

Barak Appoints War Criminal Yaron

by

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(The author served as Attorney of Record in the lawsuit against General Yaron in *Ali Aidi v. Yaron*, 672 Fed. Supp. 516 (D.D.C. 1987), *Palestine Yearbook of International Law*, Vol. V, 1989.)

Israeli Prime Minister Ehud Barak has nominated former Major General Amos Yaron to serve as director-general of the Israeli Defense Ministry, while Barak himself retains the portfolio of Minister of Defense. According to the 1949 Fourth Geneva Convention, Yaron, whose appointment must be confirmed by the Israeli Cabinet, is a war criminal by virtue of his command responsibility for the murder of about 2000 Palestinian and Lebanese civilians during the 1982 Sabra and Shatila refugee camp massacre in Beirut, Lebanon. Should Yaron's appointment be confirmed, the U.S. government will be aiding and abetting the work of an infamous war criminal. In Fiscal Year 2000, Israel is scheduled to receive \$1.92 billion dollars in U.S. military aid out of a total annual U.S. aid package to Israel worth \$2.94 billion.

In June 1982, Israel invaded Lebanon, driving as far north as the capital, Beirut, purportedly in an effort to expel the Palestine Liberation Organization. In August 1982, special U.S. envoy Philip Habib negotiated the withdrawal of Palestinian forces from Beirut. According to that agreement the United States government guaranteed the safety of the remaining Palestinian civilians and obtained Israel's assurance that its armed forces would not enter West Beirut. Israel, breaking its own pledge, occupied West Beirut and surrounded the Sabra and Shatila refugee camps on September 15, 1982.

On September 16, then Brigadier General Amos Yaron, acting under orders from the Israeli Ministry of Defense under General Ariel Sharon, allowed Phalangist troops to enter the refugee camps even though the same troops had previously engaged in massacres of Palestinians living in Lebanon. The killing at the refugee camps went on for three days. During nighttime Phalangist operations, Yaron's troops fired illumination rounds so the Phalangists could continue their bloody work. Israeli troops, under the command of Yaron, blocked the exits of the camps to prevent the refugees from escaping and supplied the Phalangists with at least one bulldozer, which was used to cover bodies with rubble.

According to the official Israeli Commission of Inquiry into the massacre (the so-called Kahan Commission), Yaron, who was present on the roof of the IDF forward command post overlooking the Shatila camp on the evening of September 16, knew then that women and children were being killed by Phalangist militiamen who had entered the camps by prior arrangement with the Israeli military. Not until the morning of September 18 did Yaron move to end the killings. Israeli military intelligence later underestimated the death toll at between 700 and 800, which was criminal enough. In his testimony to the Kahan Commission, Yaron said he was "happy" about the decision to send the Phalangist forces into the refugee camps because "the

fighting serves their purposes as well, so let them participate and not let the IDF do everything."

Under the terms of the Fourth Geneva Convention of 1949, which was signed by both the United States and Israel, by his complicity in the massacre, Yaron allowed the willful causing of "great suffering" and "serious injury" to the residents of the camps, who were legally "protected persons" thereunder. In so doing, Yaron was guilty of "grave breaches" under Article 147 of the Fourth Geneva Convention. In other words, because of his command responsibilities during the Sabra and Shatila massacre, Yaron was personally responsible for the commission of "war crimes" under general principles of both customary and conventional international law.

On August 1, 1986, the Israeli government announced that it was nominating Yaron as its Military Attaché to the United States and Canada. Immediately thereafter, this author and Mr. Abdeen Jabara, Esq. who had recently become President of the American-Arab Anti-Discrimination Committee (ADC) in Washington, D.C., decided to launch a campaign to prevent the United States government from accepting Yaron's diplomatic credentials and admitting him into the country. Together, the two of us drafted telegrams to Secretary of State George Shultz, Secretary of Defense Caspar Weinberger, and Attorney General Edwin Meese pointing out that Yaron was responsible for the commission of "grave breaches" of the Fourth Geneva Convention for the role that he played in supervising the Sabra and Shatila massacre. As such, the United States government was under an absolute obligation under the Fourth Geneva Convention to prosecute Yaron for these heinous war crimes should he set foot on United States territory. Therefore, the telegrams argued, the United States government must not allow Yaron to enter the country for any reason other than prosecution. Otherwise, the United States government would be in breach of its own obligations under the Fourth Geneva Convention.

ADC sent similar telegrams to the ambassadors for all states parties to the Fourth Geneva Convention of 1949, requesting that pursuant to common article 1, their governments had an obligation to intervene with the United States government to demand that the latter not accept Yaron's diplomatic credentials. A few European states did indeed take this matter up with the United States government. In the meantime, this author sent a letter to the Legal Adviser to the Israeli Foreign Ministry stating that in the event Yaron were to set foot upon United States territory, he would personally sue Yaron in a U.S. court for his role in the Sabra and Shatila massacre.

These vigorous efforts by this author, Jabara, the ADC, and others led the Reagan administration to hold up Yaron's Letter of Accreditation for a period of three months. According to the Israeli Press, these protests against Yaron's appointment were instrumental in prompting Washington to seek Yaron's recall. Israeli papers reported that the behind-the-scenes diplomatic fury which resulted over Yaron's nomination came after the Department of Defense received hundreds of letters from Arab-Americans and liberal Jewish groups protesting Yaron's presence in the United States.

Several meetings were held between Israeli Defense Minister Yitzhak Rabin, Prime Minister Shimon Peres, and U.S. Secretary of State George Shultz over the question of Yaron's suitability to serve as Defense Attaché in light of his involvement in the Beirut massacres. The Israeli daily Davar, associated with the Labor Party, first broke the story of the meetings between U.S. and Israeli officials over Yaron in its October 22 edition, indicating that Washington and Tel Aviv had agreed that Yaron would be recalled but not

immediately. Both sides later denied that a deal had been made, although a spokesperson for the Israeli Embassy in Washington, D.C., Yossi Gal, confirmed that the negotiations had indeed taken place. On October 24, 1986 the Reagan administration officially accepted Yaron's Letter of Accreditation.

Undaunted, ADC's Abdeen Jabara flew to Ottawa to convince the Canadian government to refuse diplomatic accreditation to Yaron as Israel's Military Attaché to Canada. To its great credit, on March 5, 1987 the Canadian government refused to accept Yaron's diplomatic credentials. Explaining the move, External Affairs Minister Joe Clark said that Canada did not consider it "appropriate" to accept Yaron's credentials. Officials of the External Affairs Ministry indicated privately that Canada had based its decision on the findings of the Kahan Commission Report.

On March 28 the Jerusalem Post reported that Yaron had asked his superiors to cut short his Washington assignment. A "cool" reception from the diplomatic community in the U.S., followed by Canada's refusal to accept his appointment to Ottawa, were factors leading to Yaron's request to be considered for a territorial command, according to their sources. Apparently, Canada had rejected Yaron's credentials with Washington's approval.

In the meantime, this author, Abdeen Jabara, Linda Huber, Esq., an attorney in Washington, D.C., Professor Linda Malone, now of the William and Mary School of Law, and Albert Mokhiber, Esq., then ADC Legal Affairs Director and later its President, convened at ADC Headquarters for the purpose of preparing a civil lawsuit against Yaron on behalf of some of the victims of the Sabra and Shatila massacre. This author and Linda Huber agreed to serve as Attorneys of Record for three Palestinian women who survived the massacre. The suit was filed in the United States District Court for the District of Columbia on May 4, 1987. The Complaint alleged that Yaron bore responsibility for the murder of the family members of the three Palestinian women under international treaties including the Nuremberg Principles, which forbid war crimes and crimes against humanity.

The plaintiffs, Fatimeh Ali Aidi, Zeineb Sa'ad and Samia A. Khatib, all three of whom resided in the Shatila camp, each asked for \$100,000 in punitive damages and an undetermined amount in compensatory damages against Yaron. The Complaint stated that the husband of Fatimeh Ali Aidi, the father and sister of Zeineb Sa'ad, and the mother, sister and five nieces and nephews of Samia A. Khatib, were "murdered in the Shatila Camp by agents of the defendant Yaron" and the IDF during Israel's occupation of West Beirut in September 1982. The lawsuit stated that Yaron was guilty of violating the Fourth Geneva Convention of 1949, which prohibits the killing of civilians under military occupation and incriminates an occupying power even if its "agents" carry out the killing. Citing the Nuremberg Principles, which were designed to prevent the repetition of crimes against humanity such as were committed by the Nazi occupying power in Europe during the Second World War, the suit alleged that Yaron's position of authority, and knowledge of the ongoing massacre, rendered him personally responsible for the actions of the Phalangists.

Yaron was served with a summons to appear in court as he left his Chevy Chase, Maryland apartment for work on the morning of May 5, one day after the suit was filed. On May 20, 50 demonstrators picketed Yaron's apartment building, calling attention to current efforts by France, Israel and the

Soviet Union to bring Nazi war criminals to justice, while Yaron continued to enjoy diplomatic status in the United States. On May 26, a motion to dismiss the case was filed by lawyers representing Yaron, claiming that he enjoyed diplomatic immunity as Israel's Military Attaché, that the statute of limitations had expired, and that the international treaties cited by the plaintiffs allowed only governments, not individuals, to bring legal action for alleged treaty violations.

During the course of the Yaron litigation, the United States Department of State took the official position that Yaron possessed diplomatic immunity under the 1961 Vienna Convention on Diplomatic Relations and the U.S. Diplomatic Relations Act of 1978. Yet, at the exact same time the U.S. State Department was also involved in efforts to put former U.N. Secretary General Kurt Waldheim on the so-called "watch list" in order to bar his entry into the United States on the alleged grounds that he might have been an accomplice to the commission of war crimes during the Second World War. The U.S. Department of Justice so barred Waldheim as of April 27, 1987. By contrast, Yaron was directly responsible for the murder of about 2000 innocent Palestinian and Lebanese civilians, including women, children, and old people. Unlike Waldheim, however, not only was Yaron permitted to enter the United States, but the U.S. government also accorded him full diplomatic privileges and immunities under the Vienna Convention. The gross hypocrisy involved in these two contemporaneous decisions by the U.S. government could not have been more blatant.

Nevertheless, the Federal District Judge who handled the Yaron case decided to defer to the wishes of the Department of State in this matter. The Judge observed that this was not a criminal tribunal, but only a civil action. Hence, the Judge ruled that Yaron was immune from civil proceedings in United States courts irrespective of whether or not he would be immune from criminal proceedings in some other forum. The Judge basically ignored expert Affidavits submitted to the Court independently by three American Professors of International Law, all of whom stated under oath that acknowledged war criminals such as Yaron were both criminally and civilly liable for the commission of their international crimes, whether in United States courts or elsewhere.

Despite this setback, ADC continued to mount its nationwide campaign to convince Yaron that an acknowledged war criminal was not wanted by the American people to be roaming the streets of their capital, and that he should go home. Exactly one year after the Israeli government press office had quietly announced the appointment of Yaron, the Jerusalem Post of Aug. 1, 1987 reported that Yaron was to resign his diplomatic position "for reasons related to a lingering controversy" about his role in the 1982 Sabra and Shatila massacre. This "lingering controversy" was fueled by ADC's "Send Yaron Home" campaign. According to the Jerusalem Post, although the Reagan administration initially accepted Yaron's posting to Washington, it had since been actively trying to encourage Israel to recall him. Eventually Yaron returned home to Israel, where he currently lives and works with his fellow war criminals in the IDF and the Israeli government.

Under basic principles of international law, the U.S. government must be concerned about directing billions of U.S. tax dollars to the control of an acknowledged war criminal such as Yaron. Accordingly, the U.S. government must discontinue all military assistance to Israel if Yaron's appointment is confirmed. Also, there is no statute of limitations for war crimes. Should Yaron attempt to return to the U.S., the U.S. government is obligated to

prosecute him for war crimes. The same conclusion follows for any other State where Yaron might travel. Legally, General Yaron is just like General Pinochet: Hostis humani generis--The enemy of all humankind!

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