat responded emotionally: "This is an important day for the victims of Sabra and Chatila," he told the Belgian press. Sharon's aides realized there was cause for concern and started looking for a Belgian lawyer who would agree to represent the prime minister.

After the Belgian prosecution gave the go-ahead, an investigating magistrate, Patrick Collignon, was appointed. He is functioning as a police investigator, and the hearings in his chambers are secret. He will read the reports that have been published, interrogate witnesses and probably make a visit to Lebanon. Most of the witnesses live in Beirut and in the two refugee camps that were the site of the massacre. It usually takes about a year for an investigative judge to collect testimony. Sharon's tenure as prime minister will thus take place under the shadow of the investigation in Belgium.

Hirsch, in the meantime, doesn't have much work to do. At the end of last week, she wrote to the judge requesting a meeting; his office notes that the judge is under no obligation to hold such a meeting. It is entirely up to him.

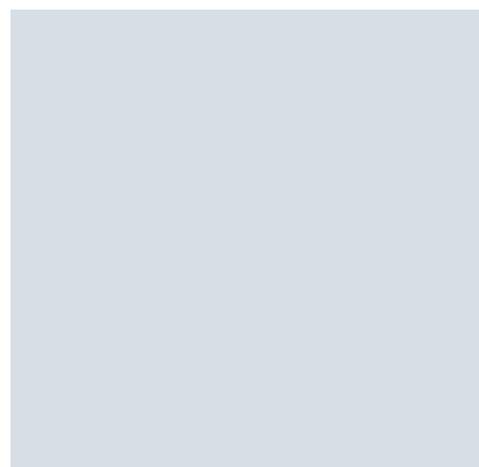
If the meeting is held, Hirsch will try to persuade the judge to drop the investigation. She maintains that an investigative judge has the discretion to decide not to pursue a prosecution. Hirsch will ask Judge Collignon to do just that, on the grounds that Sharon has already been the subject of a judicial procedure in Israel. A state commission of inquiry, chaired by the then-president of the Supreme Court, Yitzhak Kahan, looked into the massacre. It was a judicial body that investigated the event, published its conclusions and effectively exonerated Sharon, Hirsch will argue. Belgian law precludes the trial of individuals who have already faced judgment in their own country. Therefore, according to Hirsch, Sharon cannot be tried in Belgium and the case should be dropped.

Verhaeghe questions this interpretation. The Kahan Commission report, he says, did not have judicial validity because it did not have the authority to impose sanctions on those it interrogated; it was not a court and could not convict anyone, Verhaeghe says. "Hirsch's argument has no foundation in Belgian legal reality. We are not impressed by her arguments. Under Belgian law, an investigation can be carried out against a person whose country did not take action against him. What the Kahan Commission did was not a judicial operation."

Representing the state

The investigation is taking place under a Belgian law of June 1993 which gives courts jurisdiction over persons suspected of having violated international law and committing crimes against humanity, or war crimes, as stipulated in the Geneva war crimes convention of 1949. In 1999, the Belgian law was amended to include crimes of genocide. The law does not stipulate that there be a connection between the individual under investigation and Belgium. Sharon is not suspected of harming Belgian nationals; he does not reside in Belgium and there is no legal connection between him and the Belgian people. Nevertheless, he can be tried in Belgium. "If they had filed suit against him in France, they would have been shown the door unceremoniously," says a Sharon confidant, "because in France there is a clause that mandates a connection between the defendant and the state."

Another point Hirsch will make to the judge is that she is representing the



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entire State of Israel, not just Sharon. True, the suit is directed against Sharon personally. But the Justice Ministry emphasizes that it is not Sharon who is being prosecuted, but the state on behalf of which he acted as defense minister in 1982. It was the state, and not Sharon, that hired Hirsch, officials in the Justice Ministry point out.

This may be a useful public relations tactic - officials in the Foreign Ministry maintain that the Belgians are trying to put an entire country on trial - but from the legal point of view the contention that "l'etat c'est moi" is problematic. "I don't believe the judge will accept that argument," Verhaeghe says. "Under the law, only a party involved in the suit can intervene in it. The government of Israel is not a party in this case. As long as attorney Hirsch is not representing one of the defendants, I don't see how she can intervene in the suit. There is no precedent in Belgium for what she is doing."

In the meantime, Hirsch is doing something else. Since she was hired, she has been acting as a Sharon's public-relations person. She is waging a lively public campaign, appearing in the Belgian media almost every day. She explained to the Belgian paper Le Soir that the Kahan Commission was not a parliamentary investigative body, but a commission with powers that are equivalent to those possessed by an investigating magistrate under the European system. She also pointed out that the commission did not find that Sharon bore criminal responsibility for the massacre, but dealt with the moral and ethical aspects of the events.

Hirsch told Belgian radio that there is nothing serious in the Sharon case. "To say that there is no case here is to go too far, but it can be said that there is nothing substantial in the case," she stated. "There are some problems in applying the law that was enacted in 1993 - you know that it has been applied only once, when four Rwandans were accused of genocide. Now we have to examine the law; otherwise, Belgium will be flooded with suits from all over the world. The suit against Sharon also undercuts Israeli sovereignty."

Hirsch's legal work will begin only if the investigating magistrate decides to file an indictment against Sharon. Until then, she will be working the media. She is in fact a very competent PR woman. "This time we are doing things the right way," the Justice Ministry boasts. Hirsch is a handsome, articulate woman, with good connections at the senior levels of the Belgian legal community, and close ties to politicians as well. That is of no little importance. Israel and the small Jewish community in Belgium will act as a lobby for an amendment of the 1993 law, to prevent its application to serving politicians. The prime minister, Guy Verhofstadt, had been planning just such an amendment, but last month the government decided not to become involved in revising the law as long as Belgium holds the rotating presidency of the European Union. Its current tenure will end on December 13, 2001. Until then, the investigating magistrate will be able to go on with his work without political interference.

Hirsch, who is from a Jewish family, studied law in Brussels, graduating in 1979, and began working as a lawyer in 1983. She is an expert in criminal law with an emphasis on human rights. She has a small practice, and her name does not appear on the majority of the large Internet sites on which the names of Belgian lawyers are published. Hirsch is in fact a Belgian embodiment of political correctness. She employs eight attorneys - all women - but declines to say whether this is a deliberate feminist move.

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She appears at international conferences on the exploitation of women and is known as a fighter against all forms of human humiliation.

In 1996, she represented the victims of the network of pedophiles that was uncovered in Belgium. She told the Reuters news agency that the case was not solely characteristic of Belgium, but was part of a worldwide illness. Pedophilia, prostitution, pornography and commerce in human organs are caused by treating people as a resource, she maintained. "It is a global problem." Merchants who deal in human beings buy children from poor families in Asia and, with the connivance of the police and corrupt officials, transfer them from one country to another, Hirsch told the London Daily Telegraph.

Hirsch also represented the victims of the four Rwandans who were convicted of genocide by a Belgian court in a highly publicized trial. The four, two of whom were nuns, were accused of complicity in genocide in the African country, a former Belgian colony. According to the indictment, which was filed in Belgium under the 1993 law, about 1 million members of the Tutsi tribe were murdered during a three-month period beginning on April 7, 1994. The four defendants appealed to the Belgian Supreme Court, arguing that as they had not been brought to trial in Rwanda itself, it was not proper for a Belgian court to try them. Hirsch, on behalf of the victims, put forward arguments that are the opposite of the ones she is now citing in the Sharon case. In June of this year, the four Rwandans were convicted of murder and sentenced to lengthy prison terms of up to 20 years. It was the first time a jury in one country had convicted people who had committed crimes in another.

A client like any other

Sharon's trial, if the investigating magistrate decides to indict him, will resemble that of the Rwandans. The four were accused on 55 counts. In the trial, which lasted seven weeks, the witnesses described at length how the nuns had encouraged and collaborated with members of the Hutu tribe - who constitute 80 percent of the country's population - in the brutal murder of fleeing Tutsis who had found shelter in a convent. There were also other eyewitness testimonies of massacres. This time, though, Hirsch will be on the side of the defendant.

I don't understand why she took the Sharon case; I am still bewildered and looking for an answer, says one of the lawyers who worked with Hirsch on the Rwanda case. It was Hirsch, says this lawyer, who along with other jurists, pressed for enactment of the law that enables suspected war criminals from other countries to be tried in Belgium - but now she is claiming in media interviews that it is a good law, but that Belgium is applying it wrongly in the case of Sharon. Her entire conduct in this case is very strange, the lawyer adds, noting that not long ago, Hirsch complained that the Belgian defense minister was responsible for the genocide in Rwanda because he sent Belgian troops there who did not do anything to stop the slaughter.

Hirsch doesn't like questions like that. No one asked me why I chose to represent the victims in the pedophile and Rwanda cases, she says in private conversations, and I don't understand why I am being asked these questions just at this time. Since it became known that I was representing Sharon, she tells her acquaintances, I feel that I have to justify myself all the time. From her point of view, Sharon is a client like any other. In her meetings with representatives of the Israeli Justice Ministry (she has already made a visit to Israel) she stated that it was urgent to begin working immediately, before an indictment is filed. If an indictment is filed, it will be a hard battle.

Even now, at this early stage, the public campaign is far from simple. Hirsch, an affluent, opinionated, highly educated Jewish woman, is confronted by 23 plaintiffs. It was Hirsch who for years urged the Belgians to open their hearts to the downtrodden. Now she is the one who seems to be doing battle against the wretched of the earth. "In this arena of public relations our situation is not so simple," says Yitzhak Meir, who was Israel's ambassador to Belgium from 1991 to 1993. "For too many years we ignored the fact that the humanitarian situation in Israel and the territories has to be dealt with. In Europe there is sympathy for the downtrodden. In Belgium there are also guilt feelings because of what Belgium did in the Congo. Belgium, after all, became incredibly wealthy from its colonialist exploitation in the Congo.

"Hirsch is a good girl, she belongs to the liberal side of the map, but the situation is a lot more complex than it appears to be on the surface. What we perceived as 'shaking' people who are 'ticking bombs' [referring to methods used by the Shin Bet security service against individuals who have information about an imminent terrorist attack] is perceived in Europe as torture. The Palestinians have turned the agenda upside down, so that it looks like the suppression of another people. The world has become a seminar of humanitarian law, and that is what Hirsch will have to contend with."

The testimonies of the plaintiffs are shocking. The lawsuit was drawn up in Arabic, translated into French for the Belgian court, and into English by LAW, the Palestinian Society for the Protection of Human Rights and the Environment. The dry, businesslike language of the testimonies only makes them more appalling. The only witness who came to Brussels and joined the lawyers who filed the suit was Souad Srour al-Meri, plaintiff number 11 on the list of the 23. According to the suit, she is married, holds Palestinian nationality and carries a Lebanese passport. She lives in the Al Horch section of Chatila, Beirut. In the massacre, she lost her father, her three brothers (11, 6 and 3) and her two sisters (18 months and 9 months old). This is her testimony, in the official translation by LAW:

"On Wednesday, after Bashir Gemayel [Lebanon's president-elect and the head of the Phalangists, Israel's ally in the invasion of Lebanon] had been killed, we heard Israeli helicopters flying overhead at a low altitude, and on Wednesday night the Israelis started firing illumination flares, which lit up the camp as though it was day. Some of my friends went down into the shelter. On Thursday evening I went with my brother Maher to see some friends and tell them to come and sleep at our house; on the way, the road was full of corpses. I went into the shelter but I didn't find anyone there, so we went back. Suddenly I saw our neighbor, who was injured and had been thrown on the ground. I asked him where our friends were, he replied that they had taken the girls and asked me to help him, but I couldn't rescue him and I went straight back home with my brother. Maher immediately told my father that there was a massacre. I found out from our neighbor that the Phalangists were there. When my father found out, he said that we had to stay inside the house. Our neighbor was also there. We stayed in the house all night long.

"On Friday morning, my brother Bassam and our neighbor climbed up to the roof to see what was happening, but the Phalangists spotted them straight away. A few moments later, around 13 men knocked on the door of our house. My father asked who they were; they said, 'Israelis.' We got up to see what they wanted; they said, 'You're still here,' and then they asked my father if he had anything. He said he had some money. They took the money and hit my father. I asked them, 'How can you hit an old man?' Then they hit me.

"They lined us up in the living room and they started discussing whether or not to kill us. Then they lined us up against the wall and shot us. Those who died died; I survived with my mother. My brothers Maher and Ismail were hiding in the bathroom. When they [the soldiers] left the house, I started to call my brothers' names; when one of them replied, I knew he wasn't dead. My mother and my sister were able to escape from the house, but I was incapable. A few moments later while I was moving, they [the soldiers] came back; they said to me, 'you're still alive?' and shot me again. I pretended to be dead. That night I got up and I stayed until Saturday. I pulled myself along crawling into the middle of the room and I covered the bodies. As I put out my hand to reach for the water jug they shot at me immediately. I only felt a bullet in my hand and the man started swearing. The second man came and he hit me on the head with his gun; I fainted. I stayed like that until Sunday, when our neighbor came and rescued me."

Litany of atrocities

No less appalling is the testimony of plaintiff number 1, Samiha Abbas Hijazji, a Lebanese national who currently resides near the Austrian school in Beirut. She lost her daughter, her son-in-law, her daughter's godmother and "other loved ones" in the massacre. "On the Thursday, there was shelling when the Israelis came, then it got worse, so we went down into the shelter. ... We learned on the Friday that there had been a massacre. I went to my neighbor's house. I saw our neighbor Mustapha al-Habarat; he was injured and lying in a bath of his own blood. His wife and children were dead. We took him to the Gaza hospital [in Beirut] and then we fled. When things had calmed down, I came back and searched for my daughter and my husband for four days. I spent four days look[ing] for them through all the dead bodies. I found Zeinab dead, her face burnt. Her husband had been cut in two and had no head. I took them and buried them."

Mahmoud Younis, plaintiff number 4, currently resides in Chatila. He has Palestinian nationality (special refugee document no. 217163). He was 11 years old at the time of the massacre and lost his father, three younger brothers, an uncle, five cousins and other members of his family. "We took refuge in the bedroom and stayed there. As soon as they arrived, they went straight to the living room, and they tore down the photos from the walls, including the one of my brother who was killed in 'Black September.' They ransacked the living room, cursing and swearing. After having looked for us without finding us, they went up to the roof and stayed there all night long. We spent that night in terror in our hiding place, listening to the shooting and people screaming, while Israel fired flares to light the sky until sunrise.

"The next morning they started saying, 'give yourself up and your life will be spared.' My nephew was 18 months old. He was hungry and we were far from the kitchen. My sister wanted him to quiet down, and she put her hand over his mouth for fear that they would hear. Her husband decided that we would have to give ourselves up, adding that each person's fate was anyway preordained by God. The women went out first, my brothers, my father, my brother-in-law and other members of the family followed. My brother was ill. As soon as they heard our voices, they shot in our direction and came straight back inside the house. They asked us where we had been the day before when they had come in and not found anyone there. Then they ordered the women and children to go out. My brother-in-law started kissing his little girl as if he were saying goodbye. An armed man came toward my niece, tied a rope around her neck and threatened to strangle her if her father didn't let go of her. He let go of her and gave her

to me. They wanted to take me too, but my mother told them I was a girl.

"They made my mother and the women walk to the Sports Center. While I was walking, I saw my aunt's husband, Abu Nayef, killed near our house with blows of an axe to his head. The dead bodies were disfigured. While I was carrying my niece, I bumped into a dead body that had been hit with an axe and I fell over. They knew then that I was a boy, and one of them put me up against the wall; he wanted to fire a bullet into my head. My mother begged him and kissed his feet so that he would let me go. He pushed her away. When he did that, he heard the clinking of some money she had hidden next to her chest. He asked her what that meant. She replied that he could have all the money he wanted, but he had to let me stay with her. In this way, we carried on our way and we arrived at the Sports Center. The Israeli bulldozers were busy digging large trenches. We were told that we all had to get in because they wanted to bury us all alive. My mother started begging him again, and then she asked for a mouthful of water before dying.

"At the Sports Center, I saw the Israeli military, as well as tanks, bulldozers and artillery, all Israeli. We also saw groups of Phalangists with the Israelis. The Sports Center was packed with women and children. We stayed there until sunset. An Israeli came then and he said, 'Everyone go to the Cola region, whoever comes back to the camp will die.' We left, as they fired shots in our direction."

The husband of Nadima Yousef Said Nasser was murdered by being struck on the head with an ax while he was holding one of his year-old twin daughters. The little girl was "covered in blood," but survived. Another plaintiff, Muhammad Ibrahim Faqih, a Lebanese national residing in Beirut, took his son, who was hurt in the shelling of the camps, to the hospital. When he returned he saw the bodies of his two daughters, who were 14 and two and a half years old; they had been butchered with an ax - "the baby's throat was slit" - and "buried alive in a ditch." Faqih concludes his testimony: "My God, what can I say, what can I tell you? They had demolished the shops in Sabra road and dug large ditches where they buried the victims. I saw about 400 children's corpses. They upturned the earth and buried them. From the 12 members of our neighbor's family, 11 were killed and only one escaped."

Sharon is responsible

According to the suit, Ariel Sharon is responsible for all of these horrors, because he reached an agreement on September 12 with Bashir Gemayel, according to which the "Lebanese Forces" (the Phalangists) would destroy the camps. From Thursday, September 16, 1982, the suit states, the Israel Defense Forces were in control of West Beirut. According to the lawsuit, "During the morning, shells were fired down toward the camps from high locations and Israeli snipers were shooting down at people in the street. At about midday, the Israeli military command gave the Phalangist militia [a] green light to enter the refugee camps. Shortly after 5 o'clock P.M., a unit of approximately 150 Phalangists entered Chatila camp from the south and southwest.

"At that point, General Amir Drori [then the head of Northern Command] telephoned Ariel Sharon and announced, 'Our friends are advancing into the camps. We have coordinated their entry.' Sharon replied, 'Congratulations! Our friends' operation is approved.'"

In the course of the next 40 hours (coinciding with the Jewish New Year, Rosh Hashanah), between 700 and 3,500 residents of the camps were murdered. The exact number will never be known, the suit states, because

many bodies were buried under the rubble of buildings that were demolished. The Israelis, who knew exactly what was going on, according to the lawsuit, lit up the sky with illumination flares in order to assist the Phalangists.

"Certain information indicates that Mr. Sharon, although preferring to allow his local collaborators to perform the massacre in the camps, might have planned it with a view to terrorizing the entirety of the Palestinian population of Lebanon and thus pushing [the Palestinians] to leave or at least to retreat to the north of the country," the suit says.

Sharon's close circle is carefully examining every nuance of the investigation. Last week the investigating judge went on vacation. They are in no hurry, a Sharon confidant notes. The timetable is amorphous; it is not proceeding quickly, the confidant remarks. Sharon's staff views the fact that the judge has gone on vacation as an encouraging sign. Urgency in the investigation would have signaled seriousness; a slower pace suggests that nothing is urgent, and that in the end, an indictment will not be filed.

Attorney Dov Weisglass, Sharon's private lawyer, is convinced that the suit has no chance of succeeding. "The real question is whether there is any chance that the investigation will result in an indictment. The answer is categorically no. The subject was already investigated by the Kahan Commission, which was a genuine commission of inquiry, not some sort of bluff. It's difficult for me to believe that after 20 years, an investigating magistrate will succeed in anything that the commission of inquiry did not succeed in. An indictment will be filed if solid judicial evidence is submitted showing that the State of Israel or Sharon or another official wanted and intended a massacre to occur and collaborated in its execution. The Kahan Commission examined that question and reached a clear-cut conclusion that no Israeli had any such intention. The commission members only argued that the [massacre] should have been foreseen, but that is negligence without malicious intent. How can a judge in Belgium reach a different conclusion? After all, the witnesses are the same witnesses."

The same opinion, albeit on the basis of a different analysis, is held by Prof. Yehuda Blum, an expert in international law at Hebrew University. "The Belgian government will terminate the investigation because it is throwing all their foreign relations into turmoil," he says. "If this is what they are doing to Sharon, they will also have to arrest [Russian President Vladimir] Putin when he visits Belgium for what he did in Chechnya. The law will be amended, not because of Sharon, but because of Belgian foreign relations."

A bloody battle

Not everyone is so sanguine. Prof. Hava Shahor Landau, who teaches international law at Tel Aviv University and the University of Geneva, thinks it is premature to say what the result of the investigation will be. "There are several elements at work here," she explains. "On the one hand, international law grants immunity to heads of state." Laws are not applied retroactively, she points out, and there are questions that arise from the extradition laws, as to whether it would be possible to extradite Sharon to Belgium. Another element is the tremendous development of international law, and there is also the human rights aspect. While a private individual has basic rights, leaders also have basic obligations. It is difficult to know what broth will come out of this mix, she says.

Prof. Natan Lerner of the Interdisciplinary Center, Herzliya, says that the

Belgians took the 1993 law as far as possible. "Even the charter that created the International Court of Law states that in order to try someone, you have to apprehend him. Their law doesn't demand that - which is extremely unusual. I support the principle of universality, but I think there has to be some sort of connection, that a person has to live in the state that is putting him on trial, or at least be there. I don't think this particular suit stands a chance because they will not reach a situation in which they try a head of state in absentia. But Belgium is a pretty weird country in a lot of ways."

Yitzhak Meir, the former ambassador, is pessimistic. "The political situation in Belgium is such that the politicians will not be able to intervene in order to induce the judicial circles to agree not to place the prime minister of Israel on trial. I anticipate a very embarrassing scenario, with one of the possibilities for changing it being an amendment of the law. Otherwise things will be very unpleasant for everyone. The Belgians won't drop the subject from their agenda so fast. A lot of forces will be released, and blood will be shed in this battle."

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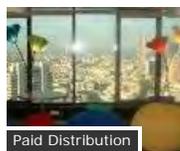
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