

War Crimes in the Summer War 2006

A systemic failure of the international institutions to uphold international law

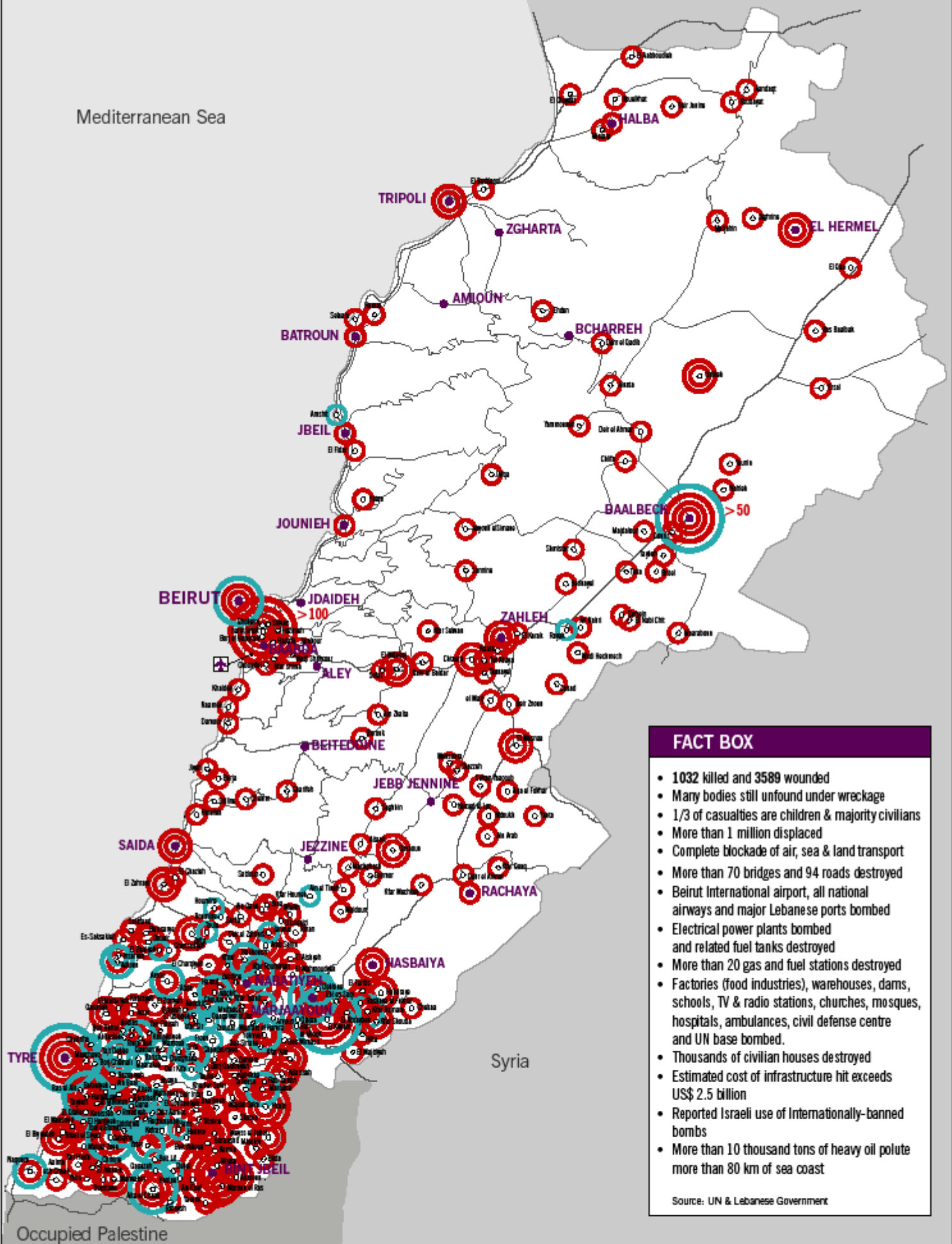
Taris Ahmed

**Commissioned by the
Islamic Human Rights Commission**

1.



Mediterranean Sea



FACT BOX

- 1032 killed and 3589 wounded
- Many bodies still unfound under wreckage
- 1/3 of casualties are children & majority civilians
- More than 1 million displaced
- Complete blockade of air, sea & land transport
- More than 70 bridges and 94 roads destroyed
- Beirut International airport, all national airways and major Lebanese ports bombed
- Electrical power plants bombed and related fuel tanks destroyed
- More than 20 gas and fuel stations destroyed
- Factories (food industries), warehouses, dams, schools, TV & radio stations, churches, mosques, hospitals, ambulances, civil defense centre and UN base bombed.
- Thousands of civilian houses destroyed
- Estimated cost of infrastructure hit exceeds US\$ 2.5 billion
- Reported Israeli use of Internationally-banned bombs
- More than 10 thousand tons of heavy oil polute more than 80 km of sea coast

Source: UN & Lebanese Government

ISRAELI ASSAULT ON LEBANON

MAP OF LOCATIONS BOMBED

- Major city
- Small town
- Highway
- Road
- strikes on August 10
- 1-5 strikes
- 6-15 strikes
- 16-30 strikes
- >30 strikes

July 12 – August 10 2006

Developed by Samidoun media team, feel free to circulate
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Data is based on news updates by lebanonupdates.blogspot.org

*“If the soldiers are not returned, we will turn Lebanon's clock back 20 years.”*¹
IDF chief of staff Brigadier General Dan Halutz

*“This affair is between Israel and the state of Lebanon. Where to attack? Once it is inside Lebanon, everything is legitimate –not just southern Lebanon, not just the line of Hezbollah posts.”*²
Israel's Northern Commander Udi Adam

*“All those now (still) in southern Lebanon are terrorists who are related in some way to Hizbullah.”*³
Israeli Minister of Justice Haim Ramon addressing the cabinet on 27 July 2006

¹ “Israel authorizes 'severe' response to abductions”, CNN, 12th July 2006, <http://www.cnn.com/2006/WORLD/meast/07/12/mideast> (accessed 21 October 2007); “Capture of soldiers was 'act of war' says Israel”, The Guardian, 13th July, 2006, <http://www.guardian.co.uk/frontpage/story/0,,1819122,00.html> (accessed 21 October 2007)

² “Israel authorizes 'severe' response to abductions”, CNN, 12 July 2006, <http://www.cnn.com/2006/WORLD/meast/07/12/mideast> (accessed 21 October 2007)

³ “Israel says world backs offensive”, BBC, 27th July 2006, http://news.bbc.co.uk/2/hi/middle_east/5219360.stm (accessed 21 October 2007)

About Islamic Human Rights Commission (IHRC)

The Islamic Human Rights Commission was set up in 1997. We are an independent, not-for-profit, campaign, research and advocacy organisation based in London, UK. We foster links and work in partnership with different organisations from Muslim and non-Muslim backgrounds, to campaign for justice for all people regardless of their racial, confessional or political background.

Our aims are manifold, and our inspiration derives from the *Qur'anic* injunctions that command believers to rise up in defence of the oppressed. IHRC volunteers and campaigners come from many different parts of the world and many different backgrounds to share in the common struggle against injustice and oppression.

Our work includes submitting reports to governments and international organisations, writing articles, monitoring the media, cataloguing war crimes, producing research papers, organising vigils, taking on discrimination cases, and so on.

Aside from our countries index we have a number of country-specific projects and research areas, e.g. Central Asia, Mauritius, Turkey, Palestine and Nigeria. Our issue related work includes researching war crimes, campaigning for prisoners of faith and other prisoners held for their beliefs, campaigning against religious discrimination and persecution, as well as many other issues in and across areas as far afield as the UK to China, Bosnia to Papua New Guinea, Europe to the United States of America and South Africa.

The IHRC website covers many aspects of our work and provides general information as well as material for the media, students, policy makers, lawyers and activists. If you would like more information, please browse our site or contact us directly.

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A. Introduction

This report is part of IHRC's work on the conduct of the 33 Day war by Israel against Lebanon. Some details of the fact-finding Mission in Lebanon (FFML) follow.

I. Background

1. The military action by the Israeli Defence Forces (IDF) in Lebanon during 12 July - 14 August 2006 (33 days) affected the civilian population in both Lebanon and Israel. This prompted the Islamic Human Rights Commission (IHRC) to assess any damage done to the civilian population and infrastructure and to examine to what extent these were justifiable under International Law.
2. A team of lawyers consisting of Alistair Stevenson Webster QC, Osama Daneshyar, Kevin Albert Metzger and Fahad Ansari visited Lebanon between 9 September 2006 and 16 September 2006. Some of their findings and photographs are referenced herein, though not all of the conclusions and recommendations of this report are shared by the team. Their report can be found separately on the IHRC website page for the 33 Day War here <http://ihrc.org.uk/activities/campaigns/10370-the-33-day-war-summer-2006>. They are referenced in this report as the FFML, IHRC Observers and observers. Their observations and some of their legal reasoning are largely referred to in Section C and D of this report. Other sources used include the UN Commission of Inquiry, Human Rights Watch and Amnesty International.
3. Since the conflict between Israel and its neighbours has been going on since World War I, the Commission was also asked to come up with recommendations of particular action that might be taken to strengthen the protection afforded to civilians and to achieve peace and stability in the region.
4. The FFML recorded eye witness accounts and interviewed survivors. They visited Southern Beirut, Southern Lebanon, the Bekaa Valley and other areas in Lebanon. Specifically, these were *Byblos, Beirut, Dahieh, Harat Hfeik, el-Ghasaniya, Tyre, Qana, Rechiknanay, Siddiqine, Kafra, Maraouhine, Aita Eik Chaab, Bent Jbeil, Yaroun, Aain Ata, Rmaich, Kham, Qa'a, and Baalbek*. Although the IHRC team was in Lebanon before any other fact-finding mission, such as the UN Commission of Inquiry, time has lapsed before the completion of this report. Due to time constraints, the different directions civilians were displaced to, and the distance between various places of fighting the findings are neither complete nor final. Therefore, other primary sources from the UN Commission of Inquiry have been used below which have been largely independently verifiable.

The FFML in numbers

Dates of the War	12 July - 14 August 2006
Dates of the FFML	9 September 2006 - 16 September 2006
Towns visited in Lebanon	<i>Byblos, Beirut, Dahieh, Harat Hfeik, el-Ghasaniya, Tyre, Qana, Rechiknanay, Siddiqine,</i>

Kafra, Maraouhine, Aita Eik Chaab, Bent Jbeil, Yaroun, Aain Ata, Rmaich, Khiam, Qa'a, and Baalbek.

Box 1





II. The Lebanon conflict

1. Background of the conflict

5. Lebanon is a small country covering only 10,452 square km, with a 225 km coastline to the Mediterranean Sea, a 375 km land border with Syria in the north and east and 79 km with Israel. The border area with the Syrian Golan Heights under Israeli occupation, known as Sheba Farms, is “disputed”.
6. The demography of the population is subject to much political contention as Lebanon is made up of several almost equally large religious communities whose roles and existence are perpetuated by a constitutional power divide. No census has been carried out since 1932, but it is estimated that 39% are Christians, largely consisting of five sub sects (Maronites, Armenian Apostolic, Chaldean Catholic, Melkite Greek Catholic, Greek Orthodox), 57% Muslims (35% Shia, 21% Sunni) and 5% Druze. The Shia and the Sunni communities are the single largest denominations. An important factor in Lebanese politics is that about 400,000 Palestinian refugees live in Lebanon according to UNRWA.⁴
7. Arab-Jewish relations have been hostile since the British commenced Jewish settlements in the region after World War I. Already the Great Syrian Congress in 1919 refused a Mandate System for the region and opposed Jewish mass settlements. Since 1945 Lebanon

⁴ UNRWA, Lebanon Refugee Camp Profiles, 31 December 2006, <http://www.un.org/unrwa/refugees/lebanon.html> <accessed 8 April 2008>

experienced international conflicts with Israel, civil war with Israeli interference and Israeli occupation. It never recognised Israel and although on 23 March 1949 it signed a general armistice agreement, it never signed a peace treaty. From 1975 - 1990 the Lebanese suffered a civil war in which about 120,000 people died. Different para-military units organised along confessional lines carried out most of the fighting, with Israel supporting Maronite extremists in the killing and maiming of other Lebanese and Palestinians epitomised in Ariel Sharon's massacres in the Palestinian refugee camps of *Sabra* and *Chatilla*. From 1982 - 1985 Israel occupied southern Lebanon and during 1985 - 2000 established a security zone there. In the 1980s Israel shelled and bombed Lebanon, resulting in the formation of Hizbullah, a Shia political and military party in Lebanon, joined also by Sunni, Christian and Communist volunteers.

8. Israel withdrew its troops in May 2000, for which UN Security Council Resolutions 425 and 426 had been calling since 1978. However, the Sheba Farms remained occupied by Israel. The Sheba Farms were occupied by Israel in 1967, and in 1981 Israel decided to extend Israeli law to the region. This was condemned by Security Council Resolution 497 as null and void.
9. Under Israeli occupation the country was torn between different armies and militias. In October 1989 deputies of the Lebanese Parliament signed the Taif Agreement. This agreement called for national reconciliation and for spreading the sovereignty of the State of Lebanon over all Lebanese territory through a one-year plan that included the disbanding of all Lebanese and non-Lebanese militias. The militias' weapons were to be delivered to the State of Lebanon within a period of six months.
10. In September 2004, Security Council Resolution 1559 called for the disarmament of Hizbullah and the retreat of Syrian forces, interfering in Lebanese internal affairs and multilateral agreements. In April 2005 Syrian troops withdrew from Lebanon. One year later in July 2006 Israel re-engaged Lebanon in a war. During the 2006 Summer War the Lebanese army was not in a position to defend the country and the defence of the country fell to Hizbullah which won several ground victories against Israel in defending the capture of Lebanese cities such as *Yatar*, *At Ech Chaab*, *Bent Jbeil* and *Khiam*.

2.The July-August 2006 War –The 33 Day War

a. What happened on and around 12 July 2006?

11. The Lebanese newspaper Al-Safir revealed the names of 67 men known to have been kidnapped by Israel or its allies during 18 years of occupation. Thousands of others are missing. Prisoner exchange between Israel and Hizbullah is thus part of the daily political reality of Lebanese-Israeli relations. For the scenario of a Hizbullah capture of Israeli soldiers, the IDF prepared a drill called *Hannibal*. The existence of such a drill indicates that the IDF was expecting such captures.⁵ The ceasefire line (also known as the blue line) was never respected by either side and its violation was rather the norm than the exception.⁶
12. On 12th July Hizbullah entered Israel to capture Israeli soldiers for the purpose of prisoner exchange. An IDF unit was patrolling the de facto border and did not follow instructions, thus not paying attention to the necessary caution in this location. Hizbullah

⁵ Al Jazeera English, God's Chariot Part I, 18 April 2007, <http://english.aljazeera.net/NR/exeres/43B08DDE-E5A2-48BF-880B-F4A2A006A8FA.htm> <accessed 8 April 2008>

⁶ For further detail see "An armed attack by whom?"

succeeded to capture two soldiers (Master Sergeant Ehud Goldwasser and First Sergeant Eldad Regev). Three IDF soldiers were killed. The IDF - prepared for the event of the capture of IDF fighters - triggered the drill. *Operation Hannibal* was launched with artillery and aerial bombardment to stop Hizbullah soldiers escaping with the captured soldiers. The IDF commander in the field then dispatched a Mercava tank into Lebanese territory, thus violating Lebanese sovereignty. After a few metres the Mercava tank was destroyed by a landmine, killing all four IDF soldiers. Following that an IDF squad was sent to rescue the Mercava crew, but the rescuers were also ambushed by Hizbullah fighters defending Lebanese territory resulting in more Israeli casualties. In total, Hizbullah captured two Israeli soldiers and killed eight.⁷

b. What action did Israel take?

13. The Israeli Cabinet hastily convened a meeting and the Chief of Staff requested five days to using the Israeli Air Force (IAF) alone with the aim to eliminate the defence capability of Israel's northern neighbour by destroying Hizbullah's fighting capability.
14. Israel's concomitant propaganda war focussed not on the destruction of Hizbullah but to get their lost soldiers back. There is a gap between the intentions of the Cabinet and its pronouncements to the public.
15. Israel claimed that the capture of two Israeli soldiers by Hizbullah on the Lebanon-Israel ceasefire line was the reason for its aggression in Lebanon. Hizbullah reminded Israel that if it wished the return of the soldiers, this could be done through a prisoner exchange.⁸ The Lebanese Government Emergency Meeting did not condone the capture of the soldiers.⁹ There was thus scope for Israel to get the soldiers back peacefully.
16. The estimated five days proved to be a miscalculation, and the Israeli cabinet failed to return the soldiers or to destroy Hizbullah. At this junction Israel continued the bombardment of Lebanon. Israel's actions raise doubt on whether Israel really expected to get Goldwasser and Regev back through the bombardment of the entire country. Weakening the new-found economic prosperity and security of Lebanon seems to have been in the forefront of Israeli war aims in its war against its northern neighbour.
17. The sheer extent of the utter devastation in Lebanon was disproportional and at times qualified as a war crime - even if Israel had acted in self-defence. However, since Israel had previously captured several Lebanese citizens the question remains whether the Hizbullah capture of Goldwasser and Regev could not be viewed as no more than a proportional defence measure.

⁷ Al Jazeera English, God's Chariot Part I, 18 April 2007, <http://english.aljazeera.net/NR/exeres/43B08DDE-E5A2-48BF-880B-F4A2A006A8FA.htm> <accessed 8 April 2008>

⁸ Guardian, Lebanon under siege from Israel, 13 July 2006, <http://www.guardian.co.uk/international/story/0,,1819702,00.html> <accessed 8 April 2008>

⁹ In his "Address to the Lebanese People" of 15 July 2006, Prime Minister Fouad Siniora stated that "[T]he Lebanese government announced from the first instance when the events broke, that it had no prior knowledge of what happened. Nor did it endorse the operation carried out by Hezbollah, which led to the abduction of the two Israeli soldiers." See full statement at <http://www.lebanonundersiege.gov.lb/english/F/eNews/NewsArticle.asp?CNewsID=17> <accessed 7 November 2006>. A/60/938-S/2006/518, Identical letters dated 13 July 2006 from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council, 13 July 2006. Cited in UN Commission of Inquiry.

18. IDF chief of staff **Brigadier General Dan Halutz** stated that “if the soldiers are not returned, we will turn Lebanon's clock back 20 years,”¹⁰ while the head of Israel’s Northern Command **Udi Adam** said, “this affair is between Israel and the state of Lebanon. Where to attack? Once it is inside Lebanon, everything is legitimate – not just southern Lebanon, not just the line of Hezbollah posts” .¹¹ Israeli authorities advised Major-General Dan Halutz against travelling to Britain because of the war crimes complaints filed against him by the Israeli Human Rights Group Yesh Gvul.¹²
19. The statements were inflammatory and phrased with intent to make it clear that the IDF would engage in retaliatory and punitive measures against Lebanon, and therefore its people. This would fall fairly and squarely within the ambit of Article 25(3) (b) of the Rome Statute as ordering, soliciting or inducing the commission of a crime. In this case the serious violations incited would include paragraphs (i), (ii), (iv) and (v) of Article 8 (2) (b) of the Rome Statute. Furthermore, Major General **Amir Eshel** of the Israeli Air Force reported an instruction from Halutz to the effect that for every Katyusha rocket which landed in Haifa, ten 12-storey buildings would be struck in the Dahia area of South Beirut.¹³ The initial response of the IDF was to claim that reporters had invented the quote, an allegation later withdrawn. The IDF then denied that such an instruction had been given. The Israeli Minister of Justice, **Haim Ramon**, is reported to have told the cabinet, on 27 July, 2006, that the citizens of southern Lebanon had been given ample warning to leave the area: “*All those now in southern Lebanon are terrorists who are related in some way to Hizbullah*”.¹⁴ In effect it declared South Lebanon a free-fire zone. The BBC reported on 27 July 2006 that the IDF had stated that any villages from which rockets were launched would be totally destroyed.
20. Lebanon pleaded promptly on 13 June 2006 for an immediate response by the Security Council to call for an immediate and unconditional ceasefire, but it was only on the 11 August 2006 when Security Council Resolution 1701 was adopted. This called for a “full cessation of hostilities based upon, in particular, the immediate cessation by Hezbollah of all attacks and the immediate cessation by Israel of all offensive military operations, and emphasizing the need to address urgently the causes that have given rise to the current crisis, including by the unconditional release of the abducted Israeli soldiers”.

c. How did the war end?

21. The ceasefire came into effect on 14 August 2007, and the last hours of the war were used by Israel to bombard Lebanon. Eighty (80 %) of the ordnance dropped were during these final days of the war. This last minute destruction cannot be explained in military terms by the objective to repatriate the captured soldiers but can only be explained in the light of the

¹⁰ CNN “Israel authorizes 'severe' response to abductions”, 12 July 2006, <http://www.cnn.com/2006/WORLD/meast/07/12/mideast> <accessed 8 July 2007>
The Guardian, Capture of soldiers was ‘act of war’ says Israel
<http://www.guardian.co.uk/frontpage/story/0,,1819122,00.html> < accessed 13 July 2006>

¹¹ CNN “Israel authorizes 'severe' response to abductions”, 12 July 2006, <http://www.cnn.com/2006/WORLD/meast/07/12/mideast> <accessed 8 July 2007>

¹² The Times “Sharon fears arrest if he visits London” 17 Sep 2005
<http://www.timesonline.co.uk/tol/news/uk/article567485.ece> <accessed 8 April 2008>

¹³ Jerusalem Post, “High-ranking officer: Halutz ordered retaliation policy”, 24 July 2006.

¹⁴ BBC, “Israel says world backs offensive“ 27th July 2006, http://news.bbc.co.uk/1/hi/world/middle_east/5219360.stm

avowed goal of the IDF to weaken Lebanon. It took Israel two months to withdraw its troops (1st October) from Lebanon.¹⁵

22. Israel failed to break Hizbullah’s fighting capability or political influence. In this sense it failed to fulfil its military objective. However, it managed to “turn the clock back” and destroy the economic base of Lebanon. The high dud rate of cluster ammunition rendered many places no-go areas for Lebanese farmers and civilians further locking Lebanon into economic weakness. In this sense Israel managed to reduce the capabilities of Lebanon to defend itself in the future and made it prone to dependence on foreign interference through aid and credits and potential future invasion.
23. However, the goal to destroy Hizbullah and reduce the defence capability of Lebanon would, if achieved effectively, render Lebanon dependent and defenceless. The severe weakening of Lebanon’s economy renders Lebanon dependent on foreign aid and credit. Moreover, Lebanese sovereignty and political independence has been undermined by other political means. Security Council Resolution 1701 calls for disarmament of Hizbullah¹⁶ and involves the Lebanese government reducing Hizbullah’s fighting capability.¹⁷ Moreover, UN posts are stationed in Lebanon but none are stationed in Israel. Also, the resolution calls for Israeli soldiers to be released unconditionally, while the release of Lebanese prisoners is merely to be “settled” as the UN is “mindful of the sensitivity of the issue”. Lebanese prisoners are thus subject to a settlement or negotiation, while Israeli prisoners are not. The entry of Hizbullah fighters into Israel and their subsequent defence against Israeli use of force is considered an “attack”, while the incursion into Lebanon with a Mercava and the bombardment of the entire Lebanon is only called an “offensive military operation”. In this sense SCRes 1701 is biased towards Israel’s position and is thus in many ways a *Lex Israelis*.

Facts	
Dates of the War	12 July - 14 August 2006
Number of breaches of the blue line since 2000	Uncountable. Probably in excess of a hundred.
Number of Lebanese prisoners in Israeli prisons with and without trial	Lebanese newspaper al-Safir revealed the names of 67 men known to have been kidnapped by Israel and its allies during 18 years of occupation. Thousands of others are missing.
Military capability of Hizbullah	World War II type Katyusha rockets, shoulder held anti-tank missiles, anti-tank landmines and other rudimentary military equipment. Some Katyusha rockets slightly modified to have a larger range and penetration impact <i>Fajr 1</i> , <i>Fajr 2</i> and <i>Zelzal</i> . No electronically guided or other high-tech weaponry.
In terms of fighters Hizbullah has 600 full-time	

¹⁵ UNIFIL Press Release, 1 October 2006, <http://www.un.org/Depts/dpko/missions/unifil/pr060A.pdf> (accessed 7 November 2006).

¹⁶ SCRes 1701 Para. No.3

¹⁷ SCRes 1701 Para. No.8

fighters and another 3,000-4,500 veterans available for mobilisation. Hezbollah fighters use a range of infantry small arms, and carry out roadside and suicide bomb attacks. 15,000-30,000 reservists in volunteer militias.¹⁸

Military capability of Israel

State of the art weaponry systems including precision guided weapon systems.

Israeli military objectives

- To destroy Hizbullah within 5 days¹⁹
- To recapture the kidnapped soldiers

Hizbullah military objectives

To defend Lebanon from renewed invasion, occupation, loss of sovereignty and interference in the internal affairs of Lebanon by Israel. Exchange of prisoners.

Box 2

Excerpts

Pre-war estimate of Hizbullah's capability according to Jane's Information Group

At a glance: An assessment of Hezbollah's military capability²⁰

Reuters / Published on day 5 of the war: 07/17/2006 12:00 AM (UAE)

Rockets and missiles

13,000 Katyusha rockets. The 107mm variant has a range of 11 km, the 122mm variant a range of 20km.

Iranian-made Fajr-3 rockets, with a range of 45km, and the Fajr-5 variant with a range of around 70km.

Footage broadcast by Hezbollah suggests it manufactured its own version of the latter, renaming it Raad-1. Israel puts the number of these at around 100.

Israel said Hezbollah fired a Syrian-supplied 220mm rocket, with a 90kg warhead at its port city of Haifa on Sunday that killed eight people.

Hezbollah said it had fired a salvo of Raad-2 and Raad-3 rockets, but did not immediately provide further details.

Foreign analysts believe Iran has secretly deployed Zelzal-2 ballistic missiles with

¹⁸ <http://www.gulfnews.com/region/Lebanon/10053556.html> (accessed 2 June 2007)

¹⁹ Al Jazeera English, God's Chariot Part I, 18 April 2007, <http://english.aljazeera.net/NR/exeres/43B08DDE-E5A2-48BF-880B-F4A2A006A8FA.htm> <accessed 8 April 2008>

²⁰ <http://www.gulfnews.com/region/Lebanon/10053556.html> (accessed 2 June 2007)

Hezbollah. Believed capable of carrying a 600kg warhead, possibly with chemical or biological agents, to a maximum range of 200km. That would put all major Israeli cities in range.

Hezbollah fired an Iranian-supplied C-802 missile at an Israeli navy vessel off Beirut last week, killing four sailors.

Box 3

d. An armed attack by whom?

24. The answer to the question whose action constituted an armed attack as understood under Art.2(4) of the UN Charter is relevant when assessing whether the attack qualifies for an aggressive offensive attack (Art.5(1)(d) Rome Statute) which is a war crime under customary international law since the *Nuremberg Trials*. The legal consequence of an armed attack is that the attacked may use force in turn for purposes of self-defence (Art.51 UN Charter). However, the use of force used in self-defence must be necessary and proportionate.²¹ Both parties are in any case bound by the basic principles of the Law governing the conduct of war known as International Humanitarian Law or the Law of War.
25. The view of the facts adopted by Security Council Resolution 1701 was that Hizbullah's abduction of soldiers was the cause of the Summer War 2006. It refers to the causes as "Hizbollah's attack on Israel on 12 July 2006" and starts its recitals with:
- a. "Emphasizing the need for an end of violence, but at the same time emphasizing the need to address urgently the *causes that have given rise to the current crisis, including by the unconditional release of the abducted Israeli soldiers*"
 - b. "Calls for a full cessation of hostilities based upon, in particular, the immediate cessation by Hizbollah of all *attacks* and the immediate cessation by Israel of all *offensive military operations*;"²²
26. However, it is highly questionable whether the Security Council's determination is factually accurate.
27. There was never a peace agreement between Lebanon and Israel. Instead the southern "border" of Lebanon is an Armistice Line concluded in the *Lebanese-Israeli General Armistice Agreement* on 23 March 1949.²³ The latest agreement stabilising the area was the *Israel-Lebanon Ceasefire Understanding*, which is a ceasefire agreement dated 26 April 1996.²⁴ In that sense there was technically a state of conflict between the two countries since 1948 and not since the 12th July 2006.

²¹ International Court of Justice's Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, 1996 ICJ 226,

²² SC/8808 SECURITY COUNCIL CALLS FOR END TO HOSTILITIES BETWEEN HIZBOLLAH, ISRAEL, UNANIMOUSLY ADOPTING RESOLUTION 1701 (2006), 11 August 2006, <http://www.un.org/News/Press/docs/2006/sc8808.doc.htm>; (emphasis added) <accessed 8 April 2008>

²³ *Lebanese-Israeli General Armistice Agreement* 23rd March 1949 U.N. doc. S/1296/Rev. 1, 8 April 1949

²⁴ *Israel-Lebanon Ceasefire Understanding* 26 April 1996; full text at: http://telaviv.usembassy.gov/publish/peace/documents/ceasefire_understanding.html; See Annex for full text.

28. Since the Israeli defeat and withdrawal in May 2000 from southern Lebanon and the “blue line” (see map), monitored by the United Nations Interim Forces in Lebanon (UNIFIL), this line was never truly respected and its violation was rather the norm than the exception. Israeli aircraft violated the blue line “on an almost daily basis” says the UN Secretary General Report on UNIFIL.²⁵ The Lebanese government considered these incursions as acts of aggression giving Lebanon the right to defend its air space with anti-aircraft missiles.²⁶ The report further described several incidents, including demonstrations on the Lebanese side, exchanges of fire between Israeli soldiers and Hizbullah, and destruction of a Syrian army radar position in the Bekaa Valley. The Israeli army used heavy artillery and mortar fire on the Lebanese side of the line in the same vicinity and dropped two air-to-ground missiles. “Israeli air violations of the Blue Line, which continued on an almost daily basis, penetrating deep into Lebanese airspace” and “were not justified” “caused great concern to the civilian population, particularly low-altitude flights that break the sound barrier over populated areas” says a another report of the UN Secretary General. “The air violations were ongoing, although demarches to the Israeli authorities, calling on them to cease the over-flights and to fully respect the Blue Line, had been made repeatedly by the United Nations, including by the Secretary-General, and a number of interested governments.”²⁷ In response on 3 October 2001 Hizbollah fired 18 missiles and 33 mortar rounds at two positions of the Israeli Defence Forces (IDF) on the line south-east of Kafr Shuba. On 22 October Hizbullah fired 10 missiles and 61 mortar rounds at five IDF positions in the same vicinity.
29. In October 2000 500 people demonstrated in Marwahin to demonstrate against Israel close to the Israeli ceasefire line fence when Israeli troops opened fire, killing three and injuring some 20 unarmed Palestinian civilians. Later on the same day Hizbullah retaliated and launched an attack across the Blue Line about 3 kilometres south of Shaba and took three Israeli soldiers prisoner.
30. The UN Secretary General stated that “as long as Israel carries on with its policy of overflying Lebanon whenever it sees fit to do so, it risked provoking retaliatory acts”. In addition, Israel used “sonic booms over population centres” at “periodic” intervals. In turn, Hizbullah sent a drone into Israel. However, despite all these events, “none of the incidents resulted in a military escalation and for this the parties and UNIFIL deserved credit”.²⁸
31. On 26 May 2006, two officials of Islamic Jihad - Nidal and Mahmoud Majzoub - were killed by a car bomb in the Lebanese city of Sidon. This was widely assumed in Lebanon and Israel to be the work of Mossad, the Israeli intelligence agency. A few months later, a man named Mahmoud Rafeh confessed to the killings and admitted that he had been working for Mossad since 1994. On the very same day of the assassination Hizbullah fired 8 rockets into Israel, and there were intensive ceasefire line violations during which one member of Hizbullah was killed and several wounded, and one Israeli soldier was wounded.

²⁵UN Department of Peacekeeping Operations DPKO, Lebanon UNIFIL background, <http://www.un.org/Depts/dpko/missions/unifil/background.html> <accessed 8 April 2008>

²⁶ Letter from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General (February 4, 2003); UN doc. A/57/722, S/2003/148 (February 5, 2003).

²⁷UN Department of Peacekeeping Operations DPKO, Lebanon UNIFIL background, <http://www.un.org/Depts/dpko/missions/unifil/background.html> <accessed 8 April 2008>

²⁸ UN Department of Peacekeeping Operations DPKO, Lebanon UNIFIL background, <http://www.un.org/Depts/dpko/missions/unifil/background.html> <accessed 8 April 2008>

UNIFIL considered the 'border' region "remained tense and volatile" but yet "generally quiet" since such ceasefire line conflicts were the norm rather than the exception.²⁹

32. Thus the ceasefire agreement became de facto inoperative due to daily violations of the blue line.
33. Given that the ceasefire had been intermittently reneged by Israel in the preceding years, Hizbullah's 'border' crossing on 12th July 2006 was an expected event. In fact it named its incursion *Operation True Promise* after a "promise" by its Secretary General, Hasan Nasrallah, to capture Israeli soldiers in order to exchange them for Lebanese prisoners in Israeli jails. Hizbullah was seeking to capture enemy combatants to exchange them for the 15 Prisoners of War taken by the Israelis during the occupation of Lebanon, who were not released despite Article 118 of the Third Geneva Convention.³⁰
34. Hizbullah's capture of enemy combatants was, therefore, part of an already existing and ongoing conflict and cannot be said to be the beginning of the sequence of events that followed. In fact, to qualify as an armed attack under Art.2(4) of the UN Charter the attack must be substantial and between states in nature and not a mere border incident.³¹ Israel's military offensive in Lebanon was substantial whereas Hizbullah's regular border incursions might not qualify to be sufficiently substantial. In *Nicaragua v. United States of America*, the ICJ ruled that "the prohibition of armed attacks may apply to the sending by a state of armed bands to the territory of another state, if such operation, because of its scale and effects, would have been classified as an armed attack rather than a mere frontier incident had it been carried out by regular armed forces."³² In that sense Israel's military action must be considered an attack under Art.2(4) of the UN Charter.
35. Invoking the accumulation of events theory (pin prick theory), each specific act of violent border crossing, though it may not qualify to be sufficiently substantial and thus an armed attack under the Nicaragua test, could - taking the sum of incidents into account - amount to an armed attack which would trigger the right of self-defence under Art.51. Since, however, both Israel and Hizbullah have been violating the ceasefire line, Lebanon could likewise invoke the doctrine leaving both sides with a right of self-defence under Art.51.
36. Following the *Caroline incident* there must be a "necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment of deliberation."³³ Hizbullah offered a prisoner exchange, and the Lebanese government called for negotiations. There was ample moment to consider alternatives. Israel's response over the 33 days does not converge in any respect with the Caroline Test and cannot be considered self-defence under that test. By the time Israel responded the breach of the line was no longer current and it

²⁹ UN Department of Peacekeeping Operations DPKO, Lebanon UNIFIL background, <http://www.un.org/Depts/dpko/missions/unifil/background.html> <accessed 8 April 2008>

³⁰ Israel uses the language of the war on terror and thus considers Hizbullah volunteers and personnel as "terrorists" with which it seeks to avail itself from the duties under the Geneva Conventions.

³¹ On self-defence in international law see Victor Kattan, "The Use and Abuse of Self-Defence in International Law: The Israel-Hezbollah Conflict as a Case Study", 12 of the *Yearbook of Islamic and Middle Eastern Law* (2005-6), pp. 31-50.

³² Upheld in *Oil Platforms (Iran v. U.S.)*, Judgment-Merits, 2003 I.C.J. 90 (November 6, 2003) <http://www.icj-cij.org/icjwww/idocket/iop/-iopframe.htm> and in the advisory opinion *Legal consequences of the construction of a wall in the occupied Palestinian territory*, Advisory Opinion, 2004 I.C.J. 131 (July 9, 2004) <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm> and in *Armed activities on the territory of the Congo (Congo v Uganda)*, Judgment-Merits 2005 I.C.J. 116 (December 19, 2005) <http://www.icj-cij.org/icjwww/idocket/ico/icoframe.htm>

³³ Robert Yewdall Jennings, *The Caroline and McLeod Cases*, 32 Am. J. Int'l L.82 (1938).

begs the question whether there was any attack to match with self-defence measures in the first place. Taken all together Israel's action thus qualify as a reprisal illegal under international law since the 1970 Declaration on *Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations* which declares that "states have a duty to refrain from acts of reprisal involving the use of force."³⁴

37. The legal conclusion, therefore, is that Israel's military offensive between July and August 2006 constituted an armed attack under Art.2(4) of the UN Charter leaving Lebanon with a right of self-defence under Art.51 of the UN Charter. It is, therefore, a valid question why the Israeli response was so different on this occasion.

e. Was the attack premeditated?

38. There is sufficient indication to believe that the response was premeditated and the kidnapping on 12 July 2006 a mere pretext. The *San Francisco Chronicle* reports that "more than a year ago, a senior Israeli army officer began giving PowerPoint presentations, on an off-the-record basis, to US and other diplomats, journalists and think-tanks, setting out the plan for the current operation in revealing detail".³⁵
39. Elliott Abrams, member of the US National Security Council dealing with the Middle East, "pushed the administration to throw its support behind Israel".³⁶ Gerald Steinberg, professor of political science at Bar-Ilan University said: "Of all of Israel's wars since 1948, this was the one for which Israel was most prepared (...) In a sense, the preparation began in May 2000, immediately after the Israeli withdrawal, when it became clear the international community was not going to prevent Hezbollah from stockpiling missiles and attacking Israel. By 2004, the military campaign scheduled to last about three weeks that we're seeing now had already been blocked out and, in the last year or two, it's been simulated and rehearsed across the board."³⁷
40. Professor Gerald Steinberg and the *San Francisco Chronicle* are not alone in this analysis and effort to report the preparation for these strikes on Lebanon and Hizbullah. Also, the *Washington Post* reported that senior Israeli officials considered the strikes as part of a "broad strategy".³⁸ Seymour Hersh reported that "several current and former officials in the Middle East told me that Israel viewed the soldiers' kidnapping as the opportune moment to begin its planned military campaign against Hizbullah."³⁹ Israeli Prime Minister Ehud Olmert told the Winograd Commission that his "decision to respond to the abduction of soldiers with a broad military operation was made as early as March 2006" and admitted to have

³⁴ See also Roberto Barsotti, "Armed Reprisals," in A. Cassese, ed., *The Current Legal Regulation of the Use of Force*, 79-110 (Dordrecht: Martinus Nijhoff Publishers, 1986); see also Ian Brownlie, *International Law and the Use of Force by States*, 281-82 (Oxford: Clarendon Press 1963);

³⁵ San Francisco Chronicle "Israel set war plan more than a year ago" 21 July 2006 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/07/21/MNG2QK396D1.DTL&hw=kalman&sn=001&sc=1000> <accessed 8 April 2008>

³⁶ Helen Cooper, "Rice's Hurdles on Middle East begin at Home" 10 August 2006 New York Times <http://www.nytimes.com/2006/08/10/washington/10rice.html>

³⁷ San Francisco Chronicle "Israel set war plan more than a year ago" 21 July 2006 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/07/21/MNG2QK396D1.DTL&hw=kalman&sn=001&sc=1000> <accessed 8 April 2008>

³⁸ Washington Post "Strikes Are Called Part of Broad Strategy" 16 July 2006 http://www.washingtonpost.com/wp-dyn/content/article/2006/07/15/AR2006071500957_pf.html <accessed 8 April 2008>

³⁹ Seymour M. Hersh, "Watching Lebanon" New Yorker, 21 August 2006

reviewed operational plans. He also admitted that Ariel Sharon ordered the army to prepare a list of targets for a military response in Lebanon in November 2005. Olmert held his first meeting on Lebanon in early January 2006 in the same week he took office and “held more meetings on the situation in Lebanon than any of his predecessors”, documenting the military build-up in the background well before Hizbullah’s next crossing of the ceasefire line on 12 July 2006.⁴⁰

41. There is, therefore, sufficient reason to believe that Israel’s actions were what might qualify as an aggressive offensive attack with the knowledge and sanction of the USA. This serious war crime has been punished by the Security Council in the case of Iraq’s invasion of Kuwait. In this case Res.1701 of the Security Council, however, considered Hizbullah’s crossing of the ceasefire line as the attack, which is legally inaccurate.⁴¹
42. On 12 July 2006 Secretary General of Hizbullah Hassan Nasrallah made it clear: “We do not want an escalation in the south, not war”.⁴² Farrid Abboud, a Lebanese ambassador, made a similar statement: “We did not declare any war. It was declared on us when our country was occupied by the Israelis, when prisoners were taken from Lebanon into Israel, and when Palestinian refugees were pushed inside Lebanon. We did not occupy Israel; we did not declare war; we didn't do anything. We don't want any escalations. At this juncture, if there is any solution to be found, it should be around a negotiating table. And there should be negotiations to the withdrawal of the Israelis from the Lebanese-occupied territories and to the release of Lebanese prisoners. That's the only solution that will, you know, be feasible.”⁴³
43. The day after the Hizbullah abduction on the 13 July 2006 the IDF bombarded Beirut International Airport and destroyed bridges, roads and Nasrallah’s office on 14 July 2006. Only after civilians died and Lebanon was under full attack and war was waged by Israel did Hizbullah promise “open war” against Israel with full rocket attacks.⁴⁴ The regular border incursions by both sides were wilfully escalated and exploited for a full war by Israel.
44. Security Council Resolution 1701 did not mention nor pay regard to Israeli premeditation of the large-scale attack nor to the disproportionate use of force by Israel in Lebanon. Instead it

⁴⁰ “Main Findings of the Winograd Partial Report”; Aluf Benn “War planned months in advance” 8 March 2007 Haaretz <http://www.haaretz.com/hasen/spages/834549.html> <accessed 15 March 2007>; “The main findings of the Winograd partial report on the Second Lebanon War” 1 May 2007 <http://www.haaretz.com/hasen/spages/854051.html> <accessed 15 May 2007>; Winograd Commission submits Interim Report 30 April 2007 <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Winograd+Inquiry+Commission+submits+Interim+Report+30-Apr-2007.htm> <accessed 15 June 2007>; Lieutenant Colonel Hany T. Nakhleh “The 2006 Israeli War on Lebanon: Analysis and Strategic Implications” US Army War College <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA468848&Location=U2&doc=GefTRDoc.pdf> <accessed September 2008>

⁴¹ SC/8808 SECURITY COUNCIL CALLS FOR END TO HOSTILITIES BETWEEN HIZBOLLAH, ISRAEL, UNANIMOUSLY ADOPTING RESOLUTION 1701 (2006), 11 August 2006, <http://www.un.org/News/Press/docs/2006/sc8808.doc.htm>; (emphasis added) <accessed 8 April 2008>

⁴² Anthony Shadid and Scott Wilson “Hezbollah Raid Opens 2nd Front for Israel” 13 July 2006 Washington Post <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/12/AR2006071200262.html> <accessed October 2006>

⁴³ Online News Hour “Israeli Forces Cross Into Lebanon After Hizbullah Fight” http://www.pbs.org/newshour/bb/middle_east/july-dec06/israel_07-12.html, 12 July 2006

⁴⁴ BBC News “Day-by-Day: Lebanon Crisis –Week One” 19 July 2006 http://news.bbc.co.uk/2/hi/middle_east/5179434.stm <accessed July 2008>

put the blame on one party only, which is not an accurate reflection of the facts, with serious one-sided legal consequences favouring a country that breached internationally recognised principles of military conduct in war. An international investigation or international court tribunal is required to view Israeli cabinet documents and question key Israeli leaders.

III. Applicable Law and the legal framework

45. The Summer War of 2006 was unusual in the sense that it occurred between a non-state actor (Hizbullah) and a state actor (Israel). It is not a clear-cut situation in which two states are in conflict with each other, so that International Humanitarian Law (IHL) would be applicable. The question therefore arises whether IHL is applicable in the first place.
46. On the one hand Hizbullah is not a legitimate group using force under international law. Only entities attached to a state are using force legitimately. The question, therefore, is whether Hizbullah was allowed to use military means in the first place, let alone Katyusha rockets. For that there needs to be a link to the legitimate government of Lebanon, as otherwise Hizbullah fighters would be acting unlawfully and would be considered to be "unlawful combatants". Their use of Katyusha rockets or any other weapon would be unlawful and illegitimate.
47. On the other hand Hizbullah is more than just a group of civilians and is in fact the only functioning armed force in Lebanon having been able to defend Lebanon from invasion and repel the invasion and occupation on two previous occasions. The Lebanese government failed to mobilise its army under the Israeli overnight leaving Hizbullah as a popular resistance movement to act. A Lebanese draft resolution stated that Lebanon has the "right to resist occupation by all legitimate means," and demanded the same as Hizbullah did, namely the release of Lebanese prisoners from Israeli jails, whilst asserting Lebanon's right to "liberate them by all legitimate means."⁴⁵ Also, the Lebanese President commended Hizbullah for its protection of the country.⁴⁶
48. Moreover, Hizbullah is represented in the Lebanese government, and the Lebanese Foreign Minister Fawzi Salloukh concurs with Hizbullah that Lebanon has the "right to resist occupation by all legitimate means" and supported Hizbullah's defence of Israeli aggression on Al Jazeera Arabic television.
49. On 13 July 2006 the Lebanese Foreign Minister Fawzi Salloukh arrived in Cairo and told reporters at the airport that his government was "expecting Arab support over this malicious Israeli aggression." "We call for mobilization to remove the Israeli aggression from Lebanon, which is considered a sinful and barbaric attack that breaches the international conventions," he added.⁴⁷ In fact, Foreign Minister Fawzi Salloukh is politically close to the Shiite parties of Hizbullah and Amal.

⁴⁵ Saudi Press Agency "Arab Foreign Ministers hold emergency meeting" 15 July 2006
<http://www.spa.gov.sa/english/details.php?id=375641> <accessed 8 April 2008>

⁴⁶ Address of His Excellency General Emile Lahoud, President of the Republic of Lebanon to the nation, 18 August 2006, <http://www.presidency.gov.lb/president/presidspeech/speech18-8-06e/18aug06speeche.htm> <accessed 8 April 2008>

⁴⁷ BreakingNews.ie "Jordan's King meets Egyptian president" 14 July 2006
<http://www.breakingnews.ie/archives/2006/0714/world/cwgbqlidojmh/> <accessed 8 April 2008>

50. According to Israeli sources “the Lebanese army has even openly assisted Hizbullah during the past week's fighting. Hizbullah's successful missile strike on an Israeli naval vessel Friday night, for instance, would have been impossible had the army's radar stations not given Hizbullah the ship's coordinates. Hizbullah does not have radar stations of its own.”⁴⁸ There is sufficient connection between Hizbullah and the Lebanese government. Therefore, one has to concur with the United Nations Commission of Inquiry on Lebanon which considers the conflict as *sui generis*,⁴⁹ but International Humanitarian Law (IHL) as applicable.⁵⁰
51. The next question is which treaty regimes apply to the conflict. Lebanon (10 April 1951) and Israel (6 July 1951) ratified the Fourth Geneva Convention. Both parties also ratified the Third Geneva Convention. Lebanon (23 July 1997) ratified the Additional Protocols, but Israel is not a party to the Additional Protocols. Therefore, of these only the Fourth Geneva Convention and customary international law are applicable between Lebanon and Israel. What is considered custom will have to be assessed in the individual case.
52. International Humanitarian Law governs the conduct of war. It seeks to protect civilians, others not participating in the hostilities, and civilian *objects* (all objects that are not military *objectives*).
53. Common Article 3 of the four Geneva Conventions as well as Additional Protocol I are considered customary international law. Serious violations of IHL, many of which are addressed in this report, are war crimes under customary international law and may be prosecuted by any state in any national court (universal jurisdiction).
54. A key principle of distinction requires combatants to distinguish between civilians, civilian objects and military objectives. Military objectives per Art.52 Additional Protocol I are those that: “by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”. Civilian objects may thus become legitimate military objectives if they are “being used to make an effective contribution to military action”. If in doubt, the object must be presumed to be civilian. Directing attacks on civilians or civilian objects intentionally is a war crime.
55. Applying international law, the following will assess the legality of the conduct of the parties.

⁴⁸ Jerusalem Post, “The innocent bystander myth” 19 July 2006, <http://www.jpost.com/servlet/Satellite?cid=1153291950870&pagename=JPost%2FJPostArticle%2FShowFull> <accessed 8 April 2008>

⁴⁹ Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1 –Advanced unedited version, Geneva 10.November 2006, No.9. www.ohchr.org/english/bodies/hrcouncil/docs/CoI-Lebanon.pdf (cited as UN Commission of Inquiry)

⁵⁰ UN Commission of Inquiry No.67

B. Actions of Hizbullah in Israel

56. A claim made by Amnesty International is that the use of Katyusha rockets, owing to its imprecise nature, was inherently indiscriminate. Amnesty International's Secretary General Irene Khan in reference to the report *Under Fire - Hizbullah's Attacks on Northern Israel*⁵¹ claims that: "The scale of Hizbullah's attacks on Israeli cities, towns and villages, the indiscriminate nature of the weapons used, and statements from the leadership confirming their intent to target civilians, make it all too clear that Hizbullah violated the laws of war". Amnesty further maintains that: "Hizbullah [fired] some 900 inherently inaccurate Katyusha rockets into urban areas in northern Israel in clear violation of the principle of distinction between civilian and military targets under international law".⁵² The following intends to investigate these claims.
57. **Preliminary Note:** There are three separate issues to be considered in this regard. The first is whether Hizbullah was "intentionally directing attacks" against civilians as stipulated under Art.8(2)(b) of the Rome Statute. The second is the question whether Hizbullah has conducted "indiscriminate attacks" as understood under Art. 51(4) of Additional Protocol I. The last issue is whether Hizbullah has taken "adequate precautions" under Art. 57(2)(a)(i) of Additional Protocol I. Hence, one does need to bear in mind the division between precautions in attacks, deliberate targetting of civilians and indiscriminate attacks.

I. Legality of Katyusha rockets in and of themselves.

58. The question arises whether Katyusha rockets are inherently unlawful.
59. There are certain types of weapons considered unlawful *per se*. These are certain weapons specifically banned by international treaties and all weapons which are inherently indiscriminate by their purpose and nature. The Katyusha rocket is not banned by any treaty regime.
60. Katyushas might be imprecise but they can also be used discriminately. Since Katyusha rockets are not inherently indiscriminate they are not illegal *per se*. This is the reasoning followed by the International Court of Justice.⁵³

II. Did Hizbullah conduct "indiscriminate attacks" as understood under Art. 51(4) and (5) of Additional Protocol I?

1. Is Art. 51 Additional Protocol I custom?

61. Indiscriminate Attacks under Art. 51 Additional Protocol I are prohibited. Lebanon is a party to the Additional Protocol I, but Israel is not. Therefore Additional Protocol I is not applicable. However, this particular provision could reflect custom. The ICRC Commentary states that it "is one of the most important articles in the Protocol. It explicitly confirms the customary rule that innocent civilians must be kept outside hostilities as far as possible and

⁵¹ Amnesty International, Israel/Lebanon: Hizbullah's attacks on northern Israel, MDE 02/025/2006, 13 September 2006, [http://web.amnesty.org/library/pdf/MDE020252006ENGLISH/\\$File/MDE0202506.pdf](http://web.amnesty.org/library/pdf/MDE020252006ENGLISH/$File/MDE0202506.pdf) <accessed 30 October 2007>

⁵² Amnesty International, Israel/Lebanon: Hizbullah's deliberate attacks on Israeli civilians <http://news.amnesty.org/index/ENGMDE020262006;14.9.2006> <accessed 30 October 2007>

⁵³ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons Opinion of the International Court of Justice*, <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>, No. 91.

enjoy general protection against danger arising from hostilities.”⁵⁴ Therefore Art. 51 of Additional Protocol I reflects customary international law.

2. How many Israeli civilians died under Katyusha fire?⁵⁵

62. The question arises as to whether any Israeli civilians died at all in the conflict, before assessing whether they were killed intentionally. Also, in a high intensity war low numbers of civilian losses often fail to allow deduction of intention. Due to various fact finding missions in Lebanon the number of Lebanese civilians who died from Israeli aggression were counted to be 1,191.⁵⁶ In the city of Qanaa itself, 28 Lebanese lost their lives.⁵⁷ According to the Israeli Ministry for Foreign Affairs, 43 Israeli civilians lost their lives under Katyusha fire. According to the same Israeli government source, four of the Israeli dead died of a heart attack under rocket fire. Civilians were victims of Katyusha fire in 9 to 11 cities including Safed, Nahariya, Meron, Haifa, Kiryat, Majdal Krum, Maghar and others. On average, between 3 and 4 civilians died in each of these cities, and the overall ratio of Israeli civilians to Israeli soldiers during the entire conflict is one of 1:3.⁵⁸ However, a fact finding mission to Israel would be required to verify these government figures.

63. Also, the IDF positioned some of its batteries close to villages in northern Israel. This suggestion is supported by the pictures of Israeli children in Kyriat Shomona writing messages on shells due to be launched into Southern Lebanon.⁵⁹ In fact it should be noted that Israeli military facilities, such as rocket launching bases and army training camps, were constructed near Arab towns and villages in northern Israel, in Fassuta, Tarsheeha and 'Arab al-'Aramshe, which caused a threat to the Arab population in Israel. Three residents of Tarsheeha died through Hizbullah fire.⁶⁰ This was not mentioned among the civilian casualties as reported by the Israeli Ministry for Foreign Affairs but was reported by Arab Non-Governmental Organisations.

3. Was the use of Katyusha rockets indiscriminate?

64. The use of force is indiscriminate as soon as the use becomes disproportionate: Art. 51(5)(b) of Additional Protocol I.

aa. Proportionality Test

(1) Was the use of Katyusha rockets in the 2006 Lebanon War proportionate in repelling the Israeli “definite military advantage”, i.e. the invasion and occupation of Lebanon?

65. For the attack by Hizbullah to be indiscriminate it is sufficient to prove the attack to be disproportionate from the *ex ante* point of view of the commander at the time. It is important to know what the Hizbullah commander was able to expect. Moreover, to be proportionate the use of Katyusha fire has to be the mildest means available and effective to repel the threat.

⁵⁴ ICRC Commentary, Additional Protocol I, at No. 1923 <http://www.icrc.org/ihl.nsf/COM/470-750065?OpenDocument> <accessed 8 April 2008>

⁵⁵ This analysis only takes deaths into consideration.

⁵⁶ UN Commission No. 77

⁵⁷ Human Rights Watch, Israel/Lebanon: Qana Death Toll at 28 -International Inquiry Needed into Israeli Air Strike, <http://hrw.org/english/docs/2006/08/02/leban013899.htm> <accessed 8 April 2008>

⁵⁸ Israeli Ministry of Foreign Affairs, Israel-Hizbullah conflict: Victims of rocket attacks and IDF casualties, <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/Israel-Hizbullah+conflict-+Victims+of+rocket+attacks+and+IDF+casualties+July-Aug+2006.htm> <accessed 8 April 2008>

⁵⁹ Associated Press Photographs, © Sebastian Scheiner., 17 July 2006.

⁶⁰ Weekly Review of Human Rights Violations of the Palestinian Arab Minority in Israel No. 286 / August 4 – 11, 2006 Also available at: <http://www.arabhra.org/publications/wrap/wraphome2006.htm>

(2) Nature of the threat

66. The nature of the attack and threat from Israel has been experienced in Lebanon in the past. Lebanon was invaded, destroyed and occupied twice in 1978 and 1982, and Israel exacerbated and exploited the sectarian situation in the Lebanon through its allies in the country. There was every reason to fear a repetition of this experience. The UN Commission of Inquiry on Lebanon found that Israel attempted to exploit the sectarian nature of Lebanese society.⁶¹ Therefore the nature of the threat was a threat to the sovereignty and the internal affairs of Lebanon.

(3) Was the use of Katyushas the mildest and most effective means in repelling the attack and threat?

67. The use of Katyushas must also be able to repel the threat and must have been suitable but at the same time the mildest means in matching the attack. If the use of the mildest means available was effective, one can infer that Hizbullah reasonably sought a definite military advantage.

(i) Effective means?

68. Unlike Syria (1967), Jordan (1967), or Palestine (1948, 1967), Hizbullah successfully repelled the Israeli occupation, and Lebanon today remains free of Israeli military forces. Thus the use of Katyusha fire was effective in repelling the threat to Lebanese sovereignty.

69. However, the threat of Israel interfering in the internal affairs of Lebanon is still continuing. The extent of interference in Lebanese internal affairs, however, would be greater under occupation.

(ii) Was the use of Katyusha rockets the mildest means available?

70. Israel destroyed 132 vital points, killed 1,191 Lebanese, destroyed entire cities and penetrated deep into Lebanon, attacking Beirut. Hizbullah was in possession of rockets with a longer range, such as *Fajr 2*, *Fajr 3* and *Zelzal* rockets with the ability to match Israeli destruction and depth of penetration, going beyond Haifa and reaching Jerusalem and Beer Saba.⁶² Hizbullah however focused only on repelling the threat, not on matching the level of destruction. Therefore, it is fair to conclude that the use of Katyusha fire was the mildest means available to Hizbullah to repel the threat.

(4) What did the Hizbullah commander need to take into consideration? Were the unfortunate civilian losses justified by the military advantage?

71. When expecting casualties, the Hizbullah commander had to keep in mind the nature of the imprecise weapon and weigh this up against the military advantage. Holding a vital pass that, if lost, would effectively surrender the territory may justify high collateral damage. The military necessity in defending the sovereignty of the country would outweigh the high collateral damage. Here, the prevention of a re-occupation of Lebanon as experienced in the 1980s and the loss of sovereignty was a real threat. This was also the perceived prospect of an Israeli victory judging from recent historical experience.⁶³

72. Though a separate issue, the Hizbullah commander is under an obligation to take “adequate precautions” as stipulated under Art. 57(2)(a)(i) of Additional Protocol I and obviously not to

61 UN Commission No. 161, No. 28

62 Reuters, At a glance: An assessment of Hezbollah's military capability
17 July 2006 <http://www.gulfnews.com/region/Lebanon/10053556.html> <accessed 2 June 2007>

63 See Annex for full speech of Hassan Nasrallah on 14 June 2006.

attack civilians “*intentionally*”⁶⁴. It is unlikely that civilians were specifically targeted. The distance between the target areas where Israeli civilians were said to be found dead and Hizbullah fire in the best case would be two kilometres. However, Katyusha firing points were not always fixed and stationed at the border and the border line meanders, so that this theoretical distance is merely the minimum range but could - depending on the military situation at the specific moment in time and the modifications made to the Katyusha rockets - be close to 25-40 kilometres. At this distance it is very unlikely that the Hizbullah commander was able to make a precise calculation of the losses or even target civilians directly. In any case, the attack was repelled with civilian to soldier casualties fortunately at a very low ratio of 1:3 and only 3-4 civilians killed per city.

73. Moreover, the International Court of Justice in its *Legality of the Threat or Use of Nuclear Weapons Opinion* could not

*“conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”*⁶⁵

Nuclear weapons destroy entire landscapes and all living creatures for generations to come and cannot be compared to Katyusha rockets. If nuclear weapons cannot definitively be “considered lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”, then there would be a second argument justifying a high collateral damage. However, with a damage ratio of 1:3 civilians to soldiers, which is very low for modern warfare, and a damage of 3-4 civilians in certain areas which were hit, the collateral damage is very low, despite the real threat to sovereignty and internal peace and lack of state-of-the-art high precision weapons.

bb. Result of the Proportionality Test

74. Hizbullah did not respond disproportionately to the Israeli threat to Lebanese sovereignty. Therefore, the use of Katyusha rockets by Hizbullah was neither indiscriminate nor disproportionate to gain a definite military advantage.

75. Lebanese politicians were all challenged about the firing of rockets into Northern Israel. However, regardless of which faction, they were in agreement on the necessity of national defence by any means necessary. The idea of a deliberate targeting of civilians was rejected by all sides. Consensus further exists that, had it not been for the firing of rockets on targets in Northern Israel, the death toll in terms of Lebanese civilians would have been much higher and the ceasefire would never have been declared.

76. Lebanese Parliamentary deputies commented by saying that the Allies during World War II never hesitated in bombing German cities to try and dissuade the Germans from attacking British cities. How could a much weaker country with much less sophisticated weaponry be expected to simply sit back and see their civilians being slaughtered?

⁶⁴ ICRC Commentary, Additional Protocol I at No. 1934 of Art. 51, “Thus in relation to criminal law the Protocol requires intent and, moreover, with regard to indiscriminate attacks, the element of prior knowledge of the predictable result.” <http://www.icrc.org/ihl.nsf/COM/470-750065?OpenDocument> <accessed 8 April 2008>

⁶⁵ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, para.105(2)(E) <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&p3=4&case=95> <accessed 8 April 2008>

77. Finally, all parties were of the view that those who claim that the Lebanese were deliberately targetting civilians had to simply look at the figures and make comparisons to ascertain the reality of the situation. Israel lost 43 civilians (according to Israeli sources), when it is said that Hizbullah were deliberately targetting civilians with inaccurate weapons. On the other hand, Lebanon lost more than 1600 civilians and 150 Hizbullah fighters, with Israel claiming that they were using sophisticated weapons and precision-guided bombs.

C. ACTIONS OF ISRAEL IN LEBANON

I. Attacks on Lebanese Infrastructure (Airports, Power Plants, Bridges, TV Stations, Streets)

78. In a conventional war between states, there are clear military advantages to be secured by interfering with the capacity of the enemy to bring reinforcements and munitions up to the front line. The movement of heavy armour and artillery requires good transport links.

79. 78 bridges have been destroyed in Lebanon. The figures are from the Lebanese government. The UN found that 109 **bridges** were destroyed,⁶⁶ including the al-Zahrani bridge located 60 kilometres from Beirut between the southern cities of Tyr and Sidon and the Sidon flyover (see Figures 3a-3b). Also, some 137 roads were destroyed totalling 445,000 square km. Observations of the damage inflicted in these attacks and others suggest that the IDF has the capacity to strike with significant accuracy.

80. In Beirut itself, numerous bridges were blown up in a number of areas, including the Halat bridge (see Figure 3c) and Maameltein bridge, both located in the Christian heartland just north of Beirut. At the time, Christiane Berthiaume, of the UN World Food Programme, described the road upon which the bridges were located as “Lebanon's umbilical cord” and the “only way for us to bring in aid.”⁶⁷

81. What is clear is that it has caused significant disruption to the population and commerce. Traffic had to make regular diversions onto side roads.

82. It is questionable whether these attacks could have been expected to confer a “definite military objective” (Art. 52(2) of Additional Protocol I). There could be no doubt that, if a land war between conventional forces was what was anticipated, interference of this type would confer the appropriate military advantage. We are not convinced that this extensive campaign would confer the necessary definite advantage to further the goal of recapturing the two soldiers or weakening Hizbullah. Since the avowed policy of the IDF was retaliation and wanton destruction as stated by its head of staff, the image gathered on the ground with widespread bombing of roads and bridges seem to confirm that this policy has been implemented. Furthermore, the tenuous nature of any military advantage set against the clear and widespread destruction caused leads us to the clear conclusion that the use of force in this regard was disproportionate and that this aspect of the attack was, therefore, unlawful.

83. The destruction of the land transportation network severely hampered civilian life including the effective working of the economy, delivery of aid, evacuation, ambulance and civil defence services. The UN reports that “on many occasions this destruction occurred after humanitarian organizations had obtained a clearance from Israel to use these roads”⁶⁸, thus endangering civilians and aid workers. For instance, “cutting the roads between Tyre and Beirut for several days and preventing UNIFIL from putting up a provisional bridge (...) jeopardized the lives of many

⁶⁶ UN Commission of Inquiry No. 137

⁶⁷ Guardian ‘Bridge bombings cut Lebanese lifeline’, 4 August 2006
<http://www.guardian.co.uk/world/2006/aug/04/israel.syria> <accessed 8 April 2008>

⁶⁸ UN Commission of Inquiry No. 138

civilians and prevented humanitarian assistance from reaching them. Injured persons needing to be transferred to hospitals north of Tyre could not get the medical care needed.”⁶⁹

84. One of the first targets to be struck was **Beirut International Airport**, where both of the runways were bombed. This is the main airport serving the country where many scheduled international flights land. By the time we landed (16 September 2006), one of the runways had been rendered serviceable again. The other runway, however, will take longer to repair as there was a bomb hole which had penetrated the reinforced steel mesh concrete (see Figures 2-3). Lebanon’s two other airports were similarly attacked.

85. A statement issued by the IDF on 14 July 2006, claimed that the airport was “...used as a central hub for the transfer of weapons and supplies to ... Hizbullah.”⁷⁰, but the IDF also “was careful not to damage the central facilities of the airport, including the radar and control towers, allowing the airport to continue to control international flights over its airspace”.⁷¹

86. The **Harbour at Ouzai** was a small fishing harbour which was attacked from the air twice (Figures 21-27). On the second occasion the guard posted to prevent smuggling was killed. It can be seen from the photographs, which show the boats damaged or destroyed in the attack, that these were ordinary fishing boats. IHRC observers visiting in 2006 spoke to one of the fishermen who explained that **the vast majority** of the fishermen who used the port were Christians or Druze. Certainly, our inspection revealed nothing which suggested there had ever been any military installation. This was a small civilian port. It provided a modest living to a small number of fishermen.

87. On 13 July 2006 there was an attack at **a power station at Jiyeh** (Figures 4-5). The station itself was not hit, but an oil storage facility attached to it was. According to the Lebanese Minister of the Environment work started to stop the leak, but there was a further strike two days later. This strike, again, hit the oil storage facility and not the power station itself on this occasion. The berm which would have prevented oil spilling out into the sea was breached, with the inevitable result that a major spillage of burning oil took place. 65,000 metric tonnes of fuel had been in the tanks, and at a minimum 10,000 tonnes flowed into the sea.

88. This burning oil resulted in a huge cloud which was reported to have covered a large area of south Lebanon. Certainly, the resultant oil slick went a long way north. Amnesty International reported that it contaminated 150 km of coastline.⁷² IHRC observers saw its effects as far north as Byblos (Jbail) (Figure 6). Through the sea current, the oil moved as far north as the Syrian border. This was a significant environmental detriment, the effects of which will be persistent.

89. This needs to be contrasted with the foreseeable environmental damage which ensued, with the release of polyaromatic hydrocarbons, dioxins and particulate matter implicated as possibly carcinogenic and causative, in any event, of respiratory problems in humans, together with the physical effects of the oil upon the coastline and fish / shellfish and the long-term effect to the beaches and livelihood from fishing and tourism.

⁶⁹ UN Commission of Inquiry No. 147

⁷⁰ Israeli Ministry of Foreign Affairs, Summary of IDF operations against Hizbullah in Lebanon , 14 July 2006, <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/IDF+operations+against+Hizbullah+in+Lebanon+14-Jul-2006.htm> <accessed 8 July 2007>

⁷¹ Responding to Hizbullah attacks from Lebanon: Issues of proportionality , 25 July 2006, <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Responding+to+Hizbullah+attacks+from+Lebanon+Issues+of+proportionality+July+2006.htm> <accessed 8 July 2007>

⁷² Amnesty International “Israel / Lebanon: Deliberate destruction or “collateral damage”? Israeli attacks on civilian infrastructure” Amnesty International (Aug 2006)

90. The general rules relating to the need to avoid unnecessary damage to civilian objects involves the necessary corollary; it seems to us that where damage has been caused in circumstances where the environmental impact is likely to be significant, even where there has been some definite military advantage in the initial attack, the attack should not impede, except for good military reasons, efforts to minimise the environmental damage flowing from the attack. Hence this was not a valid military objective and in any event, the serious environmental damage caused was disproportionate and was aggravated by the Israeli refusal to allow efforts to control it. Pursuant to Art. 8(2)(b)(iv) of the International Criminal Court's Statute, the intentional attacking of an object with the knowledge that such an attack will cause widespread, long-term and severe damage to the environment qualifies as a war crime. Article 35(3) of Additional Protocol I establishes a general prohibition on employing methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. This is considered to be customary international law.⁷³

91. Also article 55(1) of Additional Protocol further indicates that special care shall be taken during armed conflict to protect the natural environment against widespread, long-term and severe damage. Furthermore, in the *Legality of the Threat or Use of Nuclear Weapons Opinion* of the International Court of Justice⁷⁴ the principle that parties to a conflict shall take all necessary measures to avoid serious damage to the natural environment is part of the proportionality assessment:

“(...) States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality.”⁷⁵

The attack was unlikely to qualify as a military objective and was thus an illegal attack.

92. Lebanese **television and radio** stations were also hit. While Al Manar TV station might have been seen by the IDF as a propaganda and recruitment facility,⁷⁶ in law mere propaganda is not enough to qualify as a legitimate target. The TV station must make an “effective contribution to military action” and its targeting must be “a definite military advantage”. This can be the case, for instance, if troop movements were reported or it incited the population to war crimes. However, merely generating support for the “wrong side” is not enough as it subjects reporting to the political bias of the enemy and sets a dangerous precedent to reporters and journalists. The International Federation of Journalists (IFJ) subsequently condemned this attack, “warning that the attack follows a pattern of media targeting that threatens the lives of media staff, violates international law and endorses the use of violence to stifle dissident media”.⁷⁷ Moreover, the IDF did not only attack Hizbullah TV station *Al Manar*, but also *Future TV*, *New TV* and the TV station *Télé Lumière* in six different locations.⁷⁸

⁷³ Rio Declaration; A/RES/47/37 Protection of the Environment in Times of Armed Conflict, 25 November 1992.

⁷⁴ ICJ, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion of 8 July 1996, *I.C.J. Reports 1996 (I)*, p. 226.

⁷⁵ ICJ, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion of 8 July 1996, *I.C.J. Reports 1996 (I)*, p. 226, para. 30.

⁷⁶ Israeli Ministry of Foreign Affairs. Summary of IDF operations against Hezbollah in Lebanon, 13 July 2006 <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon+Hizbullah/IDF+operations+against+Hizbullah+in+Lebanon+13-Jul-2006.htm> <accessed 8 July 2007>.

⁷⁷ International Federation of Journalists. IFJ Accuses Israel Over Pattern of Targeting After Strike on Beirut Broadcaster, 14 July 2006. <http://www.ifj.org/default.asp?Index=4064&Language=EN> <accessed 8 July 2007>.

⁷⁸ *Telelumiere*. *Telelumiere Broadcast affected by Israeli Strikes* <http://www.telelumiere.com/eng/war.html> <accessed 8 July 2007>

II. Attacks on Commercial Sites

93. Figures provided by the Lebanese government state that 900 factories and other **commercial targets** were damaged or destroyed during the attacks. Factories may well be legitimate military objectives if they make a direct contribution to the other party's military capacity or if they are used militarily, including the storage of munitions. However, the scale of the attacks is of concern. In line with Israeli Chief of Staff, Dan Halutz's threat, a widespread belief in Lebanon was that there is a deliberate policy of attacking the economic base of the country to prevent Lebanon rising economically.

94. The **Liban Lait** is a milk factory located south of Baalbek and owned by a Maronite. The photos at Figures 49-54 show the damage caused to the building by four air strikes. It was clear that this was a specifically targeted attack carried out with precision. The attack took place on 16 July 2006. Fortunately, no-one was working on the premises at the time as the shift had not yet reported for work. The plant was a modern treatment and bottling / packaging plant for milk produced mainly by a large herd maintained by the enterprise itself, but milk was also bought in locally in times of need. The factory had cost nearly \$40 million to set up and had been operating successfully. It was an approved supplier to a major French dairy products company, *Candia*, which ran regular inspections.

95. One factor which is worthy of note is that the factory had recently won a contract, in competition with an Israeli company, to supply milk to UNIFIL. It would have been obvious that it was in fact a significant employer in the area with approximately 300 employees. There were no indications at all of secondary explosions.

96. The nature of the enterprise did not make it an appropriate military objective. There was no evidence of it having been put to a military use and, indeed, given the ownership of the plant, such a use was inherently unlikely. More so when the manager confirmed that the French company Candia would audit the factory once every three weeks to ensure its compliance with their regulations, permitting the use of their trademark. If there were any intelligence which suggested that the building was being somehow put to military use, these latter considerations should have been a cause for significant doubt and should have merited further investigation. Given the obligation, under Art. 52(3) of Additional Protocol I, to presume, in cases of doubt, that such an installation is being used for civilian purposes, this attack should not have been made. This was an unlawful attack and illegal to target.

97. IHRC observers visited the district of **Tanayel / El-Marj** on the Beirut Damascus highway in order to investigate the damage caused to the factories there. The area is the **Industrial District of the Bekaa Valley** boasting many companies, including glass bottling plants and several factories.

98. The first factory visited was that of **Lamartine**, which manufactured chewing gum and confectionery. The factory was established in 1982 soon after the Israeli invasion and had survived throughout the many years of the civil war. The factory employed 40 workers from an area which is not particularly known for its wealth. The owners of the factory are Iraqis who had escaped the tyranny of Saddam Hussain. They were forced to leave their confectionery factory in Iraq and had once again started a business in Lebanon.

99. At the scene itself the level of devastation was immediately evident (Figure 56). The factory had been struck by three missiles launched from an Israeli Aircraft on 16 July 2006. The resulting

damage had obliterated the factory buildings as well as the machinery inside. The damage caused was in the region of \$16 million and resulted in the complete destruction of the factory. The factory watchman confirmed that there were no connections between the owners and Hizbullah, nor were there any weapons or any other military hardware stored in the factory.

100. Some 500 metres away from the Lamartine factory was the **Maliban factory**, manufacturing glass bottles and jars. This factory was struck by four missiles on 16 July 2006. Again, the damage caused was total and rendered the factory completely inoperative (Figure 57). IHRC observers were told that the factory had housed no military equipment and the owners had no connection with Hizbullah. The factory was owned by two Hindu brothers who were originally Indian but are now naturalised British citizens. The observers interviewed the watchman outside the wreckage of what was the oldest and most successful glass manufacturer in the region. He confirmed that the buildings were struck by 4 missiles which had caused the complete destruction of the factory. Apart from informing that the factory had employed 400 workers, working three shifts in 24 hours, the guard could not supply any further information and asked that the observers contact the owners who were now living in the UK.

101. Further up the road from the Maliban factory, **Dalal Steel Industries**, a factory manufacturing pre-fabricated housing units belonging to Mr. Rafiq Dalal, was also struck and destroyed (Figure 58). The owner was a member of the Druze community and a US citizen. IHRC observers were unfortunately unable to meet the manager of the company, but were able to obtain some information about the company from the local mayor. He did confirm that there were neither military munitions anywhere near the factory nor any other military target whether in the factory or around it. A peculiar fact was that the company had apparently successfully bid to supply pre-fabricated housing units to Iraq, having beaten off competition from an Israeli company. This bears an amazing resemblance to the belief of local people about the circumstances which led to the targeting and destruction of Liban Lait, which had also outbid an Israeli company to supply UNIFIL with dairy products for South Lebanon and the Golan Heights.

102. There were a number of other factories attacked in this part of the Bekaa Valley, including a slate factory. The attack on Liban Lait leaves us to be extremely doubtful as to whether the favourable presumption was applied appropriately and, as with the damage to the infrastructure, it seems that, in the pursuit of an aggressive policy, the idea of proportionality was given scant consideration by Israel.

103. 300 families lost their primary or only income from the bombing of Liban Lait. The observers did not get employee figures for the other factories, other than Lamartine and the Maliban glass factory, but it is clear that there will be many families in the area which will similarly have lost their means of support for an indefinite period. Whilst this is, of course, a less severe detriment than loss of life or serious injury, the loss of livelihood for hundreds of families with the consequential reliance upon whatever uncertain aid is available for an indefinite period represents its own humanitarian disaster.

104. It is difficult to discern what if any, putative military advantage which would have accrued as a result of these attacks on commercial premises in the Bekaa Valley. It is, of course, possible that the IDF may have had specific intelligence in relation to some of the factories attacked. However, given the scale of the attacks and the loss, inferences which may be drawn from Liban Lait, the lack of apparent restraint and the avowed intentions of the IDF, that the overall attacks upon factories in the Bekaa Valley were intentional, unjustified and unlawful.

105. The scale of damage to commercial premises in other parts of the country allows us to draw the conclusion that this behaviour has been replicated widely and constitutes a wide and unjustifiable attack of a very serious nature.

III. Attacks on Civilian Population and Buildings

1. South Beirut

106. In areas of **the suburbs of Southeast Beirut** great swathes of properties had been destroyed as well as numerous individual buildings. The extent of the destruction was a shock for all Commission members. From our inspection of the scene it is apparent that many apartment blocks were destroyed. The photographs at Figures 15-20 graphically illustrate the scale of the damage. This Shia district is densely populated and is a mixed residential-commercial area with many small businesses. This area was a Hizbullah stronghold in that the political bureau, offices of Hizbullah MPs, *Al-Manar* and *Jihad al Binaa'* (Reconstruction Organ) were located there. Throughout the war the IDF bombarded dozens of high rise buildings, which caused some 200,000 inhabitants to be evacuated from an early stage of the conflict.

107. In **Dahiyeh** Hizbullah had set up what may be described as a security zone. It was necessary to pass through checkpoints in order to enter this zone. It may thus have been viewed by the IDF as a legitimate target. It would clearly have been a military advantage to incapacitate the Hizbullah command and control structure, if there were such a command and control structure in a movement like Hizbullah, which has a very different communication dynamics from a conventional military as observed throughout the war. In expectation of an attack, the whole area, and the suburbs surrounding it, had been evacuated and the civilian population moved out.

108. The fact remains, however, that these were areas which contained many apartment blocks which were the homes of ordinary Lebanese civilians. They may have been Hizbullah sympathisers, but this in itself is not enough to become a legitimate target. Sympathisers do not equate with military personnel, and attacks upon them, *per se*, would clearly constitute unlawful collective punishment.

109. The fact that an apartment block may have been in the security zone would not, *per se*, make it a legitimate target.

110. The widespread nature of the destruction of whole areas of mixed residential and commercial premises, both inside and outside the security zone, strongly suggests that some of these attacks were not carried out for the purposes of military advantage, but were carried out wantonly. Given the IDF's capacity for specific targetting, the destruction of whole square areas of property is a strong indication that what was being targetted fell well outside what was proportionate in furtherance of an appropriate and legitimate military objective.

111. The United Nations Commission of Inquiry also visited Dahiyeh and made similar findings:

*“The devastation in **Dahiyeh** was extensive. The area had been subjected to very heavy aerial bombardment from apparently precision-guided bombs. Whole buildings of 10 or more floors had completely collapsed. The bomb craters witnessed by the Commission were enormous, indicating the use of very heavy ordnance. There were still unexploded bombs in some buildings. There was a pattern in the bombing and some buildings had been hit several times. 326 residential buildings were either damaged or destroyed in the Southern suburbs. During one single bombing, 35 people were killed. 24 hours before the end of the conflict, one building was bombed and six families within it were hit when they came back to*

clean their apartments. The total figures of those killed or injured were, however, comparatively low in relation to the utter destruction of the area, because after the second day of the conflict a large portion of the population had vacated the area. The total of those killed is estimated at around 110 with another 300 people injured”⁷⁹.

2. South Lebanon

112. Given Major General Ashel’s pronouncement that for every Katyusha rocket that fell on Haifa in Israel, ten 12-storey buildings would be struck in south Beirut, the damage caused in south Beirut appears to have been a result of that exact policy.
112. Figure 1 shows a map of the areas attacked and destroyed in south Beirut. The sheer scale of the attacks may be judged by the photographs in Figures 61-62, which show lorries queuing up to dump rubble from the bombed areas.
113. Although there had been an evacuation of the area, there were, nevertheless, significant civilian casualties in at least two sites which we visited. The first site was in the **Imam Hassan Complex** part of the **Roueiss** district of the suburb (Figures 16-18). There was a large area which had been flattened by air strikes, which occurred on Sunday 14 August 2006, a few hours before the ceasefire was to come into effect. What we were told is that the civilian population had started to drift back in view of the fact that a ceasefire was imminent. This was an area two kilometres outside the Hizbullah security zone and the strike was not against a single building but, again, against a series of buildings in a square area. If there was specific intelligence which prompted this attack, why was such a widespread strike necessary? The witnesses to whom IHRC observers spoke said that this had been an attack without any warning. The result of the attack was that 57 people were killed.
114. The United Nations Commission of Inquiry also visited Roueiss and made similar findings:
- a. *“In **Roueiss**, the Commission received information about the bombing of 8 eight-storey buildings which were attacked on the afternoon of 13 August, a few hours before the ceasefire. Only two people survived this strike. The bodies of 13 people disintegrated completely. The death toll is now 43 civilians. Witnesses described how the buildings collapsed in less than one minute. One man was trapped in the rubble, the stairs having fallen on him. He stayed there for three days, screaming as he heard the bulldozers removing the rubble around him. In the centre of these buildings was a yard where children were playing at the time of the bombing.”⁸⁰*
115. The second site which IHRC Observers visited was in the **Chiyah** suburb. This was a site at which a complete family of 17 was killed, amongst a total of 27 who were killed at this site, which had been, again, an apartment block (Figures 19-20). A survivor stated he had been evacuated from the Hizbullah suburbs and had, eventually, been persuaded by his cousin to stay at this site, on the basis that it was a significant distance from the Hizbullah area and was likely to be safe. It was his understanding that somebody had been seen on the roof of the building firing a sidearm at an IDF drone.

⁷⁹ UN Commission of Inquiry No. 119, 120

⁸⁰ UN Commission of Inquiry No. 122

116. The United Nations Commission of Inquiry also visited Chiyah and made similar findings:
117. *“In Chiyah, according to witness reports, on 7 August one building was hit twice within 10 seconds, first by four bombs and second by two bombs. The Commission was given a list of the names of 41 individuals who killed in this incident, including 13 children, one newborn, and 17 women. Many of those killed were IDPs who had fled from the South.”*⁸¹
118. The firing at the drone would have rendered the building a military objective. However that must be viewed subject to the question of proportionality. Given that this was a building well outside the security zone which had been evacuated, it was inevitable that there would be a significant loss of civilian life were it to be attacked. Any military advantage would be substantially outweighed by the inevitable loss of life.
119. Thus the scale of the attack on the southern suburbs, whilst it *may* have included some legitimate military objectives, was, by and large, carried out in a way which was excessive, insufficiently discriminating and clearly disproportionate. The overall attack was illegal under IHL.
120. IHRC Observers were able to visit a number of villages in the deep south of Lebanon, close to the **Israeli ceasefire line** and the **Golan Heights**. The former Israeli **detention camp in Khiam**, at which a number of detainees are reported to have died during the years of occupation, had been converted by the Lebanese government into a museum and stood as a symbol of Lebanese resistance in the past.
121. The photographs in Figures 34-43 show the scale of the destruction of the museum. No evidence of military use of the museum was found and no explanation of the IDF has been advanced. It seemed to us that this camp, a cherished symbol for many Lebanese, had been attacked merely because of its symbolic value as no legitimate military purpose can be conceived. The village itself had sustained extensive damage, to schools, residences, municipal buildings and the main mosque. It is noted that there is photographic and video evidence, showing the intensive bombardment of southern Lebanese villages using MRL’s and Mechanised Artillery batteries from Israeli border towns such as Kiryat Shmona (situated in the North District of Israel).⁸² The intensity and general nature of the bombardment of the entire village, in which no building was spared, raises serious doubts as to how discriminate the IDF wanted to be at all. The attack on the museum and the village was illegal under IHL. The UN Commission of Inquiry also visited the same site and also considered this attack as unjustified.⁸³
122. Similarly, in **Rechiknanay** the whole village visited by IHRC observers had literally been razed to the ground. One side of the main road had buildings (shops, cafes, hairdressers) still standing but severely damaged – the other side of the road was all rubble and debris wiped out completely (Figures 89-91). This did not seem consistent with specific targeting, but indiscriminate bombing across a whole row of residential and commercial buildings. The flattened side of the road contained as many as 40-50 commercial units on top of which people resided. The IDF’s full-scale destruction of villages from which rockets

⁸¹ UN Commission of Inquiry No. 121

⁸² Associated Press Photographs, © Sebastian Scheiner, 17 July 2006.

⁸³ UN Commission of Inquiry No. 228

had been fired included destruction of objects that were not conceivably within the scope of military objectives. Upon control of a village bulldozers were used to flatten them, which constituted an illegal reprisal action against the civilian population.

123. El-Ghasaniya is a distance north of the Litani River. IHRC Observers were brought to a house in **El-Ghasaniya** which had been blown up by the Israelis in an attack which took place at 0300 hrs. Eight people were killed, four injured (Figures 66-69). Many were teenagers. Eyewitnesses told us that the Israelis started firing at them when they went to look for survivors. There was no evidence of any rocket launch sites, military installations, placements of munitions, scorch marks, bunkers or signs of secondary explosions which we could detect as of military significance
124. Surrounding residents and neighbours confirmed the observations and experience. IHRC Observers spoke to a lady called Teresa in a house nearby (Figure 69). She was in her late 20s and her husband was killed in the El-Ghasaniya strike. Originally from Liberia, she has been living in Lebanon for over 20 years. She has two young children and is pregnant with a third. They were, she told us, simple farmers as were the rest of the community. When the war started, food supplies were low in her area. Her husband used to go to the village, which was bombed, in order to get food and was staying in the bombed house at the time. The rest of the villagers fled this area, she told us, and went to the main part of the town where more people were gathering. She told us that there were no Hizbullah fighters in the area and that it was usually a safety zone in the past, with other villagers fleeing their homes to come there.
125. IHRC Observers also visited **Qana** where over 28 civilians, including 13 children below the age of 12 (including a nine month old girl), were killed after an Israeli air strike on a residential site at 0200 hrs on the 30 July 2006 (Figures 70-73) in which families sought refuge from Israeli bombardment. Their homes were completely destroyed. An eyewitness informed how his wife, his mother, his brother and nephews were killed in the raid. Many others informed about the deaths of their relatives.
126. IHRC observers stated that they could find no evidence of any military equipment, weapons, or launch-sites. The villagers stated that there were no weapons stored here or rockets being launched from there, which was why they hid out there. Human Rights Watch researchers who visited the site on 31 July 2006 did not find any destroyed military equipment in or near the home. According to Human Rights Watch, none of the dozens of international journalists, rescue workers, and international observers who visited Qana on 30 and 31 July 2006 reported seeing any evidence of Hizbullah military presence in or around the civilian residences around the time that it was hit. Rescue workers recovered no bodies of apparent Hizbullah fighters from in or near the building.
127. Israel claims to have footage of a lorry coming into the compound carrying missiles and launch pads. But after studying the terrain, the IHRC observers were unable to find corroboration for this allegation. The area underneath the site which was allegedly used to store the rockets has not actually been touched - it is solid concrete. There was no indication that weapons had been stored there, all we were able to note was a cesspit for sewage. The observers examined the road in detail, and in terms of measurements it is physically not possible for a lorry to enter the compound. They were told that when the houses were being built initially, the actual tipper trucks could not enter the area and had to be unloaded further down with the material then brought to the site in wheelbarrows and

smaller vehicles. When ambulances and Al-Jazeera Television arrived following the bombing, they were unable to fit their vehicles in, due to the narrowness of the road. On the second and fifth day of the war, Israel bombed nearby houses, thereby completely blocking off the roads. The entire road leading out of the village was littered with debris and rubble, houses, shops and petrol stations were all destroyed. Given our observations and the evidence cited above, the IDF footage does not match the surrounding terrain. The attack was unjustified and thus illegal.

128. On the observers visit to the village we, too, found nothing to suggest that there had been any weapons storage facility or rockets launched from or near to the site which had been struck by precision IDF targetting. Human Rights Watch researchers visiting the site the following day found no destroyed military equipment at or near the home. The Human Rights Watch report, referring to one of Israel's top military commanders, seemed to suggest that the military had no information on rockets launched from the site of the building or the presence of Hizbullah men at the time.⁸⁴
129. There are, on the Israeli Ministry of Foreign Affairs website, a small number of video clips purporting to show Hizbullah rockets being fired from near civilian buildings. It is difficult to judge their full import, as to if these are from areas which were evacuated at the time. From the previous analysis of IDF footage the authenticity and accuracy of such clips should be viewed with caution.
130. In the villages visited, the villagers were adamant that there had been no Hizbullah fighters in the village and that attacks were launched from positions such as banana plantations, where there was good cover and the opportunity to exit the launch site quickly. He observers were also told by the villagers that Hizbullah, given previous experience, did not want to provide any reason for the villages to be attacked. That evidence is corroborated by people who cannot be said to be either supporters or constituents of Hizbullah.
131. Popular belief among many Christian Maronites was that Hizbullah would simply not place villages, from which they derive their support, in any danger as they did not want to endanger their constituents or in some case their homes. The consistent evidence was that the weapons were placed outside the villages in fields and valleys which in some cases were as close as 1 km from villages, but more often were much further out.
132. On 12 September, the Observers arrived at a small village in **Marouahine**. We could see no sign of any military fortifications, structures or weapons. Hizbullah fighters had not been in the village. The villagers are Sunni and have long-standing tensions with Hizbullah.⁸⁵ It was a small tobacco farming community with extremely limited means. Here the observers met an elderly lady (Figures 74-75) whose family are very simple tobacco farmers. This was evident from the amount of dried tobacco visible both outside and hanging within the remains of her home. On 15 July, at 0700 hrs, the Israeli Air Force gave the villagers two hours to evacuate before they would begin bombing. The families left in a civilian convoy towards the nearby UNIFIL base for shelter and protection. Unhappily, at the UN post (Figure 76), the villagers were refused shelter and here the UN proved to be similarly ineffective as in Srebrenica during the Bosnian war. The civilians decided to go in civilian convoys to the nearest village, Umm al-Tout. During their journey, they were fired

⁸⁴ Human Rights Watch, Volume 18, No. 3 (E): "Fatal Strikes – Israel's Indiscriminate Attacks Against Civilians in Lebanon", pp.32 to 34 <http://www.hrw.org/reports/2006/lebanon0806/>

⁸⁵ Human Rights Watch. Fatal Strikes: Israel's Indiscriminate Attacks against Civilians in Lebanon. Aug 2006. <http://hrw.org/reports/2006/lebanon0806/> <accessed 8 July 2007>

upon by the Israeli Navy (whose ships were blockading the Lebanese coast) and, she told the observers, any **survivors trying to flee were strafed by gunfire**. In total 27 villagers were killed here, including 14 children. Homes were also blown up in additional Israeli air strikes. On the evidence available to us, this appears to have been an attack upon a convoy which was acting in accordance with Israeli Air Force (IAF) instructions to leave the area. Given the IAF surveillance capacity (drones, etc) this was, at its lowest, an action of either serious incompetence or one which exhibited an indifference to the lives of the civilians in the convoy. These facts gathered have been identically reported by the UN Commission of Inquiry.⁸⁶ The attack on the vehicles was unlawful. Further with regard to the subsequent strafing of it, when it should have been clear that it was a convoy including non-combatants, was clearly unlawful.

133. What is evident from the testimonies received is that Israel gave the villagers specific instructions to leave the village and when they did, they were killed. A similar incident was reported to have taken place in Marjayoun.⁸⁷ This military practice needs serious investigation as it touches on the cornerstone of IHL that civilians are to be spared. Even if there were Hizbullah fighters among the civilians who sought to exit the villages with the convoys, the Israeli attack is entirely disproportionate and did not distinguish between civilians and combatants. Moreover, a two hour warning is not effective as required by IHL.

134. **Yaroun** (Figures 77-81) (south Lebanon) is affluent and thus different from many of the other villages visited. Most of the property owners here are living abroad. It is a very well built area with an exceptionally high standard of housing. We The observers met an ex-patriot who is now living in the US. He was in the US when his father's home here was struck by Israeli missiles on 14 August 2006, the day before the ceasefire. The house next to his was targeted (he does not know why – he says that it was civilian), but his house collapsed as a result as the roof was shared between the houses. The owner of the neighbouring house was not there: he is in Panama. This man lost his elderly parents (76, 74), his sister-in-law (43) and his two young nieces who were only 5 years and 7 months old respectively. The latter's body was eaten by a dog, and the bits of flesh and limbs were found outside the house later. His 76-year old father died while lying on his bed, the entire roof and wall falling on him. He did not die immediately, but his cries evidently went unheard until he died. The bodies were found 25 days later. The stench of death was still there when we visited. The locals tell us that there were no fighters here, no weapons, no rockets and no sign of any military hardware whatsoever. The victims names are Farhad Farhad, Sabea Farhad, Zainab Kanafar, Zahra Farhad, Zainab Farhad - all Lebanese citizens.

135. Most of the houses belonged to ex-patriates and were of very high standard. They are an unlikely location for the storing of missiles. The observers report coming across a villa which the Israeli army had made into their own base, shovelling soil and sand around it to protect it and (Figure 82) according to local villagers, the only fighters inside these houses were the Israeli army.

3. Al Biqa Valley (Bekaa Valley)

⁸⁶ UN Commission of Inquiry No. 126

⁸⁷ UN Commission of Inquiry No. 129

112. In the Bekaa Valley the observers visited the village of **El Qaa** (Figures 83-88). At the end of a long dirt track off a road, which is beyond the Lebanese customs post and close to the Syrian border in the north of the Bekkaa valley, they visited a fruit farm. This was about as far as it is possible in Lebanon to be from Israel without being in Syria.
113. They spoke to the watchman on the farm, who recounted an attack upon the farm. On the 4 August 2006, his lookout post was destroyed but, more tragically, the building which housed the seasonal workers was destroyed. It was lunchtime and they were having their lunch and taking shelter from the heat.
114. This incident has also been reported by the UN Commission of Inquiry. A witness told the UN Commission of Inquiry *“there was an MK drone over that location prior to the bombing and that two hours before the air strike, a truck had come to load fruit. The truck was open and it was possible to see from the air what was inside.”*⁸⁸ The UN Commission of Inquiry found that *“One farmer was killed outside on a tractor and another was injured while collecting water from a tank located a few meters away from the building. Figures regarding the total death toll from this incident vary from 25 to 39. (...) [A] separate attack destroyed the house of a local farmer a few hundred meters away; however nobody was hurt as the family had left that house before that day and the farmer was outside at the time of the bombing. From the close location of the two buildings, the farming activities carried out in the open and the circumstances of the attacks as described by the farmer, it would appear to the Commission that these strikes were deliberately targeted. The Israeli authorities said they targeted the buildings suspecting they were being used as storage points for weaponry, having followed from the Syrian border to that farm a large truck they suspected of transporting arms. The Commission considers that the presence of a drone above these locations should have allowed the IDF to identify the nature of agricultural activities taking place and the presence of a large number of farm workers and their families. Even if the truck had been carrying arms, and the farm had a dual use, nothing explains why the strikes took place at a time when all workers and their families were present in the building.”*⁸⁹
115. The inspection of the site revealed nothing which was consistent with the storage of arms there. The observers were told by the watchman that the vast majority of the dead workers were seasonal workers from Syria and nearly all Kurds. The remains of their shattered lives were still evident. At least 26 people were killed. It was clearly in the middle of a fruit farm, and the sad remnants of personal possessions told their own story.

IV. Vandalism, Murder and Mutilations

112. Striking acts of **vandalism** have been observed. The Al-Hikmah Hospital in Baalbek, which was evacuated and empty when the IDF arrived, was a scene of barbarism. The director of the hospital informed us that IDF soldiers had thrown patient files on to the floor and burnt them; had blown up the safe and stolen the money; had damaged the CT scanner; had destroyed computers; had shot random bullets around; and had killed a sleeping nurse. The UN Commission reports of houses in **Taibe** being occupied by the IDF and vandalised with water containers contaminated with human waste. The local school was also vandalised as recorded by Swedish TV.

⁸⁸ UN Commission of Inquiry No. 123

⁸⁹ UN Commission of Inquiry No. 124, 125

113. Moreover, a Hizbullah fighter shot by a sniper was set on fire by the roadside outside the town and his body was mutilated. Not enough, the IDF also was out to send a signal to Hizbullah leader Shaykh Hassan Nasrallah by killing and mutilating a family incidentally having the same surname – Nasrallah. The father’s hands and legs had been cut off, and a note saying “this is what will happen to Nasrallah” was attached to his body.⁹⁰ IDF snipers fired on civilians seeking refuge in that house.
114. Places of worship were not safe of this type of barbarism. The UN Commission of Inquiry found that in the village of **Qauzah** the Maronite church was occupied and used as a base for its troops. During their 16-day occupation the IDF vandalised the church, breaking religious statues, leaving behind garbage and other waste. The Commission saw a statue of the Virgin Mary that had been smashed and left in the church grounds. When the villagers returned, they found the church had been wrecked, the church benches and confessional box smashed. Silver items remained but had been deliberately broken. There were sandbagged defensive positions within the church grounds. There was no evidence to suggest fighting in and around the church to capture it. It therefore appears that the IDF simply took the church in control similarly to the villas in Yaroun.⁹¹ Places of worship enjoy enhanced protection under IHL.
115. Also the UN Commission of Inquiry found several acts of wanton destruction such as on **water facilities**
- a. *“were destroyed or damaged during this conflict in many parts of the country”, such as “numerous water tanks damaged in Chihine, and on the road between Taibe and Qantara. In Khiyam, the Commission saw evidence of damage to pipes. Numerous water towers had been hit by a direct fire weapon - probably a tank round. Most had a single round through them, sufficient to empty their content. Israeli soldiers were stationed in Froun, in order to control the water source. This led to a decrease of water distribution to the villages located in the Qada of Marjayoun, south of Taibe. In fact fears of lack of water were one of the reasons why civilians left their villages. In Beirut, in the Christian neighbourhood of Achrafieh, on 19 July, the IDF bombed two engineering vehicles used to drill water.”⁹²*

V. Attacks on United Nations

116. One village visited by the observers was **Khiam**, which was the site of the long established and clearly marked UN observation outpost reporting Israeli war crimes. It was destroyed by a 500 lb precision guided bomb on 25 July 2006, killing four unarmed **United Nations Truce Supervision Organization (UNTSO)** observers from Austria (Major Hans-Peter Lang), Canada (Major Paeta Hess-von Kruedener), Finland (Lieutenant-Commander Jarno Makinen) and China (Lt. Colonel Du Zhaoyu). The bomb that killed Hess-von Kruedener and his crew was part of a seven-hour attack on 25 July 2006, that saw Israel dropped 14 aerial bombs and 19 artillery rounds at the clearly marked UN post. That UN Patrol Base was a solitary structure; not surrounded by any other buildings; painted white; marked UN in big, black letters; flying a UN flag; well mapped; and located in exactly the same place for more than 30 years.

⁹⁰ UN Commission of Inquiry No. 105-107

⁹¹ UN Commission of Inquiry No. 188

⁹² UN Commission of Inquiry No. 139

117. In Figures 28-33 we can see that the damage to the post indicates that it was attacked using extremely powerful weapons. The reinforced concrete blockhouse was ripped apart. UNIFIL reported that, in total, 21 strikes occurred within 300 metres of the Patrol Base and twelve artillery rounds fell within 100 metres of the Base, four of which hit the Base directly.⁹³ UNIFIL stated that Hizbullah firing was not taking place within the immediate vicinity of the Patrol Base.⁹⁴
118. The UN has stated that there had been ten messages sent to the IDF warning it that its bombs were too close to the UN post. The Secretary General of UN said:
- a. *"This coordinated artillery and aerial attack on a long established and clearly marked U.N. post at Khiyam occurred despite personal assurances given to me by Prime Minister Ehud Olmert that U.N. positions would be spared Israeli fire,"*⁹⁵
 - b. *"Furthermore, General Alain Pelligrini, the U.N. force commander in south Lebanon, had been in repeated contact with Israeli officers throughout the day on Tuesday, stressing the need to protect that particular U.N. position from attack."*⁹⁶
119. The timeline provided to the FFML by UN personell showed the first bomb exploded about 200 yards from the UN outpost at 1320 hours on Tuesday, prompting the first call by the UNIFIL observers to their designated contact with the Israeli military. The officer said they were assured by the Israeli liaison that he would stop the attacks.
120. A series of about nine more bombs hit within 100-400 yards from the observers over the next several hours, with a call to the Israeli military following each explosion. Between 1925 hours and 1930 hours, the said 500 lb precision-guided bomb was dropped on the UN post by an Israeli aircraft, destroying the structure and killing the four men inside.
121. About 40 minutes before the final bomb fell, the Canadian United Nations commander Major Hess-von Kruedener communicated to the Israeli military, "You are killing my people." The IDF acknowledged receiving warnings including this statement in the course of the Canadian Board of Inquiry into the death of Major Hess-von Kruedener.⁹⁷
122. Despite receiving multiple protests regarding their artillery rounds and air bombardment hitting the post or close to the post, the IDF failed to explain why the subsequent GPS guided Joint Direct Attack Munition (JDAM) Bomb was not halted.⁹⁸
123. The IDF considered its maps were inaccurate and apologised for the "accident".⁹⁹ However, that particular UN position was there since over 28 years. The cause for that error has been blackened out in the official report published by the Canadian Board of Inquiry.¹⁰⁰

⁹³ UNIFIL Press Release. Briefing by Assistant Secretary-General for Peacekeeping Operations Jane Lute. 26 July 2006, http://www.unicwash.org/news/JHL_briefing_SC_UNIFILpeacekeepers_26Jul2006.htm <accessed 8 July 2007>

⁹⁴ UNIFIL Press Release. Briefing by Assistant Secretary-General for Peacekeeping Operations Jane Lute. 26 July 2006, http://www.unicwash.org/news/JHL_briefing_SC_UNIFILpeacekeepers_26Jul2006.htm <accessed 8 July 2007>

⁹⁵ Rome, 25 July 2006 - Statement by the Secretary-General on the attack on the UN Observer Post in Southern Lebanon <http://www.un.org/apps/sg/sgstats.asp?nid=2149>

⁹⁶ Rome, 25 July 2006 - Statement by the Secretary-General on the attack on the UN Observer Post in Southern Lebanon <http://www.un.org/apps/sg/sgstats.asp?nid=2149>

⁹⁷ Board of Inquiry into the death of Major Paeta Hess-Von Kruedener No. 72, published 1 February 2008 <http://www.forces.gc.ca/site/focus/Hess-Von-Kruedener/boiHessVonKruedener.pdf> <accessed 7 April 2008> (cited as Canadian Board of Inquiry)

⁹⁸ Canadian Board of Inquiry No. 72

⁹⁹ CBCNews, *UN Officer reported Israeli war crimes before deadly bombing: widow*, 6 February 2008 <http://www.cbc.ca/canada/ottawa/story/2008/02/06/ot-von-kruedener-080206.html> <accessed 8 April 2008>

¹⁰⁰ Canadian Board of Inquiry No. 76

124. The Canadian Board of Inquiry into the death of Maj Hess-von Kruedener said that it was unable to determine why the Israeli Defence Force continued to bomb the post after the UN protested. The report of the Canadian Board of Inquiry reads: "While the IDF has acknowledged receipt of the protests from the UN, it has failed to explain why the attack was not halted."¹⁰¹
125. When the Canadian Board of Inquiry investigated the death, the IDF did not fully participate and support the investigation.¹⁰² The Board complained about the lack of access to IDF personnel and the limited information contained in the IDF explanation, thus being unable to ascertain why the IDF side of the liaison network did not stop its attacks.¹⁰³ The report blamed the Israeli Defence Forces for the incident and also found that the Israeli military refused to provide documents other than a summary of its own internal investigation.¹⁰⁴
126. Besides not explaining what the IDF considers an "accident" and obstructing the investigation, throughout the recovery effort to find the bodies of the team, the UN rescue team was under constant IDF fire.¹⁰⁵
127. Moreover, the Board clearly states that the blame was attributed to the IDF as an institution and considered that the incident would have been preventable should an alternative course of action have been followed on the part of the IDF. The Board was unable to identify the specific person in the command chain who was at fault due to the IDF's decision to restrict the Board's access to the relevant IDF personnel. Instead, the IDF shields these individuals whilst accepting responsibility for the killing.¹⁰⁶ The IDF conducted an internal investigation but refuses to disclose its content as well as the rules of engagement for the IAF pilot who dropped the bomb. The Board resolves though that the evidence exists and that there is no lack of evidence but access is denied by Israel and the United Nations.¹⁰⁷ It is unlikely that a six to seven hour artillery shelling and the bombing of a UN position with a precision-guided bomb was an operational error. Artillery shelling from the land and bombardment by the Israeli Air Force from the air was a dual attack on that particular UN structure.
128. The Security Council did not condemn violations of UN Protection, nor did the other countries, namely Finland, China and Austria who lost their soldiers under this attack. No protest can be noted about Israel's refusal to cooperate in an investigation. Interestingly also, the UN itself refused to provide documents requested for the investigation¹⁰⁸, despite a prima facie breach of the *Convention on the Safety of UN and Associated Personnel*. It remains unclear why Israel launched the attacks that killed the four UN personnel? Why won't the IDF and the UN provide access to those who might know? And why aren't the

¹⁰¹ Canadian Board of Inquiry No. 72

¹⁰² Canadian Board of Inquiry No. 71

¹⁰³ Canadian Board of Inquiry No. 71,72

¹⁰⁴ CBCNews, *UN Officer reported Israeli war crimes before deadly bombing: widow*, 6 February 2008

<http://www.cbc.ca/canada/ottawa/story/2008/02/06/ot-von-kruedener-080206.html> <accessed 8 April 2008> (refers to the Canadian Board of Inquiry)

¹⁰⁵ Canadian Board of Inquiry No. 59

¹⁰⁶ Canadian Board of Inquiry No. 72

¹⁰⁷ Canadian Board of Inquiry No. 71

¹⁰⁸ The Star, *Still no answers on bombing of UN post*, 21 February 2008,

<http://www.thestar.com/Canada/Columnist/article/305444> <accessed 8 April 2008>

Canadian Prime Minister Stephen Harper or the heads of states of Finland, China and Austria pressuring the IDF and the UN?

129. Kruedener's wife reports that her husband was sending emails home to Canada reporting that Israel was bombing schools and waging "a campaign of terror against the Lebanese people" shortly before he was killed. The UN post personell Major Paeta Hess-von Kruedener wrote in an email to his wife that he observed the IDF destroying a Lebanese hospital: "What this has to do with Hezbollah, I have no idea," he wrote. "I agree that the Israelis have the right to protect themselves, but they have indiscriminately bombed and targeted a civilian population's infrastructure, which is a war crime under the Geneva Convention."¹⁰⁹

VI. Attacks on Medical Facilities

130. A number of hospitals and clinics in the country were targetted by the IDF. Their ability to function was also affected by fuel shortages, the destruction of roads and bridges and the blockade of the ports by the Israeli Navy.
131. Two government **hospitals** and a Hizbullah sponsored clinic in the southern suburbs of Beirut were completely destroyed . On 11 September 2006 IHRC Observers visited the clinic which was situated in the southern suburbs of Beirut. The observers saw a large crater in the centre of where the clinic used to be and a scene of total destruction (Figure 9). They were able to observe medical files in the debris as the authorities were in the process of clearing it away. They interviewed several people at the scene as well as one of the clinic administrators. All of them were consistent in stating that there were no weapons stored in the facility, that no rockets had been fired from within or close to it, nor had it housed Hizbullah militia. Right next to where the clinic had been stood a language school and a beauty parlour which had been damaged by the strike on the clinic (Figure 10). This was one of a number of buildings in the southern suburbs of Beirut which had simply been flattened by IDF strikes, and the whole area looked as if some almighty disaster had wreaked havoc on it with tons of concrete, steel rods and personal effects littering the neighbourhood. The observers were unable to find any reason to classify this clinic as a legitimate military target and accordingly find that the attack on the clinic was unlawful.
132. A further hospital, Dar-el-Hekmah in Baalbek (Figures 13-14), was attacked by IDF commandos, supported by fighter planes and drones on 2 August 2006. The hospital had been evacuated previously, but the commandos nonetheless stormed the premises and caused a significant amount of damage, breaking doors and shooting indiscriminately in the building. This act of *vandalising* was not militarily necessary. The observers were informed and shown photographs which demonstrated that expensive medical equipment, such as the CT scanner, was damaged and that the hospital safes were blown open. The manager of the hospital informed them that money which had been stored in the safes was missing following the raid. The medical records had been burned and all of the computer hard drives had been taken. On one of the doors we could see the imprint of footwear which appeared to have been used to kick the door down (Figure 14). A male nurse, one of the skeleton staff left at the hospital to deal with emergencies, was killed in the IDF raid. He was sleeping on a bed in the grounds by the gate leading to the hospital car park. The bullet marks can still be seen on the concrete wall adjacent to the gate (Figure 13).

¹⁰⁹ The Star, Still no answers on bombing of UN post, 21 February 2008, <http://www.thestar.com/Canada/Columnist/article/305444> <accessed 8 April 2008>

133. The IHRC observers found no evidence that Hizbullah had used the hospital or its grounds to fire rockets into Israel. Indeed the distance from the ceasefire line with Israel, coupled with the documented range of Katyusha rockets and other devices known to be in the possession of Hizbullah, strongly militate against any suggestion that Hizbullah could have used the hospital as a launching point. Even if the sources of funding (Imam Khomeini Foundation) were from Shia or Hizbullah sources, this would not justify such acts or make the hospital a military objective in itself.
134. It has also been reported that the IDF showed, at one of its news conferences, arms allegedly held at the hospital.¹¹⁰ This was contrary to what the staff at the hospital told us and, indeed, since the hospital had been evacuated in anticipation of an attack, it seems improbable that arms would have been left there. The theft and damage to the equipment in the hospital and the burning of records was unnecessary and an act of vandalising even if the IDF's version of the facts were to be believed.
135. In **Bent Jbail** two hospitals were destroyed,¹¹¹ while in **Tibnin** the **governmental hospital** was fired at directly, showing at least five hits, and the area of the hospital was the target of a cluster bomb attack at a time when 2000 civilians had sought shelter in it shortly before the ceasefire.¹¹² Once again, no evidence was found that the hospital was used for military purposes.¹¹³
136. The **Red Cross Movement** was also not spared during the conflict, although the International Committee of the Red Cross (ICRC) was Israel's most adamant ally in the 2005/2006 negotiations with the Arab League and the Organisation of Islamic Countries (OIC) to introduce the new protected emblem, enabling Israel to gain access to the ICRC movement with its Red Star of David organisation. The Lebanese Red Cross (LRC) suffered from direct attacks from Israeli forces as the UN Commission of Inquiry has shown in detail.¹¹⁴

VII. Use of Weapons

137. **Multiple Launch Rocket System (MLRS)** platforms were heavily used in spite of the fact that they were known to be highly inaccurate. MLRS mobile rocket launching platform carried on tracks or tyres, capable of firing a very high volume of mostly unguided munitions. The basic rocket fired by the platform is unguided and imprecise, with a range of about 32 kilometres. The rockets are designed to burst into sub-munitions at a planned altitude in order to blanket enemy personnel on the ground with smaller explosive rounds. The use of such weaponry is controversial mainly due to its inaccuracy and ability to cause much destruction against indeterminate targets over large areas of territory, with a margin of error of as much as 1,200 meters from the intended target to the area actually hit. Since the IDF has state-of-the-art weaponry and thus alternatives available in its conduct of war, it did not seem to make any effort to distinguish between civilian objects and military objectives which is unlawful under IHL.

¹¹⁰ International Herald Tribune "Israelis raid Hezbollah near border with Syria", 2 August 2006 <http://www.ihf.com/articles/2006/08/02/africa/web.0802mideast.php> <accessed 8 April 2008>

¹¹¹ UN Commission of Inquiry No. 113

¹¹² UN Commission of Inquiry No. 163

¹¹³ UN Commission of Inquiry No. 165

¹¹⁴ UN Commission of Inquiry No. 172 ff

138. According to doctors in Tyrus hospital, white phosphorous was used in Tyrus and Basurije. The United Nations Environment Programme (UNEP) confirms the use of **white phosphorous** by the IDF.¹¹⁵ The duty to avoid superfluous harm in combat is breached with the use of such materials. Such use was not necessary and was unproportional.
139. The UNEP could not verify **Depleted Uranium (DU)** in the Lebanese soil samples taken.¹¹⁶ There are, however, claims that DU has indeed been found in Lebanese soil samples. Dough Rokke, a former officer of the US Army, responsible for the cleaning up of Depleted Uranium, claims that Israeli tanks have used radioactive grenades during the 2006 invasion of Lebanon.¹¹⁷ Soil samples of a bomb crater in Khiam taken by nuclear physics expert Mohammed Ali Qbayssi¹¹⁸ from Germany as well as Chris Busby,¹¹⁹ British secretary of the European Committee on Radiation Risk, confirm the existence of DU in Lebanese soil.¹²⁰ Also, Christ Bellamy confirms that radioactive material has been found in the Khiam crater.¹²¹ The UNEP findings on DU have been criticised by Richard Bramhall as not using the correct instruments.¹²² There remains the question whether radioactive material capable of damaging health has been used or not. The duty to avoid superfluous harm in combat is breached with the use of such materials. Such use was neither necessary and nor was it proportional.
140. Also, **Cluster Munitions** (Figure 59 shows examples of cluster sub-munitions) were in heavy use. It is evident that these munitions had been widely employed by the IDF, with news reports daily commenting on the number of cluster munitions used and the continuing danger presented by unexploded bomblets.
141. The IDF has claimed that in the course of the conflict Hizbullah were deliberately locating rocket launchers and fighting men in the vicinity of civilians. One can properly deduce, therefore, that when a decision was made by the tactical commanders of the IDF to utilise this form of ammunition, it was in the knowledge that there would, or might, be a significant number of civilian non-combatants in the targeted area. Also it is perhaps correct to state that “International law does not include a sweeping prohibition of the use of cluster

¹¹⁵ UNEP, “No Evidence of Radioactive Residue in Lebanon Post Conflict Assessment”, 6 November 2006” http://postconflict.unep.ch/press.php?prog=lebanon#leb_1 <accessed 12 September 2007>

¹¹⁶ UNEP, “No Evidence of Radioactive Residue in Lebanon Post Conflict Assessment”, 6 November 2006” http://postconflict.unep.ch/press.php?prog=lebanon#leb_1 <accessed 12 September 2007>

¹¹⁷ Sherwood Ross, “Radioaktive Munition, die im Nahen Osten abgefeuert wurde, kann mehr Menschenleben als der Atombombenabwurf auf Hiroshima und Nagasaki kosten“ 19 November 2007 <http://www.tlaxcala.es/pp.asp?reference=4273&lg=de> and http://www.opednews.com/articles/genera_sherwood_071119_radioactive_ammuniti.htm <accessed 4 December 2007>

¹¹⁸ Lebanon Daily Star, “New study detects traces of uranium in South Lebanon” 4 January 2007, http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=78163 <accessed 4 February 2007> referred by in www.unep.org/cpi/briefs/2007Jan04.doc

¹¹⁹ Chris Busby, Dai Williams “Evidence of Enriched Uranium in guided weapons employed by the Israeli Military in Lebanon in July 2006” (2006) <http://www.llrc.org/du/subtopic/lebanrept.pdf> <accessed 15 July 2007>

¹²⁰ Lebanon Daily Star, “New study detects traces of uranium in South Lebanon” 4 January 2007, http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=78163 <accessed 4 February 2007>

¹²¹ The Independent, “Chris Bellamy: An enigma that only the Israelis can fully explain” 28 October 2006 <http://www.independent.co.uk/news/world/middle-east/chris-bellamy-an-enigma-that-only-the-israelis-can-fully-explain-421947.html> <accessed 15 November 2006>

¹²² Letter of Low Level Radiation Campaign to UNEP 2 November 2007 <http://www.llrc.org/du/subtopic/habib.pdf> <accessed 15 July 2008>

bombs”,¹²³ however the absence of an express provision is a significant loophole in the current state of international law.

142. On 15 September 2006 the IHRC Observers interviewed Colonel Mohammad Fehmi, the Director of the National Demining Office (NDO) of the Lebanese Armed Forces who provided some invaluable information regarding the issue of unexploded munitions in south Lebanon, much of which was corroborated by the UN and media resources. It is now accepted that the IDF utilised some 1,800 cluster bombs in its offensive against Lebanon during the 33 day war.¹²⁴ The amount of cluster sub-munitions released was estimated to be over 1.2 million bomblets. However, the current UN estimate for the amount of unexploded cluster bombs in Lebanon is up to 1 million, which suggests an even higher usage of them.¹²⁵ The Ha’aretz reporter *Meron Rappaport* quotes the head of an IDF rocket unit in Lebanon as saying: “What we did was insane and monstrous, we covered entire towns in cluster bombs”.
143. As of 13 September 2006, the Electronic Mine Information network had identified 482 locations at which cluster bombs had been used. Their latest map of the locations is included in Figure 60. According to the Israeli military source quoted by Rappaport, the vast majority of the cluster munitions were deployed in the last three days of the war while a ceasefire was being negotiated.
144. It is reported that the rate of failure of the cluster munitions deployed by the IDF was in the order of 40%.¹²⁶ This is a very high figure and represents a continuing legacy of death for the civilian population. According to Colonel Fehmi of the National Demining Office, this is the average failure rate for the older type of cluster sub-munitions. The average failure rate for the newer cluster sub-munitions is about 10%. For Israel to have deliberately employed the use of older cluster sub-munitions with a far greater failure rate indicates a complete disregard for life and intentionally creating a no-go area for farmers and impeding reconstruction.
145. As noted later, the IDF stated that international law does not expressly forbid the use of cluster bombs. Although, as unexploded ordnance, they present dangers to the civilian population of the same type as land mines which, of course, are now prohibited by an International Convention (1997 Ottawa Convention), they do not fit easily into the definition of land mines set out in that Convention. However, IHL explicitly states that attacks should not be carried out indiscriminately. However, the sheer weight of cluster bombs and also their use in population centres, strongly suggests that their use was, if not deliberate, to a significant degree, indiscriminate. The plan shows the widespread area over which they were deployed and also their use in proximity to agricultural lands and population centres.
146. At best, any decision to use cluster bombs in civilian populated areas can be described as indiscriminate use of controversial weapons in circumstances where it is believed that

¹²³ Haaretz, *IDF Commander: We Fired More Than a Million Cluster Bombs in Lebanon*, 12 September 2006 <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=761781> <accessed 30 October 2007> IDF Spokesman’s Office response to the revelation that 1,800 cluster bombs were fired into Lebanon

¹²⁴ Haaretz, “IDF commander: We fired more than a million cluster bombs in Lebanon” 12 September 2006, <http://www.haaretz.com/hasen/spages/761781.html>

¹²⁵ BBC, “Million bomblets’ in S Lebanon” 26 September 2006 quoting Chris Clark, head of UN mine clearing operations in Lebanon http://news.bbc.co.uk/1/hi/world/middle_east/5382192.stm

¹²⁶ BBC, “Million bomblets’ in S Lebanon” 26 September 2006 quoting Chris Clark, head of UN mine clearing operations in Lebanon http://news.bbc.co.uk/1/hi/world/middle_east/5382192.stm

combatants and civilians were co-mingling and, at worst a deliberate, and therefore unlawful, use of controversial ordnance with significant disregard to civilian population and property.

147. Cluster munitions have significant negative humanitarian effects. Firstly, they spread their sub-munitions over a broad area and secondly, as a result of the high failure rate of these sub-munitions, there are usually large numbers of unexploded bomblets that have the same effect as land mines.¹²⁷ The number of civilian casualties as a result of coming into contact with these unexploded bomblets in Lebanon continues to rise. According to statistics provided by the National Demining Office: during four weeks, from 14 August - 10 September 2006, 87 people were victims of mines and unexploded ordnances, this almost equalling the yearly rate of the years 2000 and 2001. Until the bomblets are cleared, they represent a continuing danger and, as the mayor of Khiam made clear to us, it will remain too dangerous for the farmers in the affected areas to bring in their harvest, condemning them to reliance upon aid for the foreseeable future.
148. In any event the use must be within IHL and no military objectives have been furthered. Other NGOs such as Human Rights Watch came to similar conclusions.¹²⁸ Israel used cluster munitions extensively in south Lebanon, with particularly heavy use in the final days prior to the ceasefire. It is not evident how this furthered military objectives nor how this meets any test of proportionality. This is moreover the case when the density of cluster munitions contamination in south Lebanon in the immediate post-conflict period appears to exceed that of Iraq, Afghanistan, or Kosovo at the same stage. In fact Israeli cluster bombs strike frequently hit towns and villages, including many sizeable locations; these sites were apparently deliberately targeted further demonstrating the lack of professional conduct or military vision on behalf of the IDF. Moreover, Israel primarily employed surface-delivered cluster munitions, especially 155mm artillery projectiles, as well as Multiple Launch Rocket Systems (MLRS) against such civilian objects not qualifying as military objectives. The amount of sub-munitions that had been located and destroyed by September 2006 were some 2,171 by UN Mine Action Coordination Centre, south Lebanon alone..
149. Cluster bombs do not come explicitly within the absolute prohibition on land mines imposed by the Ottawa Convention. However, their nature, when unexploded, is analogous to that of land mines. Cluster munitions could fall within the category of “other devices” under Art. 3(1)(c) of the 1980 UN Convention, Amended Protocol II, in that they are of a nature to cause superfluous injury or unnecessary suffering. Given their failure rate, their nature is such that many victims will be civilians unrelated to the fighting, after the fighting has concluded, which is superfluous. Article 10 goes on to require that, “all feasible precautions shall be taken to protect civilians from the effects of the weapons to which this Article applies.”
150. In the light of such a lacunae call for a new protocol or the suitable amendment of the 1980 UN Convention Protocol II or the Ottawa Convention, which specifically addresses the use of cluster munitions in military operations, to prohibit its use in or near populated areas, at the very least, with a view to affording protection to civilian population and property from deliberate and/or indiscriminate attacks would be desirable.

¹²⁷ Human Rights Watch News, *Lebanon: Protect Civilians From Unexploded Weapons-Civilians and Aid Work Endangered by Dud Ordnance*, 16 August 2006 <http://hrw.org/english/docs/2006/08/16/leban014011.htm> <accessed 30 October 2007>

¹²⁸ Human Rights Watch, “Convention on Conventional Weapons, 15th Meeting of the Group of Governmental Experts”, 20 August 2006, Geneva, Switzerland http://hrw.org/english/docs/2006/08/30/global14155_txt.htm <accessed 8 April 2008>

151. The Dublin Conference convened end of May 2008 agreed to ban cluster bombs. A convention is scheduled to be signed in December 2008. However, the agreement is born to be ineffective since the main producers of such bombs including USA, Russia, China, Israel, India and Pakistan did not participate in the conference and thus the agreement will not bind them to abandon their production, use or sale. For the Middle East, nothing will change.
152. The agreement does not ban the assistance of such use through intelligence support. For instance, European military can still advise Israel where to bomb even when EU states are signatories. It also remains unclear whether signatories may sell their current arsenal or must destroy it. The key problem to the agreement is moreover the fact that Art. 2 defines certain types of cluster bombs to be excluded from the ban, thus enabling the continued use of such bombs in reality.
153. The head of the UN mine clearing operation in Lebanon informed the IHRC Observers that the IDF has not responded to requests for information as to areas where the cluster munitions were deployed. Such a failure to respond is deplorable and puts at risk both civilians and UN operatives. It seems that there are only two plausible reasons, now that the conflict has ended, as to why there is a lack of cooperation on the part of the IDF. The first is that the IDF simply want the unexploded bomblets to remain in situ to deny terrain to Hizbullah, with serious humanitarian consequences and is not in line with IHL. Alternatively the IDF simply do not have accurate maps or coordinates of the areas where they deployed these munitions, which would suggest indiscriminate and wanton rather than planned and precise bombing.
154. In all the circumstances we have come to a firm finding that the use of cluster munitions in such numbers in civilian locations as demonstrated graphically on the map (Figure 60) amounted to a deliberate or indiscriminate targeting of civilians and therefore the IHRC Observers condemned the policy itself as unlawful.

D. Legal Summary

I. Summary of Legal Appraisal

155. There was never a peace agreement between Lebanon and Israel. Instead the southern border of Lebanon is an Armistice Line concluded in the *Lebanese-Israeli General Armistice Agreement* on 23 March 1949.¹²⁹ The latest agreement stabilising the area was the *Israel-Lebanon Ceasefire Understanding*, which is a ceasefire agreement dated 26 April 1996.¹³⁰ Since the Israeli defeat and withdrawal in May 2000 from southern Lebanon and the ceasefire line monitored by the United Nations Interim Forces in Lebanon (UNIFIL), this line has never been respected and its violation was rather the norm than the exception. The counts of Israeli breaches of the line are in the hundreds. Defence measures against such breaches of the line must be limited and proportionate to such incursions. Lebanon frequently entered Lebanese air space, waters and territory without the consent of Lebanon, which considered this as unlawful acts of aggression which give Lebanon a right to self-defence. Its defence measures were limited to the incursion and did not expand to entire Israel.
156. Given that the ceasefire had been intermittently reneged by Israel in the preceding years, Hizbullah's crossing of the blue line on 12th July 2006 was an expected event. It was a response, named *Operation True Promise* after a "promise" by its Secretary General, Hasan Nasrallah, to capture Israeli soldiers in order to exchange them for Lebanese prisoners in Israeli jails. Hizbullah was seeking to capture enemy combatants to exchange them for the 15 Prisoners of War taken by the Israelis during the occupation of Lebanon, who were not released despite Article 118 of the Third Geneva Convention.¹³¹
157. Hizbullah's temporary incursion did not last longer than one hour and is not substantial enough to be considered an attack under Art.2(4) UN Charter (*Nicaragua v. United States of America*).¹³²
158. Israel's response to the crossing of the ceasefire line on the 12th July 2006 does not meet the legal standard for self-defence measures set out in the Caroline test. Under the Caroline test Israel's action cannot be considered acts of self-defence under Art.51 but acts of reprisal which are illegal under international law since the 1970 Declaration on *Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations* which declares that "states

¹²⁹ *Lebanese-Israeli General Armistice Agreement* 23rd March 1949 U.N. doc. S/1296/Rev. 1, 8 April 1949

¹³⁰ *Israel-Lebanon Ceasefire Understanding* 26 April 1996; full text at: http://telaviv.usembassy.gov/publish/peace/documents/ceasefire_understanding.html; See Annex for full text.

¹³¹ Israel uses the language of the war on terror and thus considers Hizbullah mujahideen as "terrorists" with which it seeks to avail itself from the duties under the Geneva Conventions.

¹³² Upheld in *Oil Platforms (Iran v. U.S.)*, Judgment-Merits, 2003 I.C.J. 90 (November 6, 2003) <http://www.icj-cij.org/icjwww/idocket/iop/-iopframe.htm> and in the advisory opinion *Legal consequences of the construction of a wall in the occupied Palestinian territory*, Advisory Opinion, 2004 I.C.J. 131 (July 9, 2004) <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm> and in *Armed activities on the territory of the Congo (Congo v Uganda)*, Judgment-Merits 2005 I.C.J. 116 (December 19, 2005) <http://www.icj-cij.org/icjwww/idocket/ico/icoframe.htm>

have a duty to refrain from acts of reprisal involving the use of force.”¹³³ Israel’s military offensive was therefore a war of aggression and thus a war crime.

159. The legal conclusion therefore is that Israel’s military offensive between July and August 2006 constituted an armed attack under Art.2(4) of the UN Charter leaving Lebanon with a right of self-defence under Art.51 of the UN Charter.

160. Moreover, there is sufficient grounds to believe that the military offensive by Israel was premeditated and therefore once again an illegal war of aggression and thus a war crime.

161. Israeli authorities advised Major-General Dan Halutz against travelling to Britain because of the war crimes complaints filed against him by the Israeli Human Rights Group Yesh Gvul.¹³⁴ The same IDF chief of staff **Brigadier General Dan Halutz** stated that “if the soldiers are not returned, we will turn Lebanon's clock back 20 years”¹³⁵, while the head of Israel’s Northern Command Udi Adam said, “this affair is between Israel and the state of Lebanon. Where to attack? Once it is inside Lebanon, everything is legitimate – not just southern Lebanon, not just the line of Hezbollah posts.”¹³⁶ Furthermore, Major General **Amir Eshel** of the Israeli Air force reported an instruction from Halutz to the effect that for every Katyusha rocket which landed in Haifa, ten 12-storey buildings would be struck in the Dahia area of south Beirut.¹³⁷ Also, the UN Commission of Inquiry “has formed a clear view that, cumulatively, the deliberate and lethal attacks by the IDF on civilians and civilian objects amounted to collective punishment”¹³⁸ Israel pursued a policy of destruction which is inherently at odds with the spirit and letter of the Geneva Conventions and customary international law of war.

162. The Rome Statute of the International Criminal Court (ICC) codified laws and customs applicable in international armed conflict. The statements above were made to affirm that the IDF would engage in retaliatory and punitive measures against Lebanon and therefore its people. Some of these comments fall within the ambit of Article 25(3)(b) of the ICC Statute as ordering, soliciting or inducing the commission of a crime. In this case the serious violations incited would include paragraphs (i), (ii), (iv) and (v) of Article 8 (2)(b) of the ICC Statute.

163. The hostilities that took place between 12 July and 14 August 2006 in Lebanon and Israel constitute an international armed conflict to which conventional and customary IHL is applicable.

¹³³ See also Roberto Barsotti, “Armed Reprisals,” in A. Cassese, ed., *The Current Legal Regulation of the Use of Force*, 79-110 (Dordrecht: Martinus Nijhoff Publishers, 1986); see also Ian Brownlie, *International Law and the Use of Force by States*, 281-82 (Oxford: Clarendon Press 1963);

¹³⁴ Times Online. Sharon fears arrest if he visits London. 17.Sep 2005.

<http://www.timesonline.co.uk/tol/news/uk/article567485.ece> <accessed 8 July 2007>

¹³⁵ CNN. Israel authorizes 'severe' response to abductions. 12 July 2006

<http://www.cnn.com/2006/WORLD/meast/07/12/mideast> <accessed 8 July 2007>

The Guardian. Capture of soldier was ‘act of war’ says Israel. 13 July 2006.

<http://www.guardian.co.uk/frontpage/story/0,,1819122,00.html> <accessed 8 July 2007>

¹³⁶ CNN. Israel authorizes 'severe' response to abductions. 12 July 2006

<http://www.cnn.com/2006/WORLD/meast/07/12/mideast> <accessed 8 July 2007>

¹³⁷ Jerusalem Post, “High-ranking officer: Halutz ordered retaliation policy”, 24 July 2006; The initial response of the IDF was to claim that reporters had invented the quote, an allegation later withdrawn. The IDF then denied that such an instruction had been given

¹³⁸ UN Commission of Inquiry No. 25

164. Generally, respect for the principle of humanity and humanitarian considerations as enshrined in the *Martens clause* was absent in the conduct of the IDF.
165. Any measure taken must be proportional, and there had to be a necessity to respond and the response had to be appropriate to stop the crossing of the line. The military offensive by Israel was not necessary as a prisoner exchange could have prevented the escalation of the conflict. Israel did not entertain the offer made by Hizbullah for a prisoner exchange. The offensive was not appropriate to stop the incursion, since at that point Hizbullah had already evacuated Israeli territory. Israel's argument that Hizbullah had to be weakened to prevent future incursions is equally valid for Lebanon. Using this argument, Lebanon could invoke the destruction of Israel to stop Israeli continued attacks and invasions.
166. The Israeli Minister of Justice, **Haim Ramon**, is reported to have told the cabinet, on 27 July, 2006, that the citizens of southern Lebanon had been given ample warning to quit the area and that hence: "*All those now (still) in southern Lebanon are terrorists who are related in some way to Hizbullah*". The IDF stated further that any villages from which rockets were launched would be totally destroyed.¹³⁹
167. Since the avowed policy of the IDF was retaliation and wanton destruction as stated by its head of staff, the image gathered on the ground with widespread bombing of roads and bridges seems to confirm that this policy has been implemented. Furthermore, the tenuous nature of any military advantage set against the clear and widespread destruction caused leads us to the clear conclusion that the use of force in this regard was disproportionate and that this aspect of the attack was, therefore, unlawful.
168. Excessive, indiscriminate and disproportionate force has been used by Israel which go beyond reasonable arguments of military necessity and of proportionality. It is questionable whether these attacks could have been expected to confer a "definite military objective" (Art. 52(2) of Additional Protocol I). It is unclear how to define the term military objective in a reprisal action in a way that does not contravene the spirit of the Geneva Conventions and customary international law.
169. The **mutilation** of bodies and destruction of **churches** is further evidence of Israeli disregard for basic human dignity and lack of basic respect for foreign property and places of worship. This qualifies as war crime.
170. In those cases where civilian convoys were fleeing, the Israeli military was found to be firing on fleeing civilians as happened in **Marouahine**. This qualifies as a war crime.
171. In **Khiam** was sited the long-established and clearly-marked UN observation outpost which was destroyed by a 500 lb precision bomb on 25 July 2006, killing four unarmed **United Nations Truce Supervision Organization (UNTSO)** observers from Austria, Canada, Finland and China. The IDF accepted responsibility but obstructs any investigation into who in the chain of command ordered the attack or was to blame. There is a clear obligation to avoid injury to UN personnel under the *Convention on the Safety of UN and Associated Personnel* and Article 8(2)(b)(iii) of the ICC Statute. The UN contacted the IDF

¹³⁹ BBC, "Israel says world backs offensive" 27 July 2006, http://news.bbc.co.uk/1/hi/world/middle_east/5219360.stm <accessed 8 April 2008>

multiple times to register their presence; the persistence in firing powerful munitions into the immediate areas appears to us to have been reckless towards protected objects and, therefore, did not show the caution and precautions in attack necessary. The UN Commission of Inquiry counted 30 direct hits on UNIFIL positions across Lebanon.¹⁴⁰ The Security Council did not condemn the attack, nor did the UN assist the Canadian Board of Inquiry in its investigation into the circumstances that lead to the death of its UN soldier.

172. Accordingly, in all the above cases, we find that, were the Rome Statute to apply, the individuals named herein (Major General Amir Eshel, Minister of Justice Haim Ramon, Brigadier General Dan Halutz) would be seriously at risk of being tried for individual criminal responsibility in, at the very least, inciting the commission of serious violations of international law.

173. The IDF demonstrated complete disregard for Lebanese life and property. This is marked throughout its conduct in Lebanon. It wilfully targeted civilian convoys; vandalised churches, hospitals and houses and entire residential areas, mutilated bodies to create fear in the Lebanese populace and destroyed several factories coincidentally having won tenders and contracts against Israeli competitors. Taking all incidents together, the deliberate and lethal attacks by the IDF on civilians and civilian objects, the needless destruction of factories, bridges, schools, churches, mosques, roads, hospital and residential complexes, the firing at convoys of fleeing civilians, were unreasoned and constituted clear wanton destruction.

174. The destruction of vital points and civilian **infrastructure** was not effective. The IDF neither managed to recapture its soldiers nor to destroy Hizbullah. The destruction of all bridges, streets, airport, harbours and factories was unnecessary and in any case disproportional. It hindered the passage of civilians, human convoys and humanitarian aid.

175. The attack on the **Jiyyeh power plant** causing two thirds of the Lebanese beach to be polluted was in the understanding of the FFML not militarily necessary and was *premeditated*. The IDF failed to take precautions necessary to protect the environment and the health of the inhabitants. Pursuant to Art.8(2)(b)(iv) of the ICC Statute, the intentional attacking of an object with the knowledge that such an attack will cause widespread, long-term and severe damage to the environment qualifies as a war crime. Article 35(3) of Additional Protocol I establishes a general prohibition on employing methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. This is considered to be customary international law.¹⁴¹ Also, article 55(1) of the Protocol further indicates that special care shall be taken during armed conflict to protect the natural environment against widespread, long-term and severe damage. Furthermore, in the *Legality of the Threat or Use of Nuclear Weapons*¹⁴² the principle that parties to a conflict shall take all necessary measures to avoid serious damage to the natural environment is part of the proportionality assessment. Here, IDF action qualifies as a war crime.

176. Also, Lebanese **television and radio** stations were hit. While Al Manar TV station might have been seen by the IDF as a propaganda and recruitment facility,¹⁴³ in law mere

¹⁴⁰ UN Commission of Inquiry No. 234

¹⁴¹ Rio Declaration; A/RES/47/37 *Protection of the Environment in Times of Armed Conflict*, 25 November 1992.

¹⁴² ICJ, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion of 8 July 1996, *I.C.J. Reports 1996 (I)*, p.

226.

¹⁴³ Israeli Ministry of Foreign Affairs. Summary of IDF operations against Hezbollah in Lebanon, 13 July 2006

propaganda is not enough to qualify as a legitimate target. The TV station must make an “effective contribution to military action” and its targeting must be “a definite military advantage”. This can be the case, for instance, if troop movements are reported or it incited the population to war crimes. However, merely generating support for the “wrong side” is not enough as it subjects reporting to the political bias of the enemy and sets a dangerous precedent to reporters and journalists.

177. **Factories and commercial complexes** were often targeted for destruction. Factories were singled out despite the lack of military necessity. At times, factories were singled out which stood in competition to Israeli companies.
178. Israeli wanton destruction can also be observed in the destruction of **hospitals** and destruction of entire **residential areas**. This qualifies as a war crime.
179. The use of **cluster bombs** with a failure rate of 40% and imprecision rate of about 1,200 metres resulted in Lebanon being clustered with land mines, creating no-go areas for civilians. The use of cluster munitions by the IDF was of no military advantage and was in contradiction to the principles of distinction and proportionality. The extent of the use of the munitions particularly during the last 72 hours of the conflict points towards lack of reason or to a plan of destruction by the IDF. The Dublin Conference convened end of May 2008 agreed to ban cluster bombs. A convention is scheduled to be signed in December 2008. However, the agreement is born to be ineffective since the main producers of such bombs including USA, Russia, China, Israel, India and Pakistan did not participate in the conference and thus the agreement will not bind them to abandon their production, use or sale. For the Middle East, nothing will change. The agreement does not ban the assistance of such use through intelligence support. It also remains unclear whether signatories may sell their current arsenal or must destroy it. The key problem to the agreement is moreover the fact that Art. 2 defines certain types of cluster bombs to be excluded from the ban, thus enabling the continued use of such bombs in reality.
180. The use of **white phosphorous** against civilians has been confirmed, which is a breach of the Geneva Convention. The use of **radioactive material** with long-term health effects is probable but not yet fully settled. The duty to avoid causing superfluous harm has not been given consideration. The use of such materials was not necessary.
181. Israel put forward that many civilian objects had a “dual use” in which Hizbullah soldiers used civilians as shields. The IHRC observers did not come across any incident where dual use has been proven. Civilian eye witnesses in the places visited by the FFML denied that Hizbullah fighters were present at the time of the attack. Mostly, the civilian population already evacuated the areas where Hizbullah fighters were stationed. The extent of destruction exceeds the cases where dual use might have been the case. The attacks were not justified by military necessity or proportionality. The available information suggests that even if this was the case, then it was so only on very limited occasions.¹⁴⁴
182. In sum the conduct of Israel in premeditating an attack, in pursuing a policy of destruction, in refusing to settle the repatriation of prisoners peacefully, in targeting civilians, churches, mosques, museums and UN personnel revealed a very negative state practice that must be sanctioned.

<http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/IDF+operations+against+Hizbullah+in+Lebanon+13-Jul-2006.htm> <accessed 8 July 2007>.

¹⁴⁴ Human Rights Watch, “Fatal Strikes – Israel’s Indiscriminate Attacks Against Civilians in Lebanon”, Volume 18, No. 3 (E) pp.32 to 34 <http://www.hrw.org/reports/2006/lebanon0806/> <accessed 8 April 2008>

183. However, the Security Council in Resolution 1701 calls for disarmament of Hizbullah¹⁴⁵ and requires the Lebanese government to reduce Hizbullah's fighting capability.¹⁴⁶ Moreover, UN posts are stationed in Lebanon but none are stationed in Israel. Also, the resolution calls for Israeli soldiers to be released unconditionally, while the release of Lebanese prisoners is merely to be "settled" as the UN is "mindful of the sensitivity of the issue". Lebanese prisoners are thus subject to a settlement or negotiation, while Israeli prisoners are not. The entry of Hizbullah fighters into Israel and their subsequent defence against Israeli use of force is considered an "attack", while the penetration Lebanese territory with a Mercava and the bombardment of the entire Lebanon are only called "offensive military operations". In this sense SC Res. 1701 once again favours Israel's position and is thus in many ways a *Lex Israelis*.

¹⁴⁵ SCRes 1701 Para. No. 3

¹⁴⁶ SCRes 1701 Para. No. 8

E. Putting the 2006 Summer War into the context of previous Israeli State Practice and the Reality of Public International Law

184. The international community including the neighbours of Israel have observed a very negative state practice and complete disregard of Israel since its inception and were not able to hold Israel accountable. The Non-Governmental Organisation community must reflect upon a new course of action to address the consistent backing of Israel by members of the Security Council. Reporting war crimes and demanding compliance with international law echoes rather hum-drum after observing Israel's negative state practice since its inception. The following summarises the breaches of international law by Israel and the systemic aggressive passiveness of the current international legal system and bodies of governance towards Israel's breaches of international law.

I. Underlying Framework of Public International Law and the UN System

185. The international system constitutes of states which are essentially political actors engaging in multi-layered politicised relations with other states and non-state actors. In these international political relations international law is enforced by those states which are at the upper end of the power ranking. Constituted by states, the Security Council and the UN are political entities and thus only advance interests rather than justice. Structurally the administration of justice is not possible in the event of counter balancing interests.

II. Public International Law and Israel 1945-2006

186. Since the birth of the state of Israel legal considerations were consistently sidelined in favour of "negotiations" or a bilateral process resulting in granting Israel largely a free hand immune from the enforcement of international legal standards. The emphasis of the "political process" is at its core an emphasis to strengthen the party with the stronger bargaining position, namely Israel, and completely strips the weaker party, namely Palestine, of its legal rights. During the discussions of Res. 181(II) the United Nations Special Committee voted against the motion to refer the question of partition to the International Court of Justice by just one vote.¹⁴⁷ Moreover, once Res. 181(II) was adopted it has never been enforced as the Security Council then emphasised "negotiations" between Arabs and Israel.

187. The admission of Israel to the United Nations in Res. 273(III) stipulates a number of conditions for membership, one of which is the repatriation of Palestinian refugees as demanded in Res. 194(III) as well as a democratic constitution in which Palestinians are treated equal to Jews. Both have not been fulfilled till today. These conditions have been silently dropped.

188. Also, the terrorist acts perpetrated by Zionist terrorist organisations such as the Haganah, Irgun or the Stern Gang during 1947-48 against Palestinians have not been prosecuted, and a number of terrorist leaders became Primer Ministers, such as Yitzak Shamir, Menachem Begin, Ben Gurion and Golda Meir. Israel has been deemed a 'peace loving' state under Art. 4 of the UN Charter after its involvement in the first ethnic

¹⁴⁷ UN Official Records of the 2nd Session of the GA, Doc A/AC 14/32, pp.299-301, 11.11.1947, para.(h)

cleansing after the Holocaust. Moreover, despite the *Stimson Doctrine* of not recognising entities gaining territory by illegal use of force it was swiftly recognised by the USA and the USSR at the time, two key members of the Security Council.

189. Israel's illegal annexation policies since 1967 have gone unsanctioned. Since 1967 Israel has been in military occupation of Jerusalem, the West Bank and the Golan Heights, and several calls for withdrawal by the Security Council in Res. 242 have gone unheard. As an occupying power Israel has built illegal settlements in the West Bank, illegally annexed East Jerusalem and illegally extended its municipal border Judaising the West Bank and thus absorbing Palestinian legal territorial claims by establishing facts on the ground. Despite the International Court of Justice opining that the Wall built in Palestine was illegal¹⁴⁸ the Security Council refused to consider the legal implications for its decisions and continues to emphasise the political route and negotiations.
190. The Israeli Human Rights policy towards Palestinians in the West Bank and Gaza is an example of negative state practice annually condemned by the UN Human Rights Commission (now the Human Rights Council).¹⁴⁹
191. International law has consistently been sidelined favouring "negotiations", which in a situation of structural bias¹⁵⁰ for Israel can only mean no incentive for negotiation, unless military and economic structure changes.
192. This logic of politics will further fuel the conflict rather than solve it. At the same time, no hope can be expressed that the Western powers will ever be law-centred when it comes to the problem of Israel.

III. Summer 2006 War

193. Embedding Israel's actions in the Lebanon War 2006, its negative state practice fits into its previous pattern of behaviour. Failure of the international institutions to sanction previous delinquency encourages Israel to its actions observed in the Summer War 2006. The obstruction to peace by the Security Council members as they, despite Lebanese calls for an immediate ceasefire, delayed the cease fire for weeks allowing Israel to cause further damage to Lebanon, is a further point of note in Western support for Israel.

¹⁴⁸ ICJ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* July 2004 <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4> <accessed 8 July 2007>

¹⁴⁹ [E/CN.4/RES/1994/3](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/1995/1](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/1996/3](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/1996/4](#) Israeli settlements in the occupied Arab territories ; [E/CN.4/RES/1997/1](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/1998/1](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/1999/7](#) Israeli settlements in the occupied Arab territories; [E/CN.4/RES/2001/7](#) Question of the violation of human rights in the occupied Arab territories, including Palestine; [E/CN.4/RES/2002/7](#) Israeli settlements in the occupied Arab territories; [E/CN.4/RES/2002/90](#) The situation of human rights in the occupied Palestinian territory. <http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/SRPalestine%20En?OpenDocument&Start=1&Count=15&Expand=2> <accessed 8 July 2007>

¹⁵⁰ Jean Allain, "*Orientalism and International Law: The Middle East as the Underclass of the International Legal Order*", LEIDEN JOURNAL OF INTERNATIONAL LAW, 17 (2004), pp.391-404. *argues* that international law has been "blatantly disregarded" by the international system in its application to the Middle East.

194. In all the above cases, were the Rome Statute to apply, the individuals named above in this report would be seriously at risk of being tried for individual criminal responsibility in, at the very least, inciting the commission of serious violations of international law.
195. As stated above Security Council Resolution 1701 calls for disarmament of Hizbullah¹⁵¹ and requires the Lebanese government to reduce Hizbullah's fighting capability.¹⁵² Moreover, UN posts are stationed in Lebanon but none are stationed in Israel. Also, the resolution calls for Israeli soldiers to be released unconditionally, while the release of Lebanese prisoners is merely to be "settled". The entry of Hizbullah fighters into Israel and their subsequent defence against Israeli use of force is considered an "attack", while the penetration into Lebanese territory with a Mercava and the bombardment of the entire Lebanon are only called "offensive military operations". In this sense SC Res. 1701 once again favours Israel's position and is thus in many ways a *Lex Israelis*.

IV. Conclusions of Part E

196. The enforcement of international law has suffered under the obstruction of the Security Council. The report has highlighted this problem throughout. The structure of the current international institutions have engendered the Summer War 2006. The United Nations system unfortunately is a part of the problem in creating crisis and an obstacle to peace rather than a catalyst to prevent the current crisis in the Middle East.
197. Politicisation over judicialisation of the legal problems gives Israel international immunity and creates factually a legal gap which disincentivises Israel to return to positive state practice. One of the causes of the war was thus the current structure of international law favouring Israel's delinquency. However, it is unrealistic to hope that the powerful states of this international system will change their policies shielding Israel from its legal duties merely out of commitment to the law. There is no incentive for Israel to subject its conduct in war to the rule of law as it has never been forced to adhere to international law more generally since its inception. In fact, international law has never been seriously applied to Israel, and the entire situation in Palestine with Israel occupying parts of it is in fact an issue to which the law has been internationally suspended. The section of the world community in power has consistently emphasised the "political process" as opposed to law or the "legal process". This logic effectively allows the militarily stronger party to impose its terms. Seeking remedy in international law is thus futile. Hizbullah is therefore the logical self-help response by a people who were stripped of their rights under international law though it would have been preferable to have a functioning international legal system.

¹⁵¹ SCRes 1701 Para. No. 3

¹⁵² SCRes 1701 Para. No. 8

G. Recommendations

Lebanese-Israeli Claims Tribunal - State responsibility and Reparations

The infrastructure and economy of Lebanon has been severely hit and needs years to regain its pre-war standard. Israel effectively has fulfilled its promise “to turn the clock backwards” through its disproportionate and wanton destruction in Lebanon. Victims of war crimes should not suffer the additional burden of interest-bearing foreign aid contracts. Israel should pay damages and reparation for the destruction caused. An international conference should be called discussing the amount of damages to be paid by Israel. US military aid and EU’s preferential treatment of Israel should be suspended. Israel’s assets abroad should be frozen to pay for Lebanon’s reconstruction. It is, however, Israel’s responsibility to pay compensation to Lebanon, and the Fact-finding Mission to Lebanon calls for a Lebanese-Israeli Claims Tribunal under a panel of non-Western and non-Arab judges.

International arrest warrants

The war crimes of IDF commanders exhibited in the Lebanon war cannot remain unpunished. States may consider invoking universal jurisdiction to arrest the persons named in this report.¹⁵³

International Investigation into the bombardment of UNIFIL positions

An investigation into the death of the four UN soldiers has been obstructed by the UN and Israel, although Israel accepted responsibility. The Security Council did not condemn the attack. The IHRC calls upon Muslim states to press the Security Council for condemnation and for a full investigation to find which individual is to blame for the killing of the unarmed UN soldiers. This investigation should, if necessary, take place outside the realm of the Security Council. States are called upon to assist the families of the killed UN personnel to have access to justice and information about who in the Israeli military was responsible for the deaths of the victims.

International Investigation or Court hearing into the question whether Israel premeditated the attack

There is sufficient reason to believe that Israel premeditated an attack on Lebanon with the backing of some permanent members of the Security Council. States, especially members of the Non-Alligned Movement and the OIC, are called upon to press for an international investigation outside the realm of the Security Council, if necessary.

Revocation of EU economic preferential status of Israel and a multilateral conference on sanctions against Israel

Given Israel’s continued breaches of international law and the impunity it acted with since, the international community should consider the formulation of an International Criminal Tribunal for Israeli war crimes since 1948. Revocation of EU economic preferential status, a halt of international loans and military aid to Israel and a re-evaluation of Israel’s membership of the UN is called for. Since key permanent members on the Security Council have obstructed the rule of law in relation to Israel a solution outside the realm of the Security Council has to be sought. A multilateral conference should be hosted discussing sanctions on Israel.

Ban of cluster bombs

¹⁵³ Judgment - Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (On Appeal from a Divisional Court of the Queen's Bench Division) 24 March 1999; Criminal Case 40/61, District Court of Jerusalem, 1961-1962, The Attorney General v. Adolf Eichmann Pinochet, Eichman

Due to the high dud rate of cluster bombs they are effectively like land mines and render entire regions as no-go areas for generations. The Fact-finding Mission supports a complete ban of cluster bombs. The Dublin Convention of May 2008 is not sufficient.

Parallel institutions to that of the Security Council, NATO and the EU and multilateral action outside the scope of the Security Council

The enforcement of international law has suffered under the obstruction of the Security Council. The report has highlighted this problem throughout. Alternatives have to be found to enforce international law through national courts, through sanctions enforced multilaterally and international tribunals set up by regional associations. The structure of the current international institutions have engendered the Summer War 2006. The IHRC welcomes a discussion contemplating creative ways forward to promote justice outside the realm of the international bodies of governance under the United Nations which unfortunately were part of the problem in creating crisis and an obstacle to peace rather than a catalyst to prevent the current crisis in the Middle East.

Annex A

Figures 1-95 – see accompanying PDF ‘Appendix’

Sayyid Hassan Nasrallah, 14 July 2006

Translation of Sayyed Hassan Nasrallah's speech:

"In this first address that I give in these days following Operation True Promise, I would like to say a few words - a word to the Lebanese people, a word to the resistance fighters, a word to the Zionists, and a word to the Arab rulers. I will not offer words to the international community because I have never for one day believed that there is any such thing as an international community, just as many in our nation feel."

The address of the General Secretary of Hizbullah, His Excellency Sayyid Hasan Nasrallah, to the Nation, the Lebanese people, the resistance fighters, the Zionists, and the Arab leaders.

“Peace be upon you and the mercy of God and His blessings!

To begin with, in this first address that I make to you since Operation True Promise [in which Hizbullah captured two Zionist soldiers] and the events that followed it, I would like, to begin with, to offer my appreciation and condolences to the families of the martyrs, those who gave the dearest of their loved ones during these hard and difficult days, and for all they have given in the noblest confrontation and battle that the modern age has known or rather that all history has known.

I want to salute the wounded, and beseech God — be He glorified and exalted — to sustain them, heal them and bring them health. I also wish to salute our steadfast people in all the cities, towns and villages who are standing firm and immovable, rooted in their land as they are rooted in their faith. I also salute my brothers the Mujahideen, the steadfast resistance fighters, enduring hardship at their posts and in all our ranks, ever ready for sacrifice in the path of what they believe. They always have and always will regard their own safety lightly and hold their heads high with pride.

In this first address that I give in these days following Operation True Promise, I would like to say a few words — a word to the Lebanese people, a word to the resistance fighters, a word to the Zionists, and a word to the Arab rulers. I will not offer words to the international community because I have never for one day believed that there is any such thing as an international community, just as many in our nation feel.

First, I say to the Lebanese people: dear people — who embraced the resistance, by whom the resistance was victorious, and for whom the resistance won its victory on 25 May 2000 — this people who were the makers of the first victory in the history of the Arab struggle with the Israeli enemy, despite the basic inequality in forces, and in spite of the fact that the majority of our Arab brothers and the majority of our Muslim brothers abandoned us and despite the silence of the whole world, this Lebanese people made the miracle of the victory that stunned the world and humiliated the Zionists. Those Zionists look upon this people in a special, unique way because they accomplished in the history of the struggle with them a special and unique accomplishment.

The battle today is no longer a battle over prisoners or the exchange of prisoners. It might be said that the Zionist enemy is responding any time there is any operation where men are captured anywhere in any part of the world, by any army or any state that has borders and regulations. What is taking place today is not a response to a capture of their soldiers; it is a squaring of accounts with the people, resistance, state, army, political forces, regions, villages, and families that inflicted that historic defeat on that aggressive usurper entity that has never accepted its defeat.

Today, therefore, this is a total war that Zionism is waging to clear its whole account with Lebanon, the Lebanese people, the Lebanese state, the Lebanese army, and the Lebanese resistance, in revenge and reprisal for the victory they won on 25 May 2000.

Dear steadfast, mujahid, and noble people, I know that the overwhelming majority of this people, in their minds, hearts, wills, culture, thoughts, love, passion, and sacrifice are a people of nobility, dignity, honor, distinction, and pride, not a people of servility, subservience, submissiveness, and surrender. I say to you that in this battle we are faced with two choices — not we, as in Hizballah, or as in the resistance, the Hizballah resistance — but Lebanon as a state, a people, an army, a resistance, and a political power — we are faced with two choices: either to submit today to the conditions that the Zionist enemy wants to dictate to us all, using the pressure, support, and backing it has from America, from around the world, and, I'm sorry to say, from Arabs.

Either we submit completely to its conditions, which means taking Lebanon into an Israeli age under Israeli domination — in total frankness this is the extent of the matter — or we stand steadfast. That is the other choice: that we persevere, that we persevere and confront. I, relying on God the Exalted, and on my faith in Him and the mujahideen and in you, knowing this people and this enemy, just as I always used to promise you victory, now I promise you victory once again.

During the Grapes of Wrath in 1996, or Operation Settling of Accounts in 1993, in the beginning they had the upper hand and our situation was

much worse. But today, the situation is different. Believe me, and I mean this, the situation now is different. All that we need is to persevere, stand steadfast, and confront them united, and I know and I will bet that the majority of our people are a people of steadfastness, a mujahid [struggling] people who can sacrifice, who have no need for pep talks. What I'm saying now is only by way of completing the idea, and affirming the choice, and clarifying what this means.

Now, as for my words for the resistance fighters, for my dear and beloved brothers: upon them rest the hopes of every Lebanese, every Palestinian, every Arab, every Muslim, every free and decent person in this world, every oppressed, tortured victim of injustice, every lover of steadfastness, courage, dignity, values, and nobility — the characteristics they embody by their presence on the field of battle and in their fight with this enemy, the fight of valiant heroes. I say to them: today, after God the Highest, you are the hope of our Nation. You are the symbol of our nobility. Our honor is in your hands.

This honor is yours and by means of you, our honor is preserved. After God the Exalted, it was you who were responsible for the victory of 2000. Today it is you, before all others, who are responsible for preserving the victory, for achieving liberation, standing steadfast, and with honor. This places demands on you that you, in practice, have proved until now and during these days that you are entirely worthy of, as you are worthy of our esteem. Those who put their trust in you, after God, their charge is great, the reward will be grand, and the mighty victory — a clear triumph — is near.

To the Zionists, to the people of the Zionist entity at this hour I say to them: you will soon discover how foolish and stupid are your new rulers, your new leaders. They do not know how to assess reality. They have no experience in this area. You Zionists say in opinion polls that you believe me more than you believe your officials. So now I call on you to listen well and believe me. Today we have persevered despite the attack that took place last night in the southern suburbs. However the attacks multiply in every village, neighborhood, street, and home in Lebanon, there is no difference between the south Beirut suburbs, the City of Beirut, or any home in south Lebanon, in the Beqaa, or the north, or Mount Lebanon, or any corner of Lebanon.

The equation has now changed. I will not say today that if you strike Beirut, we will strike Haifa. I will not tell you that if you hit the south Beirut suburbs, we will hit Haifa. You wanted to get rid of that equation, so now we and you have got rid of it in actuality. You wanted open warfare, and we are going into open warfare. We are ready for it, a war on every level. To Haifa, and, believe me, to beyond Haifa, and to beyond beyond Haifa. Not only we will be paying a price. Not only our houses will be destroyed. Not only our children will be killed. Not only our people will be displaced. Those days are past. That was how it was before 1982, and before the year 2000.

Those times have come to an end. I promise you those times have passed. Therefore you must also bear the responsibility for what your government has done, for what that government has undertaken. From now on, you wanted open warfare, so it will be open warfare. You wanted it. Your government wanted to change the rules of the game, so let the rules then be changed. You don't know today whom you're fighting. You are fighting the children of Muhammad, of Ali, of al-Hasan, of al-Husayn, of the Prophet's family, the Prophet's Companions.

You are fighting a people who have faith such as no one else on the face of the earth possesses. And you have chosen open warfare with a people who take pride in their history, their civilization, and their culture, and who also possess material power, ability, expertise, knowledge, calm, imagination, determination, steadfastness, and courage. In the coming days it will be between us and you, God willing.

As to the Arab rulers, I don't want to ask you about your history. I just want to say a few words. We are adventurers. We in Hizballah are adventurers, yes. But we have been adventurers since 1982. And we have brought to our country only victory, freedom, liberation, dignity, honor, and pride. This is our history. This is our experience. This is our adventure.

In the year 1982 you said and the world said that we were crazy. But we proved that we were the rational ones, so who then was crazy? This is something else and I don't want to get into an argument with anyone. So I tell them simply: go bet on your reason and we will bet on our adventure, with God as our Supporter and Benefactor. We have never for one day counted on you. We have trusted in God, our people, our hearts, our hands, and our children. Today we do the same, and God willing, victory will follow.

The surprises that I promised you will begin starting now. Now, out at sea off the coast of Beirut an Israeli military vessel that attacked our infrastructure, that struck the homes of our people, our civilians; you can see it burning. It will sink and with it dozens of Zionist Israeli troops. This is the beginning. There will be a lot more said before the end.

Peace be upon you, and the mercy of God!"

<http://www.cbc.ca/news/interactives/letters/peacekeepers/>

Letter from the widow of Major Paeta Hess-von Kruedener

February 6th, 2008

Hello, my name is Cynthia Hess von Kruedener – I’m the widow of Major Paeta Hess von Kruedener. My husband was killed along with 3 fellow Peacekeepers during the Israeli bombing of the UN Patrol Base Khaim, in southern Lebanon on July 25th, 2006

I’m speaking to you today following the release of our Department of Defence / Board of Inquiry. I’ve prepared this statement, instead of an interview – because it’s important to me to address the central issues – at this time – without being misspoken.

I thank the members of the Board of Inquiry: I believe they did a thorough job investigating, within the bounds of their mandate. I encourage all interested parties to review the findings of the BOI, available to the public (almost in their entirety) on the National Defence Website. (http://www.forces.gc.ca/site/focus/hess-von-kruedener/index_e.asp)

First, I want to make it clear that it’s not my intention to place inappropriate blame for the events that led to my husband’s death; and

Secondly, I want to draw attention to the questions that have not been answered through this investigation.

I direct your attention to Paragraph 72, indicating that the Israeli Defence Force has clearly accepted responsibility for the incident that killed my husband and his colleagues.

Just so we’re clear “the incident” refers to the 500 lb, precision guided bomb that was dropped on the UN bunker containing my husband and his fellow Peace Keepers; who were unarmed and serving the world community in the pursuit of peace.

The IDF have attributed the targeting and subsequent attack to an operational error; but offer no explanation of how that error occurred.

Further in paragraph 72, we find that the IDF acknowledges receiving multiple protests regarding their artillery rounds hitting the post. They even acknowledge communication from the UN Force Commander stating: “You are killing my people” – and yet; the IDF fail to explain why the subsequent J-DAM Bomb was NOT halted.

There are questions unanswered:

- If 6 hours of artillery shelling was an operational error – and bombing a UN bunker was an operational error – what are the odds that two operational errors (land and air) occurred within an hour of each other and in the same place? Keep in mind, that the UN

Patrol Base was a solitary structure; not surround[ed] by any other buildings; painted white; marked UN in big, black letters; flying a UN flag; well mapped; and located in exactly the same place for more than 30 years!

This, and many other questions, will never be answered unless, and until, the IDF reveals the complete findings of its own internal investigation. (An investigation that we know has been performed.) Without complete disclosure, we (the rest of the world), don't have the necessary information to draw lessons and prevent further, similar loss of UN Peacekeepers:

- It's clear, and sad, that the sanctity of the UN was not respected and provided no protection to the UN Peacekeepers.
- The Board of Inquiry, conducted by our Defence Department must be the first – NOT the last, step in the process of searching for truth and accountability.

The world needs to know: What were the 'rules of engagement' for the IDF pilot who dropped that bomb? I believe that, the IDF lost the privilege of secrecy, on this issue, when they targeted a UN Post.

I call upon the House of Commons to debate the findings of the BOI; and through our Foreign Minister, take this issue to the UN Security Council and the UN General Assembly:

- This was not an accident.
- Paeta's death, with his fellow Peace Keepers: Hans of Austria, Jarno of Finland, and Du, of The Republic of China: was entirely preventable.
- The Security Council (as an instrument responsible for maintaining international law, international peace and security) must condemn violations of UN Protection – in no uncertain terms.

I ask Canadians not to turn away from this issue; as if it doesn't concern you. The security of Peace Keepers, in this extremely distressed world, affects everybody.

Join me, by contacting your Members of Parliament; ask them to "Make the Safety of our World's Peace Keepers a Priority!"

http://telaviv.usembassy.gov/publish/peace/documents/ceasefire_understanding.html

Israel-Lebanon Ceasefire Understanding

Following is the text of the "understanding" reached on Friday, April 26, 1996, for the ceasefire in Lebanon:

The United States understands that after discussions with the governments of Israel and Lebanon, and in consultation with Syria, Lebanon and Israel will ensure the following:

1. Armed groups in Lebanon will not carry out attacks by Katyusha rockets or by any kind of weapon into Israel.
2. Israel and those cooperating with it will not fire any kind of weapon at civilians or civilian targets in Lebanon.
3. Beyond this, the two parties commit to ensuring that under no circumstances will civilians be the target of attack and that civilian populated areas and industrial and electrical installations will not be used as launching grounds for attacks.
4. Without violating this understanding, nothing herein shall preclude any party from exercising the right of self-defense.

A Monitoring Group is established consisting of the United States, France, Syria, Lebanon and Israel. Its task will be to monitor the application of the understanding stated above. Complaints will be submitted to the Monitoring Group.

In the event of a claimed violation of the understanding, the party submitting the complaint will do so within 24 hours. Procedures for dealing with the complaints will be set by the Monitoring Group. The United States will also organize a Consultative Group, to consist of France, the European Union, Russia and other interested parties, for the purpose of assisting in the reconstruction needs of Lebanon.

It is recognized that the understanding to bring the current crisis between Lebanon and Israel to an end cannot substitute for a permanent solution. The United States understands the importance of achieving a comprehensive peace in the region.

Toward this end, the United States proposes the resumption of negotiations between Syria and Israel and between Lebanon and Israel at a time to be agreed upon, with the objective of reaching comprehensive peace.

The United [S]tates understands that it is desirable that these negotiations be conducted in a climate of stability and tranquility.

This understanding will be announced simultaneously at 1800 hours, April 26, 1996, in all countries concerned.

The time set for implementation is 0400 hours, April 27, 1996.

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