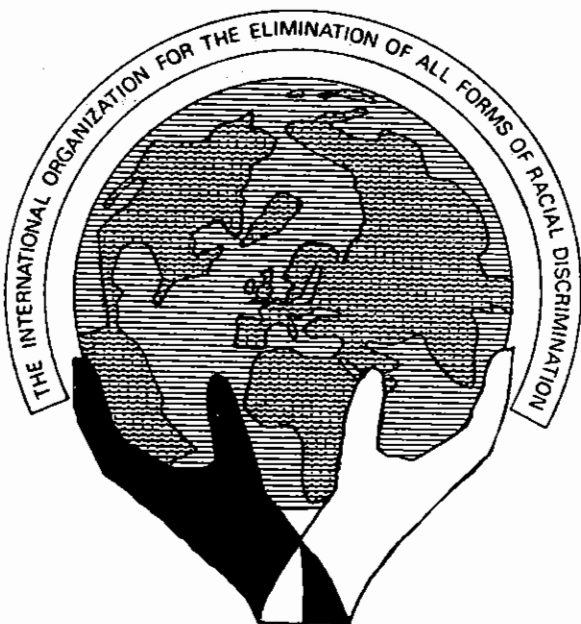


**THE INTERNATIONAL ORGANISATION
FOR THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION
(EAFORD)**



ISRAEL AND NUREMBERG

**Are Israel's leaders guilty
of war crimes?**

A preliminary study

by

John Reddaway

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All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
Universal Declaration of Human Rights

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Are Israel's leaders guilty of war crimes?

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John Reddaway,

former Deputy Commissioner-General
of the United Nations Relief and
Works Agency for Palestine Refugees

INTRODUCTION

This is a preliminary study. All the facts of Israel's invasion of Lebanon may not yet be known, and the international community has yet to take stock fully of Israel's conduct before, during and after the invasion. It is imperative that the circumstances and events of the invasion should be thoroughly examined by some form of independent judicial enquiry.

Meanwhile, however, it is important that the question whether Israel's leaders were or were not guilty of waging a war of aggression and of committing crimes against peace and against humanity in their invasion of Lebanon should be debated in the context of the relevant international law. And that debate should begin now while the memory of this summer's events is fresh in people's minds and before the passage of time, the occurrence of some new crisis elsewhere in the world or the adroit use of propaganda to cover up and misrepresent these events deflects world attention from this subject.

This study was written before the massacres of Palestinians at the refugee camps on the outskirts of Beirut took place on 16-18 September. The degree of culpability for those atrocities which lies on Israel's leaders has not yet been definitively established. It should be the subject of an urgent independent, internationally authorised judicial investigation, even in advance of a wider examination of Israel's actions. A unilateral enquiry conducted by Israel itself is not likely to reveal the whole truth, even though it may go some way towards that end. But what is already clear is that Israel's leaders cannot escape a large measure of responsibility and blame for the mass murder of unarmed Palestinians at Chatila and Sabra. The case against them as war criminals which is set out in this study (and particularly against the Defence Minister, Mr Ariel Sharon) is now more cogent than ever. Many people may well conclude that this latest terrible consequence of their action in launching the invasion of Lebanon proves the case against them

beyond doubt. They must answer not only for their initial action but also for its consequences.

From the evidence that has appeared so far, including press reports of the proceedings before the judicial enquiry in Israel, the case against Israel's leaders in regard to the specific issue of the Beirut massacres consists of the following:

- (1) unquestionably Israel was in control of the area and could have prevented the massacres from occurring;
- (2) unquestionably also Israeli leaders acquiesced in and facilitated the use of Lebanese militia to "clear up" the Palestinian camps, knowing their record of extreme brutality towards the Palestinians; the use of Lebanese militia in this operation was co-ordinated between the Israeli and Lebanese Christian forces and approved by the Israeli cabinet; it may actually have been instigated by Israeli leaders;
- (3) they must therefore have been aware of the danger that the militia men would commit some atrocity against Palestinian civilians; one Israeli Minister has given evidence that he specifically warned of this at a Cabinet meeting; it is impossible also to credit that Israeli leaders were not apprised through their efficient military intelligence of the danger involved in using the Lebanese militia;
- (4) when informed of the killing of Palestinian civilians in the camps Israeli leaders failed to take swift and effective action to stop it; if there were culpable delays in informing them, they must accept responsibility for the consequences of those delays;
- (5) it is alleged that there was actual Israeli connivance and participation in the massacres, not merely culpable negligence or acquiescence; specifically it has been alleged (a) that the Israeli forces surrounding the camps fired flares at night to help the Lebanese militia in their bloody work; (b) that Major Haddad's forces from southern Lebanon took part and that this could only have happened with the knowledge and consent of the Israeli military command; and (c) that Israeli soldiers were actually present in the camps and may have taken part in the massacres.

As a postscript to this indictment it is, I think, appropriate to quote the text of a message which was sent to Israel's Defence Minister by President Reagan's envoy in Beirut, Mr Morris Draper, on the morning of Saturday, 18 September. It was revealed at an open session of the Israeli commission of enquiry on 21 November:

"You must stop the massacres. They are obscene. I have an officer in the camp counting the bodies. You ought to be ashamed. The situation is rotten and terrible. They are killing children. You are in absolute control of the area, and therefore responsible for that area."

In drafting this paper the author had invaluable help and advice, which he and EAFORD gratefully acknowledge, from Professor W. T. Mallison and Mrs S. V. Mallison of George Washington University. Professor Mallison is a member of the Consultative Council and Mr Reddaway a member of the Executive Council of EAFORD and former Deputy Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees.

Anis Al-Qasem,
Secretary-General

APPLICABILITY OF THE NUREMBERG CHARTER AND JUDGMENT

The Charter of the International Military Tribunal, which was adopted at the end of the Second World War by the Four Powers, the United Kingdom, the United States, the Soviet Union, and the French Republic, and which was then applied in the trial of the principal German defendants at Nuremberg, established the concept of individual criminal responsibility where evidence showed that the accused had committed crimes against peace, war crimes, or crimes against humanity. Article 6(A) of the Charter contained the following definition:

“CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing.”

The Tribunal determined that the scope of crimes against peace should be confined to those individuals who constituted the top political and military leadership.

In its judgment the Tribunal examined the ideological premises of the Nazi movement, including its emphasis on the acquisition of territory by force and its assumption of German racial superiority to other races. It also examined evidence indicating the deliberate planning and carrying out of aggression by the Nazi leadership. It decided that the seizure of both Czechoslovakia and Austria (which preceded the Second World War) were acts of aggression. It also adjudged that the invasions of Poland, Denmark, Norway, Belgium, the Netherlands, Luxembourg, Yugoslavia and Greece were acts of aggression. It concluded that eight members of the German political and military élite were guilty of crimes against peace by reason of their having conducted or planned wars of aggression.

During the proceedings the point was made that the standard which had been applied to the Nazi leaders of Germany would also be the standards to be applied in the future to other national leaders. It follows that the Tribunal's criteria are applicable to the actions of the Government of Israel in southern Lebanon.

SELF-DEFENCE UNDER INTERNATIONAL LAW

(1) *The United Nations Charter*

Article 2(3) and (4) and Article 51 of the United Nations Charter codify the pre-existing customary law concerning aggression and self-defence. Article 2(3) states:

“All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.”

Paragraph 4 of the same Article provides that:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”

Article 51 of the Charter incorporates the customary law of self-defence in the following words:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs . . .”

The negotiating history at the San Francisco Conference shows that Article 51 was intended to incorporate the entire customary law or “inherent right” of self-defence, including reasonable and necessary anticipatory self-defence which is an integral part of the customary law.

(ii) *The United Nations Definition of Aggression*

The United Nations Charter left it to the Security Council to decide in particular cases whether “any threat to the peace, breach of the peace, or act of aggression” had occurred; but later the General Assembly formulated a definition of “aggression”. The text of the Definition was adopted by the General Assembly on 14 December 1974 by consensus as resolution 3314 (XXIX). The aim was to provide a more detailed formulation than appears in the Charter. But Article 6 of the Definition made it clear that there was no intention of modifying the words or meaning of the Charter.

Article 1 of the Definition states that:

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations . . .”

Since the Charter recognises the rights of “peoples” as well as “states”, aggression by a state against a people is also in violation of Article 1.

Article 2 of the Definition provides:

“The first use of armed force by a State in contravention of the Charter

shall constitute *prima facie* evidence of an act of aggression although the Security Council may in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.”

The Nuremberg principles concerning the criminal nature of aggression and illegality of any territorial acquisition resulting from aggression are incorporated in Article 5. Article 7 provides that nothing in the Definition prejudices the right to self-determination as enunciated in the U.N. Charter and in the U.N. Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States.

No member state voted against this Definition.

(iii) *Criteria for the lawful exercises of self-defence*

If a state claims that it has taken action in the lawful exercise of its inherent right of self-defence and if that claim is to be valid under international law, it has to satisfy three requirements:

- (1) it is obliged to use in good faith *peaceful procedures*, if available, before resorting to the use of force;
- (2) it has to show that an *actual necessity* existed for it to use force because it was itself under armed attack or because such armed attack was imminent;
- (3) the force it uses in response to actual or anticipated armed attack must be *proportional*, both in kind and amount, to the character of the attack to which it is itself subject.

The first requirement (use of peaceful procedures) is not juridically binding on a state which is itself already subject to actual or imminent attack. In the second requirement “actual necessity” has customarily been formulated in a narrow sense with a view to precluding the bogus use of self-defence as a pretext for aggression. Moreover, although “actual necessity” admits the exercise of reasonable and necessary anticipatory self-defence, this is regarded as a highly unusual and exceptional form of lawful self-defence which may be resorted to only when the evidence that a threat of armed attack is imminent and the necessity to act is overwhelming. The requirements of necessity and proportionality have always been applied with more rigour to a claim of anticipatory self-defence than to a claim of defence against an actual armed attack. In the third requirement, the principle of proportionality prescribes that the use of force, if it is to be justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it. A use of force which is unreasonable or excessive as a response to, and in the particular context of, the initial attack is not permitted and does

not constitute a lawful exercise of the right of self-defence. It is itself an act of aggression.

ISRAEL'S CLAIM OF SELF-DEFENCE

At the meeting of the Security Council on 6 June 1982 (the day when the invasion was launched), Israel's representative at the U.N. specifically claimed that the invasion was justified as lawful self-defence in the following statement:

“It thus becomes imperative for the Government of Israel to exercise its legitimate right to self-defence to protect the lives of its citizens and to ensure their safety.”

He also invoked the right of anticipatory self-defence to “deter” future “terrorism”:

“Faced with intolerable provocations, repeated aggression and harassment, Israel has now been forced to exercise its right of self-defence to arrest the never-ending cycle of attacks against Israel's northern border, to deter continued terrorism against Israel's citizens in Israel and abroad, and to instil the basic concept in the minds of the PLO assassins that Jewish life will never again be taken with impunity.”

He sought to justify the violation of the territorial integrity of Lebanon on the grounds that:

“If Lebanon is either unwilling or unable to prevent the harbouring, training and financing of PLO terrorists openly operating from Lebanese territory with a view to harrassing Israel, Israelis and Jews world-wide, then Lebanon surely must be prepared to face the risk of Israel's taking the necessary countermeasures to stop such terrorist operations.”

He made no mention of Israel's part in undermining the stability of Lebanon through its support for Major Haddad's forces in the south and of right-wing militias in the north and its consistent frustration of the United Nations peace-keeping efforts (including those of UNIFIL).

How does Israel's claim to have acted lawfully in the exercise of its inherent right of self-defence measure up to the three requirements set out above?

(i) Peaceful Procedures

Peaceful procedures were available for Israel's use through the machinery of the United Nations, but Israel failed to use them.

On 4 and 5 June Israel launched massive air attacks against targets in Lebanon, using the attempt on the life of the Israeli Ambassador in London on 3 June, as a pretext for its action. On 5 and 6 June specific opportunities

were provided for Israel to use peaceful procedures. On 5 June the Security Council adopted its resolution 508 which reaffirmed and supported statements made the previous day by the Security Council and by the UN Secretary-General in efforts to dissuade Israel from invading Lebanon. The resolution called upon "all the parties to the conflict to cease immediately and simultaneously all military activities within Lebanon and across the Lebanese-Israeli border and no later than 0600 hours local time on Sunday 6 June 1982."

The Secretary-General reported to the Security Council on 6 June that, in response to resolution 508, the PLO had "reaffirmed its commitment to stop all military operations across the Lebanese border". He added that later, after the time for the cease-fire had expired and in spite of the fact that heavy Israeli air raids were still continuing, Mr Arafat "had given orders to all PLO units to withhold fire for a further specified period". Both these PLO assurances were given *before* Israel invaded Lebanon with its ground forces on 6 June.

Israel's response to the opportunity for the use of peaceful procedures provided by resolution 508 was to continue its air attacks on Lebanon. UNIFIL reported that approximately 110 Israeli air strikes had been observed in eight hours following the time fixed for the cease-fire to take effect on 6 June. Then, later on the same day, Israel launched its massive land invasion.

When it became clear that Israel had invaded Lebanon, the Security Council adopted on 7 June a further resolution (509) which demanded "that Israel withdrew all its military forces forthwith and unconditionally to the internationally recognised boundaries of Lebanon". Again, Israel failed to comply and, indeed, committed more and more forces to the invasion.

Israel's failure to respond affirmatively to the Security Council's calls for a cease-fire combined with its continuation of air strikes and its invasion by land clearly constituted a rejection of the opportunity to use peaceful procedures.

There had of course been many opportunities for Israel to use peaceful procedures, had it been willing to do so, before the hostilities reached the point of full-scale war at the beginning of June. Contrary to Israeli allegations, the cease-fire between Israel and the PLO which was negotiated in July 1981 had held, even if precariously, until 21 April 1982 when Israeli air-craft bombed areas along the Lebanese coast for about two hours after an Israeli soldier had been killed (on Lebanese, not Israeli territory) by a land mine in the area controlled by Israel's agent, Major Haddad. Even then, the PLO did not react against this major breach of the cease-fire by Israel. It was not until 9 May, when Israeli aircraft again attacked targets in Lebanon, that rockets were fired into northern Israel from Palestinian positions in south Lebanon.

According to a report which was issued by the UN Secretary-General for the period from 11 December 1981 to 3 June 1982, this was the only PLO military action against Israel across the Lebanese border during this period. The casualties from the Israeli bombing on 9 May were given in the report as 16 killed and 56 wounded. No Israeli casualties were reported from the PLO response except for one elderly person who died of a heart attack.

The UN report shows that during the nine months preceding Israel's invasion the PLO did in good faith adhere to the terms of the cease-fire, except for their retaliatory action on 9 May in response to Israel's second major breach of the cease-fire. During this time, as stated in the UN report, Israel carried out training manoeuvres with tanks and live ammunition on Lebanese soil near PLO positions. UN observers described these manoeuvres as "intensive, excessive and provocative". Nevertheless, the PLO did not respond.

On the other hand, the UN report records persistent violations of Lebanese air space by Israeli aircraft and of Lebanese waters by Israeli naval vessels during this same period.

After the invasion had been launched Israel's representative in New York scornfully dismissed the use of peaceful procedures through the Security Council on the grounds that the Council was exerting itself "to save a terrorist organisation from well-deserved and long-overdue retribution". He argued that his Government had resorted to its right of self-defence only "after years of unparalleled restraint." He referred to "months of cautioning and warnings" by Israel concerning an alleged PLO military build-up in southern Lebanon.

It is true that Israel did make repeated representations to the US Government about this alleged PLO build-up. But the complaints were not substantiated. It seems probable that they were fabricated or at least vastly exaggerated precisely in order to provide a pretext for Israel's own build-up near the Lebanese border in preparation for the invasion. In any case, unilateral (and disputable) representations made by Israel to its ally, the United States, about "years of restraint" and "months of cautioning" certainly do not constitute a resort to peaceful procedures as envisaged in international law and do not meet the requirement that Israel should have used peaceful procedures before resorting to force in the exercise of its right of self-defence.

In contrast, Lebanon did avail itself of peaceful procedures in seeking to prevent a renewed outbreak of hostilities. It asked the Security Council to obtain Israel's "total and unconditional withdrawal from Lebanon". This request (which was ignored by Israel) clearly referred not only to the incursion of Israel's own forces but also to its violation of Lebanon's integrity through its support for Major Haddad's forces.

There remains the question whether Israel was absolved from the

requirement to use peaceful procedures because it was already itself subject to actual or imminent attack.

As already observed, it was Israel, not the PLO, which broke the cease-fire. Israel, however, has sought to maintain that throughout the period of the cease-fire it was under continuing attack by the PLO in the form of terrorist acts against individual Israeli and other Jews, not only in Israel itself but also in the occupied territories and in other countries outside the Middle East. This argument falls to be examined in relation to the other two requirements of "actual necessity" and "proportionality of response." In the present context, it is not a proposition meriting serious discussion. Incidents affecting a relatively small number of individuals could not possibly constitute an attack on the State of Israel such as to absolve it from the need to use peaceful procedures before launching its attack on Lebanon. The proposition becomes even more untenable when examination of the claim as stated by Israel's representative at the United Nations reveals that some of the individuals concerned may not have been Israeli citizens at all and that some of the incidents occurred outside Israel and far away from any PLO military positions in southern Lebanon.

On the other hand, there is clear evidence that Israel's invasion of the Lebanon was deliberate, long-planned and ruthlessly pursued without regard to legal and humanitarian considerations. This suggests that in fact Israel was never prepared to contemplate the use of peaceful procedures and was, on the contrary, determined to go to war in an attempt to knock out the PLO. In a revealing remark quoted in the *New York Times* of 26 February 1982 Israel's newly appointed Ambassador in Washington had predicted that Israel would have to take military action in southern Lebanon, adding "I would almost say it's a matter of time."

In the light of the facts summarised above, the conclusion is inescapable that peaceful procedures (such as a restoration of the cease-fire negotiated in 1981) were available to Israel but that Israel chose not to use them. On this ground alone the Israeli claim of lawful self-defence is untenable under international law.

(2) Actual Necessity

As has been said, customary international law requires that the concept of "actual necessity" as a justification for the use of force in self-defence should be narrowly formulated with a view to preventing states from using a sham claim of self-defence as a camouflage for aggression.

Israel's claim that it was faced with an actual necessity of using force in its own defence appears to be based on two grounds:

- (1) that it was already the subject of actual armed attack in the form of terrorist acts against individuals; and
- (2) that it was threatened with imminent armed attack justifying a resort to anticipatory self-defence.

In regard to the first of these two grounds, if in fact there had been armed attack by the PLO against the State of Israel and provided that the attack were of "sufficient gravity" (to use the language of the UN Definition of Aggression), this would have met the requirement of "actual necessity". Although the PLO is not a state, it is a recognised public body and a national liberation movement representing the people of Palestine. As such, it ought to respect other parties' (including Israel's) "inherent right" of self-defence as set out in Article 51 of the UN Charter. There is, however, in the context of the events leading up to Israel's invasion, no evidence of an armed attack of any degree of gravity by the PLO. According to UNIFIL the only PLO use of military force across the Lebanon border against Israel subsequent to the cease-fire in July 1981 and prior to the Israeli invasion in June 1982 was the PLO's response to Israeli air attacks on 9 May, which has already been described.

The particular incidents cited by Israel as constituting an armed attack by the PLO were summarised by Israel's representative in the Security Council on 6 June (the day of the invasion). He said –

“even in the relatively short period of time which has elapsed since the July 1981 agreement on cessation of hostilities, the total of dead and wounded at the hands of the PLO has steadily mounted to a point where it now reached 17 dead and 241 wounded in a total of 141 terrorist acts all of them originating from terrorist bases inside Lebanon.”

Concerning the 17 stated to have been killed, he provided 15 specific examples which included eight Israeli Jews, seven of whom were apparently killed in Israel, and an Israeli diplomat killed in France. He also referred to seven Jews killed in foreign countries including Austria, Belgium and West Berlin, none of whom were stated to be Israeli citizens. Concerning the seven Israeli Jews stated to be killed in Israel, he said that four were killed on 22 April 1979 and three on 6 April 1980 (both occasions *prior* to the 1981 cease-fire). He assumed that the PLO were responsible in all instances but furnished no proof. In the case of the Jews killed outside Israel, he did not say whether the local police authorities agreed that the PLO were responsible. The inclusion of attacks on non-Israeli Jews outside the state of Israel reflects claims advanced by the Israeli Government that “the Jewish people” throughout the world share a common nationality with the citizens of Israel. But in fact the Government of Israel has no legal authority to intervene diplomatically or militarily on behalf of Jews who are not Israeli nationals. Even supposing the Jews killed in foreign countries were Israeli nationals, the responsibility for their protection lies primarily with the host countries and intervention by Israel could be justified only if that protection fell below the standard commonly accepted by the international community. To try to make out that a number of isolated attacks on Jews,

by unidentified assailants in Europe presented such a danger to the State of Israel as to justify its invasion of a neighbouring state in the Middle East is making a mockery of the concept of self-defence.

After referring to the 1981 cease-fire Israel's representative continued:

“Violations of the cessation of hostilities began almost immediately and have continued unabated, culminating most recently in the attempted assassination of Ambassador Argov in London.”

He specifically accused the PLO of responsibility for the attack on Ambassador Argov in this and other statements. The PLO had itself denied responsibility and said that the attack served Israeli and not Palestinian interests. In London two Jordanians and an Iraqi were arrested and charged with the crime. On 5 June (before Israel launched its invasion) the British representative at the UN stated that the attack had in fact been perpetrated by members of an anti-PLO group and that one of them was carrying a “hit list” which included the name of the PLO London representative himself. Even if the PLO had been proven, contrary to the facts provided by the British police authorities, responsible for this shooting, it still would not amount to an armed attack on the State of Israel according to the standards of international law. Ambassadors of other countries have been attacked and, on occasions, killed. But the governments concerned have not tried to argue that these incidents constituted an attack on their country justifying the use of massive military force in response.

In regard to the second of the two grounds on which Israel claims an “actual necessity” of using force in self-defence (viz. the threat of imminent armed attack), the determining question is whether there existed evidence that any such armed attack was both anticipated and imminent. The threat must not only be anticipated, but it must also be imminent. If such evidence is available, it has not been disclosed by Israel.

After the invasion occurred, Israel claimed to have captured large quantities of PLO munitions and also plans for PLO attacks on northern Israel. Military officials claimed that the captured plans “proved the guerrillas intended to wipe out settlements in northern Israel” (*The Guardian* (London), 18 June 1982). Mr Begin was stated to be intending to give the documents to President Reagan to justify (retrospectively) Israel's invasion. But nothing further seems to have come of this discovery. It is not impossible that such plans had been prepared by PLO guerrillas whose bellicosity exceeded their grasp of military realities. But that does not “prove” an intention on the part of the PLO leadership to engage in any such reckless operations.

The existence of these munitions and “invasion” plans does not of itself constitute confirmatory evidence that an attack was imminent and that

Israel was thus confronted with an "actual necessity" of resorting to the use of force in self-defence. The relevance of these discoveries as justification for Israel's claim of self-defence is impaired by the fact that they were made after, and not before, the invasion took place and could not therefore have been a factor in Israel's decision to invade.

In the event the invasion revealed – as was of course to be expected – the enormous disparity between the military strength of the PLO in southern Lebanon and that of the invading Israeli Defence Forces. This again raises doubts whether Israel had any real evidence for believing that a massive resort to force was actually necessary to pre-empt an armed attack by the PLO. In addition, the consistent refusal of the PLO to respond to Israeli provocations in southern Lebanon (with the one exception of 9 May) in the several months before the Israeli air attacks of 4 June which immediately preceded the invasion is a strong indication that the PLO were trying to avoid, rather than to precipitate, a major confrontation with Israel.

The truth is that the alleged PLO threat claimed by Israel was unsupported by convincing evidence and was, in any case, relatively small-scale in its character. On the other hand, Israeli plans for a large-scale invasion were reported months prior to the actual event and substantiated by Prime Minister Begin's assertion that they awaited only a "clear provocation". Such long-term planning for an alleged defensive measure indicates that the claimed threat was not perceived to be imminent. Claims such as those advanced by Israel have not provided sufficient grounds for the legal conclusion of "actual necessity" in responding to an anticipated armed attack in the past and cannot do so now.

At Nuremberg the defendants claimed legal justification in the doctrine of anticipatory self-defence for Germany's invasion of Norway and Denmark. They put forward the argument that Germany alone could decide whether preventive action was a necessity and that, in making this decision, Germany's judgment was conclusive. The Tribunal rejected these contentions and decided that the invasions were "acts of aggressive war."

Israel, like Germany, now makes the claim that it alone could decide whether its military response was necessary. Again, the claim should be rejected.

(3) *Proportionality*

According to the UN Secretary-General, Israel invaded Lebanon with a force of "more than two mechanized divisions with full air and naval support." This cannot possibly be deemed to have been a "proportional" response to the incidents claimed by Israel's representative at the UN as the justification for the invasion. On even the most liberal or extreme formulation of the requirement of proportionality this criterion could not be shown to have been met.

During the Security Council's consideration of the events beginning 6 June 1982, no-one spoke in support of the view that the Israeli actions met the requirement of proportionality.

In contrast with the undocumented claims by Israel's representative in the Security Council citing 17 individuals alleged to have been killed by the PLO, the figures for Palestinian and Lebanese victims of Israeli attacks, wherever they occurred, show that during the period from the cease-fire up to 4 June 1982, 16 Palestinian civilians (including at least eleven teenagers and one eight-year-old-child) were killed by Israeli soldiers or settlers in the West Bank or Gaza, and 86 Palestinian and Lebanese civilians were killed in Israeli air attacks on Lebanon. All of the Palestinian and Lebanese casualties were clearly caused by Israeli armed forces or by settlers armed by the Government of Israel.

CONCLUSION: SELF-DEFENCE OR AGGRESSION?

Israel may not successfully invoke the claim of lawful self-defence unless it meets each of the three criteria considered above. In fact, it does not meet any of these three requirements and it follows that on all three counts the invasion must be adjudged an act of aggression.

Confirmation of this conclusion is provided by Article 2 of the UN Definition of Aggression (which was accepted by Israel and all other member states in 1974). That Article provides that the "first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression . . ." In the present context, since the PLO responded to the Security Council's call for a cease-fire in its Resolution 508, whereas the Government of Israel did not (and indeed followed up its air attacks of 4 and 5 June with its massive invasion by land on 6 June), it follows that it was Israel which made the "first use of armed force" in contravention of the Charter.

The essence of the case for rejecting Israel's claim that its invasion was an act of lawful self-defence was well put by Mr Anthony Lewis, writing in the *New York Times* on 7 June:

"To protect Israelis in the Galilee from rockets and shells is essential. But the best method of doing so is the one that US envoy Philip Habib negotiated last July: a cease-fire between Israel and the PLO. In terms of keeping northern Israel free of artillery attacks, that arrangement has been astonishingly successful.

"In short, the cease-fire kept the Galilee safe until Israel bombed Lebanon. The argument that aggressive new military action was needed to keep the rockets out turns reality upside-down."

The true nature of the invasion was foreshadowed in a statement reported in *The New York Times* of 18 April 1981 by a spokesman of the Israeli Defence Forces, Brigadier General Yaakov Even (some 14 months before the invasion actually happened):

“We are on the offensive. We are the aggressors. We are penetrating the so-called border of the so-called State of Lebanon, and we go after them (the PLO) wherever they hide.”

ISRAEL'S WAR AIMS

If Israel's claim to have acted in lawful self-defence is false, what were its real motives in launching the invasion? It may be accepted that one of its aims was to eliminate the danger to its citizens in northern Israel from PLO attacks across the border with Lebanon. The method it adopted of securing this limited objective (“Peace for Galilee”) may be condemned as unlawful, excessive and misconceived. But that it was, initially at least, one, though by no means the sole, aim need not be questioned.

At the outset of the invasion Israel proclaimed that its purpose was to establish a *cordon sanitaire* extending some 25 miles northward from the Lebanese/Israeli frontier. The PLO were to be driven out of this area in order to eliminate the danger of further attacks across the border on Israelis living in northern Israel.

This was not a reasonable or legitimate ground for going to war. The history of the past thirty years or so shows that Israel's Arab neighbours and in particular the Palestinians, are at least as much in need of protection from armed attack by Israelis as are the Israelis in northern Israel from armed attack by the PLO. No one would concede that they had a right to try to establish by force of arms a *cordon sanitaire* on Israel's side of the borders. But at least it can be conceded that an attempt by Israel to establish such a *cordon sanitaire* in southern Lebanon was plausibly consistent with its stated purpose of providing protection for its citizens in northern Israel.

However, it soon became apparent that the real aims of Israel's leaders in invading Lebanon went far beyond this initial limited, though still indefensible, objective.

After the Israeli armed forces had advanced into Lebanon the distance of 25 miles specified in the original aim of the proposed *cordon sanitaire*, they continued their advance until they reached the outskirts of Beirut. On 29 June *The Times* (London) reported that an Israeli air force officer who had taken part in the early bombardment of Lebanon had said –

“We had absolutely no intention of stopping at the Zahrani line (25 miles north of the international border). We dashed northwards as far as possible without any intention whatsoever of stopping.”

An editorial in *The Times* (London) of 7 August posed the question whether

“the *cordon sanitaire* was just a stepping stone on the way to a bigger war?”

Israeli leaders and spokesmen explained this extension of the invasion in

terms of war aims which went far beyond the original objective. These further aims were variously reported as –

- (1) the physical destruction of the PLO and its infrastructure as an organised military and political force.
- (2) the expulsion of the PLO and its armed forces from Lebanon.
- (3) the establishment in Lebanon of a Lebanese government friendly to Israel and strong enough to prevent any reconstituted PLO presence there.
- (4) the elimination of PLO influence in the West Bank and Gaza in order to open the way for the emergence of a Palestinian leadership amenable to Israel's ideas of limited Palestinian autonomy and continued Israeli control of the territories. Menachem Milsem, Israel's civilian administrator of the West Bank, was reported in *International Herald Tribune*, of 10 June, as saying –

“We are fighting the PLO in order to make peace with the Palestinians.”

Similar views were attributed also to General Eitan and Mr Sharon in *The Sunday Times* (London) 20 June, and in *The Times* (London), 5 August, Mr Sharon was quoted as saying:

“The bigger the blow and the more we damage the PLO infrastructure, the more the Arabs in Judea and Samaria (the West Bank) and Gaza will be ready to negotiate with us and establish co-existence.”

- (5) the extinction of Palestinian nationalism on the grounds that there is no room within the boundaries of former Palestine for both Jewish and Palestinian nationalism.
- (6) the removal of Palestinians from Lebanon to Jordan on the grounds that the latter already constitutes the Palestinian state which they are demanding.
- (7) the enforced withdrawal of all Syrian troops from Lebanon.
- (8) the destabilisation of Jordan and other Arab governments in order to establish a power vacuum surrounding Israel. Anthony Lewis, writing in *The New York Times* of 24 June, reported that –

“Mr Sharon has made his strategic view clear. Apart perhaps from Egypt, he wants Israel to be surrounded not by stable, moderate Arab governments but by a power vacuum. He wants to destabilise King Hussein's Jordan, and his ambition reaches even to Saudi Arabia.” He added –

“This war is above all a victory for Sharonism”

- (9) As for Mr Begin, his strategic vision seems to reach beyond even that of his Defence Minister.

At the end of June it was reported that Mr Begin had rejected the use of the word “invasion” and had asserted that “Israel did not invade any country.” He later asserted that Israel's action was “divinely ordained”.

And in a personal letter sent to President Reagan at the beginning of August he said—

“Now, may I tell you, dear Mr President how I feel these days when I turn to the Creator of my soul in deep gratitude”, Mr Begin wrote. “I feel as a Prime Minister empowered to instruct a valiant army facing ‘Berlin’, where, amongst innocent civilians, Hitler and his henchmen hide in a bunker deep beneath the surface.

“My generation, dear Ron, swore on the Altar of God that whoever proclaims his intent to destroy the Jewish State or the Jewish people, or both, seals his fate, so that what happened from Berlin, without inverted commas, will never happen again.” (*The Times*, 5 August 1982)

After this message reached Washington it was reported that some senior US government officials “genuinely seemed to question Begin’s mental health”; and that Israelis in Jerusalem were saying that he was gripped by a “dark and macabre fantasy” and was “now living in a surreal world.”

The emergence of these wider war aims, as the invasion progressed was further evidence that Israel’s claim of self-defence was bogus and that what Israel had in fact engaged in was “the planning, preparation, initiation and waging of a war of aggression” (to use the language of the Charter of the Nuremberg Tribunal in regard to “crimes against peace”). The enforced establishment in a neighbouring country, Lebanon, of a regime acceptable and amenable to Israel is not a lawful exercise of Israel’s right of self-defence. Nor is the destruction of the political and military leadership of another people, the Palestinians – particularly since that leadership has been recognised by the United Nations and, in some degree or other, by nearly all member states. Nor is the frustration (through the destruction of its leadership) of the Palestinian people’s right to self-determination and to the restoration of Palestinian territory now under military occupation by Israel. Nor is the creation (again through the destruction of the Palestinian leadership) of an alternative ‘leadership’ for the Palestinians living in the West Bank and Gaza which would be subservient to Israel and ready to co-operate in Israel’s scheme of establishing in those territories a system of emasculated Palestinian autonomy under Israeli control – a scheme designed to perpetuate Israel’s occupation of the West Bank and Gaza and to foreclose any exercise by the Palestinians of their right of self-determination in respect of those territories. Nor is the enforced removal of Palestinians from Lebanon and into Jordan, in pursuance of Israel’s tendentious and untenable claim that Jordan is in fact the Palestinian homeland and, hence, that it is neither necessary nor right that they should return to territory now occupied by Israel. Nor is the enforced removal from Lebanon of troops from another Arab country, Syria, who came there by

invitation of the Lebanese Government itself. Nor is the destabilisation of neighbouring Arab states. Nor, finally, does a unilateral (and patently hysterical) claim to be engaged in a "divinely ordained" struggle against forces of evil confer on the claimant exemption from the established requirements of international law concerning the exercise of the right of self-defence – nor, one might add, exemption from the normal requirements of civilised conduct, humanity and common decency.

So much for the wider war aims which were voiced, authoritatively or not, by Israeli leaders in the course of the invasion. From the outset, the dominant purpose in the Israeli leaders' minds, even though it was not formulated in precise terms, was probably not the defence of Israel at all (that is, Israel within its pre-1967 borders); but rather the consolidation of its possession of the whole area it has occupied since 1967. This was to be achieved by reducing – if possible, eliminating – the potency of the Palestinians as rival claimants to any part of "Eretz Israel".

There remain two other possibilities aims which have not been disclosed but which, in the light of past history, may well be present in the minds of Israel's leaders today. These are the *de facto* annexation of Lebanese territory and the diversion to Israel of Lebanese water resources. To object that such aims are impracticable or unrealistic and cannot therefore have been an underlying motive for the invasion is to misread the character of the zealots now in power in Israel.

At the beginning of the invasion Israel's Prime Minister declared that his Government "does not covet a square inch of Lebanese soil". This had an ominously reminiscent ring. In June 1967 the then Prime Minister of Israel, Mr Levi Eshkol, gave the same assurance about the territory of the West Bank then under Jordanian rule. Fifteen years later Israel is still there in occupation of the West Bank and has spent these years colonising the area with Israeli settlers, seizing land and water belonging to the Palestinian inhabitants and consolidating the permanency of its occupation by a process of gradual annexation. It has already formalised its annexation of East Jerusalem (as well as the Syrian territory of the Golan Heights).

In the case of Lebanon, Israel has maintained its presence in the south since its incursion in 1978 by the device of setting up and maintaining a puppet regime under Major Haddad. It may be that Israel's leaders now have it in mind to escape the odium of overtly occupying Lebanese territory, at least for the time being, by extending the area under the control of their puppet. But it would be naive to dismiss the possibility that an underlying aim of the invasion was in time to bring a part of southern Lebanon under permanent Israeli rule. The territorial demands originally put forward by leaders of the Zionism Movement included Lebanon; and Israeli leaders, such as Ben Gurion, have in the past advocated incorporating within Israel the southern part of Lebanon up to the Litani river.

On 21 May 1948 Ben Gurion wrote in his dairy (subsequently published): "The Achilles heel of the Arab coalition is in the Lebanon. Muslim supremacy in this country is artificial and can easily be overthrown. A Christian State ought to be set up there, with its southern frontier on the river Litani. We would sign a treaty of alliance with this State". The clear implication is that Israel would occupy and annex the area up to the Litani.

Ben Gurion reverted to this scheme six years later. Moshe Sharett was then serving as Prime Minister as well as Foreign Minister of Israel. In his published *Personal Diary* he includes a letter from Ben Gurion, then temporarily out of office, on 27 February 1954 which reads in part:

"It is clear that Lebanon is the weakest link in the Arab League . . . The creation of a Christian State is therefore a natural act; it has historical roots and it will find support in wide circles in the Christian world, both Catholic and Protestant . . . Now is the time to bring about the creation of a Christian State in our neighbourhood. Without our initiative and our vigorous aid this will not be done. It seems to me that this is the *central duty*, or at least one of the central duties, of our foreign policy."

Sharett's *Diary* also records a meeting of senior officials on 16 May 1954, at which Ben Gurion stated that the time was propitious for action concerning Lebanon because of tensions between Syria and Iraq as well as internal trouble in Syria. Dayan, then the Chief of Staff, expressed enthusiastic support. In Sharett's words:

"According to him (Dayan) the only thing that's necessary is to find an officer, even just a Major. We should either win his heart or buy him with money to make him agree to declare himself the saviour of the Maronite population. Then the Israeli army will enter Lebanon, will occupy the necessary territory, and will create a Christian regime which will ally itself with Israel. The territory from the Litani southwards will be totally annexed to Israel and everything will be all right."

At that time Ben Gurion and Dayan failed to get sufficient backing for their aggressive designs on the Lebanon. But a quarter of a century later Dayan's scheme was put into effect. In March 1978 Israel launched a massive raid into Lebanon and its troops established themselves on the Litani river. The Security Council called on Israel to withdraw and after some three months Israel complied. But before its forces withdrew they established a zone across southern Lebanon and placed it under the control of the renegade forces led by Major Haddad.

It seems that ideas of the kind advanced by Ben Gurion and Dayan continue to attract and motivate Israel's leaders. In July of this year Prime Minister Begin appointed a new member to his Cabinet, Yuval Ne'eman, who took office as Minister of Science and Technology. Just before his

appointment and some three weeks after Israel's invasion of Lebanon he had written an article in the *Jerusalem Post* of 24 June outlining "Israel's Options in Lebanon". It contained the following:

"The answer is that the IDF (Israel Defence Forces) must be prepared for a long stay in Lebanon. Adopting a position which will seem almost permanent is the only way of persuading the other powers – and the Syrians, eventually – to accept a complete evacuation of all forces . . . In the interim Israel will have an opportunity of reaching a stage of socio-economic or technological development in the nearby region (south Lebanon) which, geographically and historically, is an integral part of Eretz Yisrael. Israel could possibly even reach an agreement on border rectification . . . The Litani River could be exploited by both nations . . . It is, perhaps, also possible that Israel could integrate the strip south of the Litani, with its friendly citizens, into Israel's development plans . . ."

Israeli leaders have long coveted the water of the Litani and its tributaries. In recent times their covetousness has been sharpened by the fact that Israel has now exploited to the maximum its own sources of underground water and is rapidly approaching the point where it will also have exhausted the possibilities of exploiting for Israel's benefit the sources available in the occupied territories. Unless major new supplies can be made available for the use of Israel's farmers, the continuing expansion of its agriculture will be brought to a halt. The control of Lebanese water, as well as Lebanese land, may well have been an undeclared aim of the invasion.

Time will show whether Israel's leaders do in fact have such designs on Lebanon. It is ominous that already suggestions are being made from Israel that its forces will have to remain in Lebanon until all the Syrian troops and even other Palestinians, besides the PLO leadership and armed forces, are removed in order to prevent the re-emergence of "terrorism". If such designs do emerge in future, that will be yet further proof of the aggressive purpose which lay behind the euphemistic facade of "Operation Peace for Galilee".

CRIMES AGAINST HUMANITY

Once it is established that Israel's attack on Lebanon was a "war of aggression" and not a lawful resort to self-defence it follows that Israeli leaders responsible for the invasion were guilty of "crimes against peace" within the terms of the Charter of the Nuremberg Tribunal. It follows also that their subsequent and consequential actions in carrying out the invasion were criminal acts under the Nuremberg principles. But the case against them does not rest there. They must also answer for their violations of humanitarian law, their "crimes against humanity" in the course of waging their war of aggression.

Reports from diverse, independent and eye-witness sources indicate that the invasion was carried out with great brutality and callous contempt for the requirements of humanitarian law. The bulk of these reports appear, *prima facie* at least, to be accurate and reliable in a general sense even though, in the confusion caused by the invasion, it was obviously not always possible for observers to be precise in detail about numbers of persons, extent of damage and so on.

It is certainly desirable that the reported facts should be verified by some kind of independent and impartial enquiry. However, that may not prove practicable if Israel refuses to co-operate or to allow access to individual witnesses and evidence on the ground. It is possible that the truth of the reported events may never be wholly and precisely established. Meanwhile, and in the absence of positive evidence to the contrary, it is reasonable to proceed on the assumption that the reports were broadly true, particularly where a number of different sources reported in similar terms. Mere denials or allegations of exaggeration from Israeli spokesmen, unsupported by independent evidence, will not suffice to disprove the reports. It is significant that confirmatory evidence for much of the actions attributed to Israel in these reports is available from Israeli witnesses who were serving with the invading forces or present on the ground in some other capacity, such as press reporters. There is also of course abundant visual evidence in the form of photographs and films.

In summary, the reported Israeli actions which may be classified as "crimes against humanity" are these:

(1) *Indiscriminate bombardment of civilians*

Israel disputes assessments that have appeared in the news media and in reports from voluntary agencies and international organisations about the scale of civilian casualties resulting from its invasion. In fact it may never be possible to establish entirely accurate and reliable figures owing to the confusion and devastation caused by Israel's attacks.

Nevertheless, the reports that have appeared in the news media and from other sources establish beyond doubt that Israel did carry out attacks on populated areas using both artillery and aerial bombardment and that these attacks resulted in the killing and wounding of civilian population, both Lebanese and Palestinian, on a massive scale. Reports appearing in Israel itself confirm this.

Israel claims that its attacks were directed against specific PLO targets ("Palestinian strongholds") and that, because these were located in populated areas, some civilian casualties were unavoidable. However, the bulk of the reports indicates that, even if the intention was to strike at specific military targets, in practice the massive scale of the attacks and the indiscriminate nature of the weapons used was such that civilians were

bound to be killed and wounded in large numbers. It is clear from the reports that Israel's military and political leaders must have been aware of and must have accepted the responsibility for the effect of their actions on the civilian population.

(2) Use of weapons of indiscriminate destruction

Reports appeared and have not been denied that, besides using aerial and artillery bombardment in circumstances where civilian casualties on a massive scale were bound to be caused, Israel employed, in the course of its attacks on areas populated by civilians, weapons specifically designed to kill and maim indiscriminately. The weapons in question are cluster bombs and phosphorous bombs.

(3) Destruction of houses and dislocation of civilians from their homes

Again, Israel disputes the number of persons rendered homeless as a result of the invasion; and again it may never be possible to establish more than an approximate figure. But the reports establish beyond doubt that the attacks on populated areas did result in the destruction of the homes of civilians on a massive scale and in causing, again on a massive scale, civilians to abandon their homes, even if not destroyed. UNWRA (the UN agency which cares for the Palestinian refugees) reported that its camps housing upwards of 100,000 refugees in southern Lebanon were deliberately razed to the ground, much of the destruction being caused after the fighting had ceased. These camps had in fact been the homes of the refugees for over thirty years.

(4) Destruction of civilian property, both private and publicly owned

Reports, including photographs and films, establish indisputably that destruction of property on a vast scale was caused by the invading Israeli forces.

(5) Prevention of the movement of civilians out of areas under military attack or threat of military attack

Although in their siege of West Beirut the invading Israeli forces were reported to have used psychological warfare with a view to inducing civilians to abandon the city (see (6) below) it was also reported that they erected road blocks and otherwise impeded the departure of civilians from areas under actual or imminent attack. Similar action was reported to have been taken in Tyre and Sidon at earlier stages of the invasion.

(6) Deliberate use of terror against civilians

Reports, which have not been denied, indicate that Israel used weapons of psychological warfare, such as mock attacks by dive bombers and the dropping of threatening leaflets, to induce civilians to abandon their homes and property, particularly in West Beirut.

(7) Denial of essential services to civilians

Numerous reports, again not denied by Israel, appeared that the Israeli

forces were preventing essential supplies of food, electricity and water from reaching civilians under siege in West Beirut.

(8) Denial of relief supplies to civilians in need

Numerous reports, again not denied by Israel, indicate that the Israeli authorities refused to allow supplies of food, clothing, medicines and other essential materials to reach civilians in urgent need of relief as a result of the invasion. Both international organisations and voluntary agencies were denied access to areas under Israeli control and facilities for the movement of relief supplies into those areas.

(9) Denial of hospital and other health services, including burial of the dead, to civilian population

Besides obstructing the provision of relief supplies, including medicines, the Israeli authorities are reported to have closed hospitals and to have prevented hospital and other health staff from treating persons in urgent need of medical care. Instances were also reported where Lebanese and Palestinians were prevented from burying their dead.

(10) Refusal of prisoner-of-war status to Palestinians taken prisoner

There were many reports, and these were confirmed by the Israeli authorities themselves, that Israel refused to accord the protection afforded by the Geneva POW Convention to Palestinians taken prisoner by Israeli armed forces. It was reported that Israel was invoking Defence Regulations enacted in Israel as authority for its actions (as it has done also in the case of territories occupied in 1967).

(11) Ill-treatment of Palestinian and other prisoners

Numerous reports appeared indicating that the Israeli authorities ill-treated both combatants and non-combatants whom they had taken prisoner during the fighting or placed under detention afterwards. These reports include eye-witness accounts from expatriates who were in Lebanon at the time of the invasion. Many reports indicate that the ill-treatment was systematic and that in some cases it resulted in the death of the persons subjected to it.

The humanitarian law in the world legal order which is relevant to these actions by Israel is briefly as follows:

(a) Convention on the Prevention and Punishment of the Crime of Genocide

This Convention was approved by UN General Assembly resolution 260 A (III) of 9 December 1948. The essential Articles are II, III and IV, which are as follows:

Article II

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.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

It should be noted that, under Article II, the intent to destroy "in whole or in part" a national, ethnical, racial or religious group constitutes genocide. In order to establish a charge of genocide it is not necessary to show that the whole of a people have been killed. If that were required, it would not have been possible to sustain a charge of genocide against the Nazi leaders in respect of their massacre of Jews.

(b) *The Geneva Conventions for the Protection of War Victims (1949)*

Israel, as well as all the other states involved in the recurring Middle East hostilities, are state-parties to the Geneva Conventions of 1949. Israeli actions are in violation of a number of provisions of two of these international humanitarian law Conventions: Convention III for the Protection of Prisoners of War; and Convention IV for the Protection of Civilian Persons.

The state of Israel has consistently refused to apply the Geneva Civilians Convention although its Article 2 provides that it applies "to all cases of partial or total occupation." It is the consensus of the world community that this Convention is applicable.

Article 33 prohibits the use of "terror", such as the massive bombings of civilian targets in Lebanon, against the civilian population. It is a well known principle of international law that "The civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threats of violence which have the primary object of spreading terror among the civilian population are prohibited." The attacks upon Lebanese villages

and upon the city of Beirut in which thousands of innocent civilians have been killed or injured are a clear violation of this principle.

Article 18 of the Civilians Convention states in part: "civilian hospitals . . . may in no circumstances be the object of attack." Eye-witness reports from Lebanon testify to sustained attacks by Israeli forces on hospitals and sanatoria.

The International Committee of the Red Cross, in its Commentary on the Conventions, points out that Article 5 of the Civilians Convention and Article 4 of the Prisoner of War Convention require that any person captured in combat be classified as either a military prisoner of war or a protected person under the Civilians Convention, and it is not permissible to classify either one as a common criminal. Again there are eye-witness reports that Israeli army trucks filled with handcuffed and blindfolded prisoners were leaving Lebanon for undisclosed sites in Israel. This is a violation of both the Civilians Convention and the Prisoner of War Convention.

Article 66 of the Civilians Convention permits trials of captured individuals only by "non-political military courts, on condition that the said courts sit in the occupied country." Therefore, moving the prisoners from Lebanon to Israel is a further violation of the Convention.

Article 4A (2) of the POW Convention contains the specific criteria which entitle members of organised resistance movements to treatment as prisoners of war on the same basis as regular soldiers. These criteria are: (1) being under military command; (2) having a fixed distinctive sign; (3) carrying arms openly; and (4) conducting their operations in accordance with the laws and customs of war. Even Israeli Defence Minister Sharon has conceded that the Palestinians had both "regular" and "irregular" troops (*Washington Post*, 12 June). The Government of Israel has apparently conceded that the first three requirements have been met by the Palestinian armed forces. However, it denies them POW status on the alleged basis that they have not complied with the laws and customs of war. In view of the massive violations of these laws and customs by the Israeli armed forces, it is untenable for Israel to hold the Palestinians to a higher standard than the Israelis have for themselves.

Article 4A (3) prohibits such denial of status not only to irregulars but to "members of regular armed forces who profess allegiance to a government or an authority (emphasis added) not recognised by the Detaining Power." It was reported in the *Washington Post*, 13 June, 1982 that:

"Although army officials declined to acknowledge it, refusals to grant internationally recognised prisoner-of-war status to the guerrillas apparently is the result of a political decision stemming from a reluctance of Israeli officials to recognise the Palestine Liberation Organisation as a legitimate force."

(c) Hague Convention IV of 1907 on the Law of Land Warfare

This is now accepted as binding customary law and forbids, in Article 23c, the use of weapons "calculated to cause unnecessary suffering." This prohibition has also been uniformly interpreted to include weapons which have indiscriminate effects. The cluster bombs used by Israel in Lebanon definitely fall into this prohibited category. In addition, the use of United States weapons in actions directed against civilians is contrary to United States law and to the agreements with the United States under which Israel has received these weapons.

THE GUILTY MEN

As has been said, the Nuremberg Tribunal determined that the scope of crimes against peace must be limited to only the top political and military leadership. The same limitation may reasonably be applied in the case of crimes committed by a state or a government against humanitarian law.

On this basis the responsibility for crimes of both kinds committed in the course of Israel's invasion of Lebanon may reasonably be attributed to four men: the Prime Minister, Mr Menachem Begin; the Defence Minister, Mr Ariel Sharon; the Foreign Minister, Mr Yitzhak Shamir; and the Chief of Staff of Israel's Defence Forces, General Rafael Eitan. It is these men, more than any others, who were responsible for launching the invasion and for the way in which it was carried out. It is they, above all, who should answer for the aggression against Lebanon, for the ruthless barbarity with which it was carried out and for the massive suffering inflicted on Lebanon's civilian population, both Lebanese and Palestinian.

In determining whether they were conscious of the nature and effects of their actions, it is relevant to recall that their past record reveals them all to be men addicted to violence and hardened in their contempt for human life, particularly where the lives at risk are those of Palestinians or other Arabs.

It was Mr Begin who masterminded the blowing up of the King David Hotel in 1946, causing the deaths of 91 Jews, Arabs and British, and the massacre of 254 unarmed Palestinian villagers, many of them women and children, at Deir Yassin in 1948.

It was Mr Shamir who planned and directed the assassinations of Lord Moyne, the British Minister Resident in Cairo, in 1944, and of Count Bernadotte, the UN Mediator in 1948.

It was Mr Sharon who was the first commander of the notorious Unit 101 which perpetrated the massacre of 66 Palestinian villagers at Qibya in 1953 and many other similar atrocities.

It is General Eitan who has been operationally responsible for the brutal tactics employed by Israeli troops in the West Bank and Gaza in recent years and also for arming Israeli settlers there and encouraging them in their violent excesses against the Palestinians. It was he who gave the green light

to Israeli soldiers to kill indiscriminately by reducing to a farce the sentence passed on an Israeli officer who was found guilty of murdering civilians in the course of Israel's incursion into Lebanon in 1978.

They are all men who already had much blood on their hands, before they launched the invasion of Lebanon.

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