

At the end of the 33 Day War against Lebanon by Israel in 2006, IHRC commissioned a report by a group of British lawyers into the effects of that war in Lebanon. The report was limited by the access they had to only sites in Lebanon and thus was to look at accusations of war crimes in the conduct of the war.

The original draft of the report submitted in or around October 2006 follows. IHRC did not publish this reports as its own due to concerns it had over the following;

- (i) Lack of objectivity. The report was to look at the **conduct** of the war, yet many value laden statements were made throughout the report that indicated the authors had a clearly predetermined idea that military action on the part of Israel was justified – despite their claim in Introduction (4) that they did not. We felt this affected their methodology and resulted in the premise that where evidence was lacking they should write to the Israeli authorities to seek clarification. This was compounded by a failure to accord a similar method when dealing with Hizbullah. We found this to also run counter to the video evidence that the team took, in which they clearly had access to ask such questions to senior Hizbullah officials.
- (ii) Whilst assuming that Israel has a right to self-defence as a state under international law, no consideration was given to international law arguments that self-defence and resistance are also lawful under certain circumstances. Instead discussion was had to as to Lebanon's duty and lack of ability to 'disarm' HB rather than its duty to defend its citizens.
- (iii) A presumption throughout that anyone they interviewed could not be a HB supporter based on ethnicity or religion or school of thought did not meet a satisfactory standard. This is supposition based on sectarian and racial presuppositions.
- (iv) The manner in which the rapporteurs presented their arguments that gave rise to the impression that they were trying to mitigate Israeli actions that led to the loss of civilian life by trying to find evidence to substantiate claims that HB fighters were based in certain areas even where in some cases no such accusation had been made.
- (v) The contradictions were compounded by subsequent versions of the report and disagreement between members of the group regarding the findings. A further short report of another trip by one of the team members is appended.

Nevertheless, the document makes important points and we make it available to a general readership for the sake of transparency. The appendices referred to herein containing a large amount of photographic evidence are available in a separate PDF here:  
<http://ihrc.org.uk/activities/campaigns/10370-the-33-day-war-summer-2006>

Another report overviews international law precepts as they applied to the conflict was commissioned by IHRC at the same time can be found on the same page, as can links to the videos of the group at work in Lebanon.

*IHRC, 2007 & 2012*

## **MILITARY ACTION BY ISRAEL IN LEBANON: A LEGAL ASSESSMENT**

### **INTRODUCTION**

1. The military action by the Israel Defence Forces ( IDF ) in response to the seizure by Hizbullah personnel of two members of the IDF has raised, in the international community, a number of acute questions, both as to the legality of the action and, in particular, as to the legality of the way in which it was conducted.

2. We have been asked to visit Lebanon in order to take evidence as to what actually happened during the Israeli action and to evaluate the legal consequences of that action. We feel that it is necessary to consider the actions of both the IDF and Hizbullah. We have also been asked to consider what recommendations should be made as a result of our findings. In particular, we have been asked to consider what action might be taken to strengthen the protection afforded to civilians in circumstances of conflict such as this.

3. As will be seen later in this report, there are serious difficulties in ascertaining, with clarity, the legal rules which govern such a conflict: This was not, certainly as characterised by Israel, a war between states; it was not an internal conflict. It was, on the other hand, the type of action which may become more common where an attack is predicated upon the alleged justification that a neighbouring state is not doing enough to control the activities of insurgents / resistance fighters / terrorists operating from its territory.

4. We make it clear from the outset that our consideration is limited to the legality of the way in which each side has conducted military operations. A judgment as to the legality of Israel's action, per se, lies outside the scope of our report. We have not addressed, therefore, the question of whether or not Israel was acting lawfully in taking *some* military action. An examination of the political and military background to the action involves political and strategic evaluations which fall

outside the scope of an enquiry into *how* the military action was conducted and will, in our view, be likely to obscure the issues to which we address this report.

5. This enquiry was commissioned by Islamic Human Rights Commission. We wish to make it absolutely clear that:

a) No pressure has been applied to us to come to any particular conclusion;

b) We have approached with no *a priori* assumptions. It is an inherent aspect of human rights that they apply heedless of religion, ethnicity or political persuasion and so we have striven to be open-minded and even handed. Where, in our judgment, either party has acted unlawfully, we have not hesitated in saying so.

## **CHAPTER 1:THE LEGAL FRAMEWORK**

1. It is not the purpose of this report to enter into an academic debate as to the applicability of individual laws or rules governing the use of force. It is nevertheless necessary that we give a brief account of those laws and rules so as to make patent the basis upon which we have approached the issues which we are to consider. It should be made clear from the outset that the principles through which we have approached these issues are rooted in a firm belief that, even in war or quasi war situations, the protection of the human rights of non-combatants is fundamental and that there is a high duty on the parties involved to take appropriate steps to safeguard such rights.

2. Foremost amongst these rights is, of course, the right to life

3. The need to accept that there are limits to the circumstances in which war can be waged and, further, the manner in which it may be waged, is well recognised. There have been concerted attempts to instigate binding rules amongst the international community. Of greatest relevance to our considerations are the Geneva Conventions, I to IV, and the Protocols, I and II. These set out, in the areas to which they apply, a code which embodies and strengthens many of the pre-existing tenets of customary international law and previous conventions in relation to the rules of war. They provide, to a significant degree, a code by which the actions of a military force may be appropriately judged. They embody, it seems to us, exactly the type of minimum restrictions upon the mode of conducting warfare that can reasonably be expected from any civilised state or combatant group. These documents embody the least which common humanity dictates. We have approached the issue of cluster munitions in a separate chapter because it seems to us to pose quite discrete problems which can be addressed in a relatively simple way.

4. In terms of formal international law, however, it is clearly relevant that:

a) Israel is not a signatory to either of the Protocols;

b) Hizbullah is not a recognised state and is clearly not, nor could be, a signatory of the Protocols.

5. Nevertheless, as has been argued by the prosecution in the Special Court for Sierra Leone and other *ad hoc* tribunals, there is a strong argument, based upon common humanity and legitimate expectations as to how combatants should conduct their operations where there is a threat to civilian life or property, that the rules embodied in the Protocols have now become customary International Law and that the conduct of all combatant forces should be judged in accordance with them.

6. The Red Cross has sought to summarise the basic laws thus:

*“ ...6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.*

*7. Parties to a conflict shall, at all times, distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.”*

7. It seems to us that the details of the Protocols flow directly from these basic propositions and that any civilised society would not wish to derogate in any way from these principles. **Israel is a democratic society.** Whatever Hizbullah’s status, International Law should expect any combatants to act with regard to the same rules and laws.

8. A further difficulty with the formal scheme of the Conventions and Protocols is that they were not designed at a time when this type of conflict was fully envisaged. Thus, the definitions in Protocols I and II do not, it may be argued, cover situations outside those in which either states are at war or there is war within a state. The type of asymmetrical warfare which has taken place in

relation to Lebanon does not come easily within the definitions set out in the Protocols, yet the need to protect the civil population is no less cogent. Again, the dictates of common humanity require that Hizbullah fighters do not breach the basic and accepted rules and laws of war.

9. Accordingly, our enquiry has been guided by a formulation of principles which, it seems to us, must be accepted by all combatants, in whatever type of conflict, as fundamental and not susceptible to any type of reservation or derogation. Given the limitations of our brief, these should not be taken as a compendious summary of all of the rules of war.

*BASIC RULES APPLICABLE TO ALL COMBATANTS*

A. Every state has a right to self-defence and the protection of its citizens.

B. Where the safety of its citizens is threatened, a state has the right to take necessary and proportionate action, including military action. Military action will only be necessary where the threat is imminent and substantial.

C. Where military action is justified, the requirements of Protocols I and II should apply, whether the action is between states, or is what one can refer to as asymmetrical warfare. The principles underlying protection afforded to non-combatants and civil infrastructure should not vary, whatever the nature of the conflict. Given that the definition of legitimate “military objectives” is defined in Article 52 of the first Protocol as:

*“2. Attacks should be limited strictly to military objectives. In so far as objects are concerned military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total and partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.*

3. *In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used,*”

the Protocols allow combatant states to initiate military action against targets which qualify under this definition, it is accepted that, under the rules of International Law as they now stand, there will be situations in which military action can lawfully involve greater interference with the rights of non-combatants and civilian property than would be appropriate under circumstances of, for example, lesser threat. In other words, necessity and proportionality are fact dependent and will vary according to the situation, i.e. “the circumstances ruling at the time.”

D. Before launching a military action, the Precautions listed in Article 57, Geneva Protocol I, must be followed. These are set out in Appendix 1. They impose duties which include those to:

i) Take constant care to spare the civilian population, civilians and civilian objects;

ii) Do *everything feasible* to verify that the object of the attack is a legitimate military objective;

iii) Take *all feasible precautions* to avoid and, in any event, to minimise civilian loss;

iv) *Refrain* from deciding to launch any attack which may be expected to cause civilian damage / loss which would be excessive in relation to the concrete and direct military advantage anticipated ( the rule of proportionality ).

E. Parties must take suitable precautions to protect civilians from the effects of attacks *to the maximum effect feasible*.<sup>1</sup> This includes:

i) Evacuation of the civilian population/objects from the vicinity of military objectives;

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<sup>1</sup> Geneva Protocol I, Art. 58

ii) Avoiding locating military objectives within or near densely populated areas.

iii) Taking other necessary measures to protect the civilian population / objects under their control. This includes avoiding the siting of military personnel and equipment in civilian property outside the area of the immediate battle zone or which is occupied at the time by civilians.

### Discussion

Many claims have been made as to the conduct of the combatant forces and a significant amount of evidence published. The limited **video surveillance evidence** posted by the Israeli government, on its website, if reliable, is intended as support for the claim that Hizbullah fired rockets from locations close to civilian residential buildings. The videos are, in the main, not dated and thus it is difficult to establish whether these events took place at a time when the IDF was actually physically engaged in the area and at a time when, for example, the civilian population had been evacuated. In our view, the use of an occupied civilian building or its immediate curtilage to launch an attack or to store arms or undertake other military actions is not legitimate. On the other hand, it is, sadly, inherent in the nature of warfare that, in the immediate battleground itself, combatants will use civilian buildings in order to further their objectives, whether for cover or for attack.

**Comment [A2]:**

The **photographic evidence** posted on the website is not, however, the only photographic evidence available.

**Comment [A3]:**

There is available **photographic evidence** which shows the IDF placed Multiple Rocket Launchers and Mechanised Artillery units in Kiryat Shmona (north Israel).<sup>2</sup> One such photograph depicts Israeli children (girls) writing messages on shells that were due to be launched into southern Lebanon.

**Comment [A4]:**

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<sup>2</sup> Associated Press Photographs, © Sebastian Scheiner., 17<sup>th</sup> July 2006.



## **CHAPTER 2: OUR APPROACH**

Our visit to Lebanon was undertaken as soon as the air blockade was lifted. We travelled extensively to sites where damage had been caused or fighting had taken place, talking to people on the ground. Many were bewildered by what had happened to them and their families and properties. By chance, the Prime Minister of UK made his first visit to Lebanon on the day we were inspecting the devastation visited upon areas in the southern suburbs of Beirut. Whilst resentment at UK and US policy was widespread, we were treated with courtesy wherever we went, including the Hizbullah<sup>3</sup> heartland in south Beirut.

It must be recognised that some weeks had passed between many of the attacks and our visit. Delay was inevitable owing to the air blockade. The speed at which the huge amount of rubble had been, and continued to be, removed from south Beirut, for example, meant that we largely had to rely upon local testimony as to the buildings which had stood there, together with the evident nature of the surrounding buildings.

Accordingly, it must be accepted that an inspection of the sites themselves was, at this stage, unlikely, in the major part, to assist in determining whether weapons had been concealed or operated from there. Physical inspection, however, is, in our judgment, only one way of determining these issues. We questioned local people. We have taken into account the possibility that their views may well have been radicalised by what has happened to them, but it must be acknowledged that there is an equal likelihood that they would resent, for example, the use of their homes by HB for weapons deployment if that had led to the loss of their family / home, or both.

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<sup>3</sup> We will, for convenience, refer to Hizbulah as HB

So their testimony is a valuable resource. We have also been able to form judgments by looking at the sector of Lebanese society from which individuals have come. For example, the Liban Lait plant<sup>4</sup> on the southern outskirts of Baalbek was owned by a Maronite Christian. It does not seem to be unreasonable to accept the assertion by the plant manager that, in such circumstances, he could hardly be seen as a HB supporter.

In so far as has been possible to date, we have examined such photo-reconnaissance material as we have been able to gain access to and have considered any explanation offered by the parties. We have written to the government of Israel asking a number of specific questions in relation to the sites which we have examined. We have asked for a substantive reply within 28 days. Until that period has expired or until such a reply has been received, this should be regarded as an interim report.

Significant assistance can be derived in an enquiry such as this, as in any criminal investigation, by the statements of the parties themselves at or before the time of the act. We have thus been significantly assisted, in judging the intentions behind IDF action, by the reported declarations of the IDF Chief of Staff, Brigadier General Dan Halutz, who made the following statements:

- “Nothing is safe.”<sup>5</sup>
- “We will target infrastructure ...and turn the clock back in Lebanon by twenty years” ( *unless the Israeli prisoners were freed* ).<sup>6</sup>
- Further, Major General Amir Eshel of the Israeli Airforce reported an instruction from Halutz to the effect that for every Katyusha rocket which landed in Haifa, ten 12- storey buildings would be

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<sup>4</sup> see p. 33 infra

<sup>5</sup> The Times, 14th July, 2006.

<sup>6</sup> The Guardian, 13th July, 2006

struck in the Dahia area of South Beirut.<sup>7</sup> 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 27th July, 2006, that the citizens of southern Lebanon had been given ample warning to quit the area. “All those now in southern Lebanon are terrorists who are related in some way to Hizbullah.”<sup>8</sup> He was also reported to have said that massive firepower should be used in the area before any ground troops went in.

BBC reported, on 27<sup>th</sup> July, 2006, that the IDF had stated that any villages from which rockets were launched would be totally destroyed.

We will, in the course of this report, examine the degree to which these statements or alleged statements were mirrored by what had happened on the ground. We will also consider the individual responsibility of those who made such statements.

Given the continuing casualties from unexploded cluster ordnance, we were circumspect and did not visit sites where we understood there to be a danger. There is, however, sufficient material available, notably through the evidence of IDF soldiers themselves and through the UN agency responsible for attempting to deal with the legacy of these munitions, for us to form a view upon the nature and extent of the use of such munitions.

In forming judgments, we have attempted to be realistic. Situations confronting battlefield commanders can change quickly. Although modern techniques and intelligence can do much to pierce the fog of war, they do not resolve it completely. Honest mistakes can be made which lead

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<sup>7</sup> Jerusalem Post, 24th July, 2006

<sup>8</sup> BBC, 27th July, 2006.

to tragic consequences. Collateral damage may be unavoidable in given circumstances (although the obligation to minimise such damage is a serious one ).

Our judgments are made on the evidence available to us. We have only come to firm conclusions where the evidence, in our view, reasonably permits us to do so. We guided our considerations by employing the following categories:

1. Firm conclusion. This applies when it seems to us that the evidence of unlawful action is clear and there is no reasonable likelihood of any acceptable explanation or where we are firmly of the view that the action was lawful.
2. Provisional conclusion. This is where the evidence gives a strong indication that the action taken was lawful / unlawful but where we accept that there may be evidence which may reasonably alter the conclusion.
3. No conclusion. Where the evidence was so tenuous or unclear as to make any conclusion speculative.

Schematically, whilst the Geneva Protocols talk in terms of civilian populations, civilians and civilian objects, we have adopted a slightly different approach. We have divided up the areas for consideration thus:

- i) Infrastructure, including roads, bridges and power stations;
- ii) Domestic property, including apartment buildings, shops etc;
- iii) Commercial targets, principally factories;
- iv) Other targets.
- v) Cluster munitions.

### CHAPTER 3: INFRASTRUCTURE

#### *An Overview*

Figures cited by the BBC indicate an extensive attack upon the infrastructure of the country.<sup>9</sup> The Lebanese Government anticipates that the costs of reconstruction will be \$4 billion US dollars, with added consequential losses in the commercial sector.

- 78 bridges were attacked.
- 900 factories, markets, farms and other commercial buildings were destroyed or damaged. (We deal with commercial infrastructure in chapter 4 ).
- 25 petrol stations were attacked.
- 630 km of roads have suffered damage.
- The three airports were damaged.
- Ports, water and sewage treatment plants and power stations were attacked.

This was not a war between two states. In our view, it is not tenable to suggest that a legitimate object of the attack was the state itself. It is, of course, a contentious question as to how a government which fails to control attacks upon a neighbouring state from its territories can be held to account. The reality is clear: that the Lebanese state does not have the strength to disarm HB and that, in any event, attacks upon its infrastructure could hardly be expected to assist the state in such a task. The IDF attack upon the infrastructure would inevitably have the effect of impeding a conventional army in deploying.

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<sup>9</sup> BBC News, 32/8/06

We therefore approach the assessment of the various attacks upon Lebanese infrastructure which we were able to inspect upon a case by case basis looking at whether it is reasonable to conclude that they were military objectives.

In doing so, we have reminded ourselves that, as a military objective, a target must offer a definite military advantage even to qualify. Only if such an advantage can be identified do we need to move to questions such as proportionality.

### **Bridges and Roads**

In a 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. The movement of heavy armour and artillery requires good transport links.

The position with HB is very different. It has no significant armour or heavy artillery. Its largest rocket systems are lorry mounted. In general terms, therefore, one has to ask whether pitting a road with bomb craters every few kilometers can realistically be said to confer a definite military advantage when dealing with such an enemy.

Where there is an apparent alternative route to a bridge, a similar question arises.

The figures supplied to us by the Lebanese government suggest that 78 bridges had been struck.

During our enquiry we travelled to the far north east, to the south west and to the south east. We travelled over many miles of road and were able to witness the level of destruction, which varied considerably. The main arterial route down the coast had suffered the greatest in terms of destruction of significant bridges, with disruption to traffic. It is doubtful, however, in the extreme whether this would have caused HB any significant difficulty in moving men or material ( on the

scale employed by them ) or, indeed, the seized Israeli soldiers. What is clear is that it has caused significant inconvenience to the population and commerce. Traffic has to make regular diversions onto side roads.

In Beirut, itself, bridges have been blown in a number of areas. Given the significant numbers of alternative routes available in the city, the military advantage to be derived from these bombings is open to question.

In the Bekkaa valley, the main roads were pocketed by bomb craters, often at culverts. This appeared to be mainly of nuisance value.

Recalling the definition of a military objective under Geneva Protocol I, Art. 52.2, we ask ourselves whether these attacks could have been expected to confer a “definite military objective.” 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.

It is clear, from statements made by Israeli intelligence in 2004 and 2006 that they were aware that HB had already deployed huge amounts of rocketry within range of Israel.<sup>10</sup>

We are not convinced that this extensive campaign would confer the necessary definite advantage in a contest against an enemy of this type. We remind ourselves of the avowed intentions of the IDF as stated by its head of staff<sup>11</sup>, which seem to be consistent with such widespread bombing of roads and bridges.

Further, 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.

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<sup>10</sup> See p.9 supra

<sup>11</sup> see p. 3 supra

Our conclusion in this regard is a firm conclusion.

*Our observations of the damage inflicted in these attacks and others suggest that the IDF has the capacity to strike with significant accuracy. This is an observation to which we shall return when considering the nature of the attacks upon, in particular, south Beirut.*

### Airports

One of the first targets to be struck was Beirut 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 ( on 16th September, 2006 ) one of the runways had been rendered serviceable again. The other runway, however, will take longer to repair as there is a bomb hole which has penetrated the reinforced steel mesh concrete at a point where a road runs underneath the runway.

Lebanon's two other airports were similarly attacked.

Two possible explanations could be advanced for these airports as military objectives

( remembering, as ever, that this was not an inter-state war ):

- a) That it would deny a route for smuggling the captured IDF soldiers out of Lebanon;
- b) That it would deny HB a means of flying men or materiel into the country. A statement issued by IDF on 14th July, 2006, claimed that the airport was, "...used as a central hub for the transfer of weapons and supplies to...Hizbullah.<sup>12</sup>"

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<sup>12</sup> Statement on website of Israeli Ministry of Foreign Affairs, 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>



The stated reason for the Israeli action was the seizure of the two soldiers by HB. It was, we feel, inherently unlikely that HB would attempt to get two captives out of Lebanon via Beirut airport. A far more probable scenario would be that they would either be hidden in a HB location within the country or would be taken out overland, through the long land borders with Syria.

There is a Lebanese air force base by the airport, but there is no evidence or suggestion of which we are aware to the effect that there has been co-operation between HB and the air force whose capacity is, in any event, extremely limited. IDF could not reasonably have anticipated any resistance from the Lebanese air force and would have had very little difficulty disposing of it in any event. To all intents and purposes, therefore, Beirut airport should be treated as a civilian airport unless IDF is able to provide any evidence in support of its assertion of 14th July, 2006.

The HB's main source of armaments is reputedly Iran. There are, as we understand it, no flights between Beirut and Iran. Again, in our judgment, the prospects of HB importing material through Beirut Airport were very remote.

The possibility of the entry into the country of volunteers via the airport, even though more substantial, has never been put forward by the IDF and can therefore be discounted. In any event, our understanding is that HB's source of manpower is essentially local: Lebanese fighting on their own ground.

We have seen no evidence of any appeal by HB for fighters to come to their aid from other countries. There may be intelligence to the contrary available to the IDF. We have written with the appropriate enquiries. Unless there is any other credible explanation put forward our firm view is that the attack on Beirut Airport was unlawful.

***The Power Station at Jiyeh***

On 13th July, 2006, there was an attack at a power station at Jiyeh. 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. The berm which would have prevented oil spilling out into the sea was breached on this occasion, with the inevitable result that a major spillage of burning oil took place.

We were informed that 65,000 metric tonnes of fuel had been in the tanks and that at least 10,000 tonnes had flowed into the sea.

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 report that it contaminated 150 km of coastline<sup>13</sup>. We personally saw its effects as far north as Byblos ( Jbail )<sup>14</sup> and it is said to have gone as far north as the Syrian border. This was a significant environmental detriment, the effects of which, on the coastline, will be persistent.

Our observations of the site showed that there are, in fact, two power stations there, and that the station attacked was the smaller of the two. It was also the one which had storage tanks outside a bay area which would have acted to inhibit the spread of oil because it would have been out of the main tidal flow and a barrier would have been much easier to deploy.

After the attack, the IDF was asked for permission to bring in measures designed to contain or attack the spillage, but this was refused.

This was a civilian installation. The method of attack strongly suggests that this was not a military objective. The accuracy of other attacks on infrastructure targets, and the fact that both strikes hit the oil storage tanks, rather than the power generating capacity, demonstrate that a reduction in

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<sup>13</sup> *"Israel / Lebanon: Deliberate destruction or "collateral damage"?* Israeli attacks on civilian infrastructure" Amnesty International (Aug 2006)

<sup>14</sup> Figure 6

generating capacity was not the objective. After all, there were other oil storage tanks nearby and alternative fuel was readily transportable to the site ( as, indeed, proved to be the case ). It would, in any event, have been a highly questionable contention to suggest that the reduction in capacity by a single generating station many miles from the fighting would confer a definite military advantage.

This needs to be contrasted, in our view, with the foreseeable environmental damage which ensued, with the release of polyaromatic hydrocarbons, dioxins and particulate matters which are 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.

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.

Accordingly, we conclude that:

- a) This was not a valid military objective;
- b) In any event, the serious environmental damage caused was disproportionate and was aggravated by the refusal to allow efforts to control it.

We therefore conclude that this was an unlawful attack. This is a firm conclusion.

## **Hospitals**

A number of hospitals and clinics in the country were targeted 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.

Two government hospitals and a clinic, in the southern suburbs of Beirut, which were said to be sponsored by HB were completely destroyed.

On 11th September we visited the clinic sponsored by HB which was situated in the southern suburbs of Beirut.

We were confronted by a large crater in the centre of where the clinic used to be and a scene of total destruction (figure 9). We were able to observe medical files in the debris as the authorities were in the process of clearing it away.

We 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 HB militia. Right next to where the clinic had been stood a language school and beauty parlour which had been damaged by the strike on the clinic<sup>15</sup>. Placing it in context, this was one of a number of buildings in the southern suburbs of Beirut which had simply been totally 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. We were unable to find any reason to classify this clinic as a legitimate military target and accordingly find that the attack on the clinic, in particular, was unlawful. We would class this as a provisional conclusion, pending a response from the Israeli government.

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<sup>15</sup> Figure 10

A further hospital, al-Hikmah, in Baalbek<sup>16</sup> was attacked by IDF commandos, supported by fighter planes and drones on 2nd 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. We 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 us 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. Repairs were already being undertaken by the time we visited this hospital, but we were able to see bullet holes in some of the walls, and damage to the interior of the building, together with many photographs of the damage. 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).

We found no evidence that HB had used the hospital or its grounds to fire rockets into Israel. Indeed the distance from the border with Israel, coupled with the documented range of Katyusha rockets and other devices known to be in the possession of HB strongly militate against any suggestion that HB could have used the hospital as a launching point. We do however accept the possibility, based on the evidence of fighting, that there could have been HB militia at or around the hospital, although this may have been in response to the raid. HB claimed, according to Associated Press, that guerillas *in the area* responded.

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<sup>16</sup> Figures 13 and 14

It has also been reported that IDF showed, at one of its news conferences, arms allegedly held at the hospital<sup>17</sup>. 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.

If true that there were arms held in the building, this would have the effect of making the hospital a legitimate military target. We were informed that many commercial and municipal buildings in the Bekaa valley do have armed guards to deter attacks from bandits. Clearly this must be taken into account, but to store arms in a hospital would clearly be unlawful. On the other hand, there must be a strong presumption that a hospital is a civilian building. It would remain such even if injured fighters had been receiving treatment there. Until there is clearer evidence about what really happened at the hospital, and particularly in view of the widely conflicting reports, we do not feel we have sufficient information to come to a conclusion in this case as to whether or not the attack was justified. Provisionally, therefore, we are unable to conclude that the IDF's attack on this hospital falls outside the range of a legitimate military target. However, the damage to the equipment in the hospital and the burning of records seemed to be unnecessary and disproportionate and, to that extent, we come to the provisional conclusion that the methods used in the raid were unlawful.

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<sup>17</sup> International Herald Tribune, 2<sup>nd</sup> August 2006,

#### **CHAPTER 4: DOMESTIC TARGETS**

In areas of south Beirut, great swathes of properties have been destroyed as have a number of individual buildings. From our inspection of the scene, it is apparent that many apartment blocks were destroyed. The photographs at figures 15 to 20 graphically illustrate the scale of the damage.

It must be accepted that, in the Dahieh area, HB had set up what may be described as a security zone. It is our understanding that 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 HB command and control structure, if there were such a command and control structure.

We were told that, in the expectation of an attack, the whole area, and the suburbs surrounding it, had been evacuated and the civilian population moved out.

The fact remains, however, that these were areas where there were many apartment blocks which were the homes of many ordinary Lebanese. They may, for the large part ( for the sake of argument ) have been HB sympathisers, but it is important to understand that there are other sections of HB, other than its military arm. It runs clinics and schools and makes social provision for the people living in the area. Sympathisers do not equate with military personnel and attacks upon them, *per se*, would clearly constitute unlawful collective punishments.

Thus, it was, in our view, incumbent upon the IDF, in planning attacks, to be discriminating in its choice of targets. The fact that an apartment block may have been in the security zone would not, *per se*, make it a legitimate target. Those civilians living in such a block cannot be held responsible for the activities of HB. There would need to be specific intelligence to justify an attack upon an apartment block.

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 either as revenge attacks or as a demonstration of power. Given the IDF's capacity for specific targeting, the destruction of whole square areas of property gives a strong indication that what was being targeted fell well outside what was proportionate in furtherance of an appropriate and legitimate military objective. We remind ourselves of the reported claim by Major General Ashel, that for every Katyusha rocket that fell on Haifa, ten 12-storey buildings would be struck in South Beirut. Given the scale of the damage caused, that would appear to have been exactly the policy followed by the IDF. Such a policy would have been, in our view, completely unlawful.

We have included, at appendix A, a map showing the areas attacked and destroyed in south Beirut.

The sheer scale of the attacks may be judged by the photographs at figs 61 and 62 which show lorries queuing up to dump rubble from the bombed areas. Much work had been done, by the time at which we arrived, to clear rubble.

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 Rweis district of the suburb. There was a large area which had been flattened by airstrikes, which took place on Sunday 14<sup>th</sup> 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 2 km outside the HB 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 we spoke said that



this had been an attack without any warning. The result of the attack was that 57 people were killed.

The second site which we visited was in the Shieh 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.

We spoke to a survivor. He had been evacuated from the HB 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 HB 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.

This would, of course, have rendered the building a military objective. However that, of course, must be viewed subject to the question of proportionality. Given that this was a building well outside the 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, in our view, substantially outweighed by the inevitable loss of life.

Thus, our view is that 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. We come to the firm conclusion that the overall attack was unlawful.

In relation to the building at Shieh, based upon the information which we were given, this was, again, an attack which carried with it an inevitably disproportionate civilian death toll. Unless the IDF is able to produce intelligence which would show a high degree of military necessity, we find that this attack was unlawful. This is a provisional conclusion.

### **The harbour at Ouzai**

This was a small fishing harbour.<sup>18</sup> It was attacked from the air twice. On the second occasion the guard posted to prevent smuggling was killed.

It can be seen from the photographs, which shows the boats which were damaged or destroyed in the attack, that these were ordinary fishing boats. We spoke to one of the fisherman who explained that the vast majority of the fishermen who used the port were Christians or Druze and that there was no connection to HB at all. Certainly, our inspection revealed nothing which suggested there had ever been any military installation here.

This was a small civilian port. It provided a modest living to a small number of fishermen. The only possible rationale for the attack which we can think of is that it was designed to cut off an avenue whereby the captured Israeli soldiers could be taken out of the country. The difficulties with this line of reasoning, however, lie in the following:

a) Our information is that there were excellent relations between the fishermen and the guard and that they had always co-operated in preventing smuggling. They were not HB sympathisers;

b) The IDF was, in any event, mounting an extensive blockade of the coast. This would have the inevitable effect of a temporary curtailment of the ability of the fishermen to earn their livings. As such, it may have been proportionate ( although we doubt it ).

However, this attack on the means of livelihood of the fishermen, comprehensively destroying their main means of earning it, seems to us to have been far in excess of what was necessary to achieve

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<sup>18</sup> Figures 21-27

any purpose which we could discern. As such, we came to the firm conclusion that this was unlawful.

In addition, we were able to visit a number of villages in the deep south, close to the Israeli border and near the Golan Heights. We will deal with attacks upon civilians on the road in another chapter of this report.

By and large, we are prepared to accept that these areas would have contained a significant number of military objectives and that, since they were situated, in effect, in what can be considered the battle zone close to the border, it is difficult to establish with any certainty the degree to which HB fighters may have been close to the villages. It is clear, however, that the pronouncements of senior commanders in the IDF and the Minister of Justice quoted earlier were such that they would encourage IDF forces to act with a lack of appropriate restraint. We will examine, in due course, the legal responsibility of the makers of those statements.

### **Khiam**

One village which we visited was Khiam, the village at which was sited the long-established and clearly-marked UN observation outpost which was destroyed by Israeli munitions on 25 July 2006 killing four unarmed United Nations Truce Supervision Organization (UNTSO) observers from Austria, Canada, Finland, and China.

At figures 28 to 33 in the appendix, 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 meters of the Patrol Base and 12 artillery rounds fell within 100 meters of the Base, four of which hit the Base directly.<sup>19</sup> UNIFIL stated that HB firing was not taking place within the immediate vicinity of the Patrol Base.<sup>20</sup> The UN has stated that there had been 10 messages sent to the IDF warning it that its bombs were too close to the UN post. We quote from the CNN report which, in turn, quotes the Secretary General of UN:

“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,” Annan said.

“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.”

The timeline provided CNN by a U.N. officer in Lebanon showed the first bomb exploded about 200 yards from the U.N. outpost at 1:20 p.m. 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.

A series of about nine more bombs hit within 100 to 400 yards from the observers over the next several hours, with a call to the Israeli military following each explosion.

The U.N. base at Noqoura lost contact with the outpost at 7:40 p.m., apparently the time of the direct hit, the officer said.”

The Israeli Foreign Ministry website purports to quote from an email from one of the 4 soldiers killed. It is worth quoting the actual words of the officer:

*“ Team Sierra is currently observing both IDF/IAF and Hezbollah military clashes from our vantage point which has a commanding view of the IDF positions on the Golan mountains to our east and the IDF positions along the Blue Line to our south, as well as, most of the Hezbollah static positions in and around our patrol Base. It appears that the lion's share of fighting between the IDF and Hezbollah has taken place in our area. On the night of 16 July, at 2125 hrs, a large firefight broke out between the Hezbollah and the IDF near a village called Majidyde and lasted for one hour and 40 minutes.*

*(5) Based on the intensity and volatility of this current situation and the unpredictability of both sides (Hezbollah and Israel), and given the operational tempo of the Hezbollah and the IDF, we are*

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<sup>19</sup> UNIFIL Press Release 26 July 2006,  
[http://www.unicwash.org/news/JHL\\_briefing\\_SC\\_UNIFILpeacekeepers\\_26Jul2006.htm](http://www.unicwash.org/news/JHL_briefing_SC_UNIFILpeacekeepers_26Jul2006.htm)

<sup>20</sup> *ibid*

*not safe to venture out to conduct our normal patrol activities. We have now switched to Observation Post Duties and are observing any and all violations as they occur.*

*This is all the information of a non-tactical nature that I can provide you. I cannot give you any info on Hezbollah position, proximity or the amount of or types of sorties the IAF is currently flying. Suffice to say that the activity levels and operational tempo of both parties is currently very high and continuous, with short breaks or pauses. Please understand the nature of my job here is to be impartial and to report violations from both sides without bias. As an Unarmed Military Observer, this is my raison d'etre.*

*What I can tell you is this: we have on a daily basis had numerous occasions where our position has come under direct or indirect fire from both artillery and aerial bombing. The closest artillery has landed within 2 metres of our position and the closest 1000 lb aerial bomb has landed 100 metres from our patrol base. This has not been deliberate targeting, but has rather been due to tactical necessity.”<sup>21</sup>*

It appears from this passage that there were HB positions somewhere near to the UN post. The mayor of the village informed us that there were no HB posts in the village. The UN outpost was right on the outskirts of the village, about 300 metres from the former Israeli detention camp at Khiam. We accept the email as a contemporaneous document which indicates (although not as unequivocally as stated by the Israeli Foreign Affairs website) that there were HB outposts close to the UN outpost. However, given the number of warnings given by the UN, the well known position of the outpost and the consistent use of drones by the IDF, the fact that the outpost was hit seems to indicate a determination to pursue tactical goals *irrespective of the cost*. This is entirely consistent with the approach which we have noted elsewhere. There is a clear obligation to avoid injury to UN personnel<sup>22</sup> and, given previous history<sup>23</sup> and the number of times which the UN contacted the IDF to register their presence, the persistence in firing powerful munitions into the immediate areas appears to us to have been inappropriate and, therefore, unlawful. This is a firm conclusion.

The former Israeli detention camp, at which a number of detainees are reported to have died during the years of occupation, had been turned into a museum. The photographs at figures 34 to 43 show the scale of the destruction. It seemed to us that this camp, a cherished symbol for many Lebanese, had been attacked because of its symbolic value and not for any legitimate military purpose. Such

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<sup>21</sup> Email. Maj Hess von Kruedener

<sup>22</sup> In particular as clarified by the its codification in Article 8 (2)(b)(iii), Rome Statute

<sup>23</sup> Previous attack on UN post in Qana 1996, *Supra*

an attack would have been unlawful. We have no information as to possible deployment of HB fighters in the area and this conclusion is therefore provisional.

The village itself had sustained extensive damage, to schools, residences, municipal buildings and the mosque. We have written to the Israeli Government asking for specific information as to why this village had been bombarded to this degree. Given its proximity to the border, we do not feel able to draw any firm conclusion, pending any reply, as to whether an attack on this scale was proportionate and therefore lawful. However it is noted that there is photographic and video evidence, showing the intensive bombardment of Southern Lebanese villages using MRL's and Mechanized Artillery batteries from Israeli border towns such as Kiryat Shmona. The intensity and general nature of the bombardments, raises serious questions about how discriminate these attacks were.

### **Rechiknanay**

Here the whole village had literally been razed to the ground. One side had buildings (shops, cafes, hairdressers) still standing but severely damaged – the other side of the road was all rubble and debris wiped out completely<sup>24</sup>. This did not seem consistent with specific targeting but indiscriminate bombing across a whole row of residential and commercial buildings. A young man told us that the flattened side of the road contained as many as 40-50 commercial units on top of which people lived. We considered the threat of the IDF to destroy totally any villages from which rockets had been fired. What we saw here was consistent with that threat. Such an approach, in effect reprisal action, is clearly illegal and we come to the firm conclusion that this was unlawful, as was the use of bulldozers to flatten other villages.

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<sup>24</sup> Figures 89 to 93

## **Hizbullah Action**

It should not be felt that the sole object of this report is to examine the actions of the IDF. Human rights emphatically do not depend upon the ethnic or religious origin of the individual involved and we do not draw any distinction between Israeli citizens affected by unlawful action and Lebanese citizens affected by unlawful action.

We did not visit Israel during the course of our enquiry, but we are confident that there are ample facts in the public domain which enable us to express a view as to the conduct of military operations. We, again, reiterate that we make no judgment as to the justice of the cause of Israel or HB. What we examine is the way in which military action conformed with the rules of war and impacted upon the civilian population.

The following information is taken from the website of the Israeli Ministry of Foreign Affairs:

*“ Since the beginning of the fighting on July 12, 3,970 rockets landed on Israel, 901 of them in urban areas. More than a thousand rockets landed in the Kiryat Shmona area, 808 rockets landed near Nahariya, 471 near Safed, 176 near Carmiel, 106 near Akko, 93 in the Haifa vicinity and 81 near Tiberias.*

*Health Ministry: Since July 12, 4,262 civilians were treated in hospitals for injuries. Of these, 33 were seriously wounded, 68 moderately and 1,388 lightly. Another 2,773 were treated for shock and anxiety.*

*During Hizbullah's month-long bombardment of Israel's civilian population, 6,000 homes were hit, 300,000 residents displaced and more than a million were forced to live in shelters. Almost a third of Israel's population - over two million people - were directly exposed to the missile threat.”*

These figures disguise a more complex truth. It has been suggested, for example, that IDF positioned some of its batteries close to villages in northern Israel.<sup>25</sup> This suggestion is supported by the pictures of Israeli children in Kyriat Shomona writing messages on shells due to be launched into Southern Lebanon.<sup>26</sup> There is also some evidence that there was some initial restraint by HB and that its main attacks were launched after excessive casualties were being caused to the Lebanese civilian population. It was 14<sup>th</sup> July, for example, before any attacks were launched on Haifa.

Nevertheless, it is a fact that the main weapon in its armoury, the Katyusha rocket, is far from being a weapon which can be targeted with a significant degree of accuracy. Whilst it may well be the case that HB rockets were aimed, for example, at a munitions factory in Nazareth, they were not sufficiently accurate to avoid unnecessary civilian damage. However it must also be noted that such weapons are not outlawed.

The contemporaneous statements of the HB leader, Nasrallah, made it clear that HB would respond, in what it saw as being in kind, to the IDF attacks in southern Lebanon. This led to attacks upon civilian installations which may have been seen by HB as giving Israel a taste of its own medicine. However justified it may have been seen by HB or sections of the Lebanese population, such retaliation is unlawful. Just as with cluster bombs, whilst an attack upon a military position with such rockets may be justifiable ( depending upon the degree of risk to civilian objects / civilians ), given the lack of discrimination inherent in their lack of precision targeting, to fire them at areas where there were significant civilian populations was, in our view, inherently unlawful. Even if, as we have identified in this report, many aspects of the IDF actions were unlawful, that did not justify, in legal terms ( in our view ), unlawful action in retaliation. Accordingly, it can be said that prima facie the firing of Katyusha rockets at areas where there was an inevitable risk to civilian

**Comment [i7]:** Reference?

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<sup>25</sup> How Human Rights Watch lost its way in Lebanon by Jonathan Cook (freelance writer based in Nazereth), Media Monitors Network, September 7, 2006

<sup>26</sup> cited supra



objects / civilians was unlawful . This conclusion is based upon the figures reported by the Israeli Government. We have not visited northern Israel.

There is an obligation upon combatants to avoid, so far as possible, placing themselves in positions where the civilian population / civilian objects are put at risk. There have been many claims that HB fighters had stationed either themselves or their munitions in civilian centres. That, of course, would have rendered those centres legitimate military objectives, subject, as always, to questions of proportionality.

There is, on the Israeli Ministry of Foreign Affairs website, a small number of video clips purporting to show HB rockets being fired from near civilian buildings. It is difficult to judge their full import, as we do not know if these are from areas which were evacuated at the time. However, they do indicate that, on specific occasions, HB fighters did launch attacks from areas which would have justified an attack upon, say, a launch site. A case in point which demonstrates the complexity of this issue is Qana, on 30<sup>th</sup> July 2006, where a significantly accurate strike was visited upon a three storey building resulting in the certain loss of 28 lives. HRW researchers visiting the site the following day found no destroyed military equipment at or near the home. The HRW report, referring to one of Israels' 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 HB men at the time.<sup>27</sup>

On our 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 targeting.

However, as before, the truth may be more complex. In every village which we visited, the villagers were adamant that there had been no HB fighters in the village and that attacks were

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<sup>27</sup> Human Rights Watch, Volume 18, No. 3 (E): Fatal Strikes, pp.32 to 34, citing Ha'aretz newspaper of August 1 2006

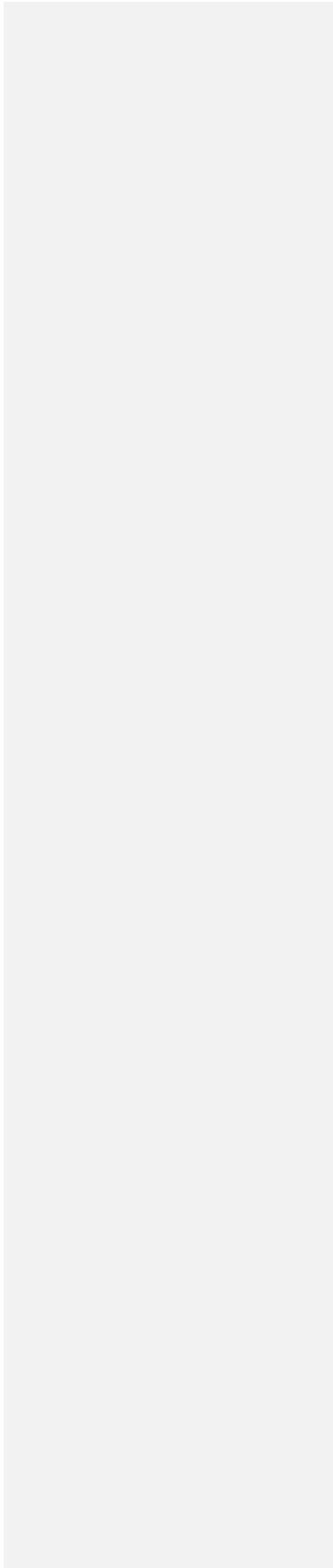
launched from positions such as banana plantations, where there was good cover and the opportunity to exit the launch site quickly. We were also told by the villagers that HB, given previous experience, did not want to provide any reason for the villages to be attacked. That evidence is corroborated by people who cannot be said to be either supporters or HB natural constituents. Many Christian Maronites, including those who were working at our hotel in Beirut informed us that HB would simply not place the villages, from which they derive their support, in any danger as they did not want to endanger their people 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.

It is difficult to tease the truth out of this conflicting evidence. However, taking the video footage at its face value, bearing in mind the very limited number of clips posted on the website, we conclude that there may have been occasions upon which HB fighters did use civilian installations to launch attacks. On the other hand having regard to the extent and consistency of the eyewitness accounts from Lebanese citizens from all communities, if the video footage is verifiably accurate the use of civilian installations was likely to be the exception rather than the rule or policy. To conclude otherwise we would have to find that the many Lebanese to whom we spoke, from all religious communities, and cities, and social backgrounds were all wrong, and be unfaithful to our own observations. To that limited degree, we are able to come to the conclusion that such action, as limited as it may have been, would have been unlawful.

However, we are unable to come to any conclusion as to the degree to which such action was widespread, but we hope to obtain more information from the Government of Israel which may assist in coming to a further conclusion.

Equally we conclude that IDF action in positioning some of its batteries close to villages in North Israel would also have been unlawful. While it is understandable that Israel employs censorship as

to the location and movement of its troops and batteries, it nevertheless means that unless there is access allowed or firm information provided we can only come to a provisional view.



## **CHAPTER 5: COMMERCIAL TARGETS**

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.

The scale of the attacks is of concern. There is a widespread belief in Lebanon, as related to us, that there was a deliberate policy of attacking the economic base of the country, in accordance with the threat of the Israeli Chief of Staff, Dan Halutz, to which we have already referred<sup>28</sup>.

We visited the LIBAN LAIT plant south of Baalbek. The photos at figs 49 to 54 show the damage caused to the building by 4 airstrikes. A degree of tidying up of the site had started, but it was clear that this was a specifically targeted attack carried out with precision.

The attack had taken place on 16<sup>th</sup> July, 2006. Happily, no-one was working in 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 \$40m 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. One factor which is worthy of note is that it had recently won a contract, in competition with an Israeli company, to supply milk to UNIFIL. It would have been obvious that it was, as is the fact, a significant employer in the area, with approximately 300 employees.

The company was substantially owned by a Maronite Christian who could not reasonably be expected to have been a HB sympathizer.

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<sup>28</sup> See p. 9 supra

There were no indications at all of secondary explosions.

Having carefully considered the evidence, we concluded that this was an unlawful attack. 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 3 weeks to ensure that it complies 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 consideration should have been a cause for significant doubt and should have merited further investigation. Given the obligation, under Geneva Protocol I, Art 52.3, to presume, in cases of doubt, that such an installation is being used for civilian purposes, this attack should not have been made.

These factors are sufficient, in our view, for our conclusion that this was unlawful to be a firm conclusion.

However, these factors should not be viewed in isolation. An attack against an economic installation would fit with the avowed policy of the IDF, as stated by Halutz, to which we have referred.<sup>29</sup>

In relation to the local belief that the raid was inspired by the successful bid against an Israeli enterprise, we do no more than note the coincidence.

Having initially visited the factory of Liban Lait, we were told of other economic infrastructure in the Bekaa Valley which had been completely destroyed.

We therefore deputed one of our number to visit 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

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<sup>29</sup> See p. 9 *supra*.

industrial district of the Bekaa Valley boasting many companies, including glass bottling plants and several factories.

The first factory visited was that of Lamartine, which manufactured chewing gum and confectionary. The factory was established in 1982 soon after the Israeli invasion, and had survived throughout the many years of the civil war and prospered. 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 confectionary factory in Iraq, and had once again started a business in Lebanon.

At the scene itself the level of devastation was immediately evident. The factory had been struck by three missiles launched from Israeli Aircraft on 16<sup>th</sup> July. The resulting damage had obliterated the factory buildings as well as the machinery inside. The damage caused was in the region of \$16 million (US), and resulted in complete destruction of the factory. The factory watchman confirmed that there were no connections between the owners and HB, nor were there any weapons or any other military hardware stored in the factory.

Some 500 metres away from the Lamartine factory, was a factory manufacturing glass bottles and jars. This factory was struck by 4 missiles on 16<sup>th</sup> July. Again the damage caused was total and rendered the factory completely inoperative. Once more, we were told that the factory had housed no military equipment and the owners had no connection with HB. The factory was owned by 2 Hindu Brothers who were originally Indian but are now naturalised British citizens. We interviewed the watchman outside the wreckage of what was the oldest and most successful glass manufacturers 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 us that the factory had employed 400

workers, working 3 shifts in 24 hours, the guard could not supply us with any further information, and asked that we contact the owners who were now living in the UK.

Further up the road from the glass factory, the factory manufacturing pre-fabricated housing units belonging to Mr. Rafiq Dalal, was also struck and destroyed. The owner, like the other owners, was inherently unlikely to have had any connection to the HB. He is, in fact, a member of the Druze community, and a US citizen. We were unfortunately unable to meet the manager of the company, but we were able to obtain some information about the company from the local mayor. He did confirm that there were no military munitions anywhere near the factory, nor any other military target whether in the factory or around it. Further a familiar fact appeared to give a possible clue as to the motive for the factory's intentional destruction. The company, it appeared, had 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 that 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. Again, we do no more than note the coincidence.

There were a number of other factories attacked in this part of the Bekkaa valley, including a slate factory. It may be that there were one or two appropriate military objectives amongst those attacked, but our view of the attack on Liban Lait leaves us to be extremely doubtful as to whether the Art. 53.2 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.

We know that 300 families lost their main or only income from the bombing of Liban Lait. We do not have employee figures for the other factories, other than Lamartine and the 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 of hundreds of families with the consequential reliance upon whatever aid is available for an indefinite period is its own humanitarian disaster.

For our part, we were unable to discern the putative military advantage which would have accrued as a result of these attacks on commercial premises in the Bekkaa valley. It is, of course, possible that 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, we again conclude that the overall attacks upon factories in the Bekkaa valley was unlawful. We have sought information from the Israeli government. Until a response is received, we would class this as a provisional conclusion.

We do not have sufficient information as to the scale of damage to commercial premises in other parts of the country to draw any safe conclusions, but would note that, if it proves to be the case that this behaviour has been replicated widely, this would constitute a wide and unjustifiable attack of a very serious nature.



## **CHAPTER 6: OTHER TARGETS**

Our examination of the attacks to date has concentrated upon hard targets, i.e. infrastructure, civilian installations and suchlike. We have reported upon the consequential human costs for the civilian population.

This chapter will deal with specific attacks upon human beings and individual houses, largely in the South. It will recount the information given to us during the course of our travels. We do not currently have access to Israeli intelligence which may have prompted some or all of these attacks, but we note the requirement under international law to weigh the potential cost to civilian life and the need not to act capriciously upon uncertain intelligence.

Our approach in this chapter is different from elsewhere in this report. In large part, we do not have sufficient information to determine why a particular target was chosen, so we have allowed the accounts of the villagers to speak for themselves. Only where there appears to be a clear case have we ventured to draw any conclusion.

### **El-Ghasaniya**

We were brought to a house in **El-Ghasaniya** which had been blown up by the Israelis in an attack which took place at 3 o'clock in the morning. Eight people were killed, four injured.<sup>30</sup> Many were teenagers. Israel had on numerous occasions promised to clear up everything south of the Litani River. El-Ghasaniya is quite a distance north of the Litani River. There was no evidence of any rocket launch sites, military installations, placements of munitions ( i.e. no scorch marks, bunkers or signs of secondary explosions which we could detect: NB we are not military experts ). This area seemed to be of no physical or military significance. A local told us that the attack took place at 3 AM and as they went to look for survivors, the Israelis started firing at them again.

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<sup>30</sup> See figs. 66 to 69

We spoke to a lady called Teresa in a house nearby<sup>31</sup>. She was a lady in her late 20s whose husband been killed in the El-Ghasaniya strike. Originally from Liberia, she has been living in Lebanon for over 20 years. She has 2 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. It was owned by an old generous and welcoming lady who used to allow everyone stay at her home, where some people sheltered for safety. Teresa and her children were at her cousin's house at the time, as her husband thought it would be safer if they went there. The rest of villagers fled this area, she told us, and went to the main part of the town where more people were gathering. Nobody knew what to do, they were all scared and people just began fleeing to the main town. She told us that there were no HB fighters in the area and that it was usually a safety zone in the past, with other villagers fleeing their homes to come here.

Our provisional view is that this action was unlawful.

### **Qana**

We visited **Qana**, where over 28 civilians, including 13 children below the age of 12 (including a 9 month old girl), were killed after an Israeli air strike on a residential site at 2 a.m. on the 30<sup>th</sup> July, 2006<sup>32</sup>. Homes were completely destroyed. One man we spoke to told us how his wife, his mother, his brother and nephews were killed in the raid. Others told us of their own relatives who died. The remains of a disabled person's scooter stood hauntingly beside the wall<sup>33</sup>.

The men, women and children who were killed were, we were told, seeking shelter from Israeli bombardment elsewhere.

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<sup>31</sup> See fig. 69

<sup>32</sup> See figs 70 to 73

<sup>33</sup> See fig. 73

Again, we could find no evidence whatsoever of any military equipment, weapons, or launch-sites. The villagers told us there were no weapons stored here or rockets being launched from here. Human Rights Watch researchers who visited the site on the 31<sup>st</sup> July 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 the 30<sup>th</sup> and 31<sup>st</sup> July reported seeing any evidence of HB military presence in or around the home around the time that it was hit. Rescue workers recovered no bodies of apparent HB fighters from in or near the building. Israel claims to have footage of a lorry coming in the compound carrying missiles and launch pads. But after studying the terrain, we were unable to find corroboration for this allegation.

1. The area underneath the site which was allegedly used to store the rockets has not actually been touched - it is all solid concrete. There was no indication that weapons had been stored there, all we were able to note was a cess pit for sewage.

2. We examined the road in detail and it seemed virtually impossible for a lorry to enter the compound. We 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.

3. 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.

4. On the 2nd and 5th days 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, we entertain significant doubts as to the IDF explanation advanced. We have written to the Government of Israel seeking further information. Our provisional conclusion is that this was unlawful..

### **Marouahine**

Next we arrived at a small village in **Marouahine**. Here we met an elderly lady named Maryam Abdallah<sup>34</sup>. Her family are very simple tobacco-farmers. This was evident from the amount of dried tobacco both outside and hanging within the remains of her home. On the 15th July, at 7am, the Israeli Air Force gave the villagers 2 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<sup>35</sup>, the villagers were refused shelter. They decided to go in civilian convoys to the nearest village, Umm al-Tout. Maryam and her daughter were in one car. Her husband was in one pick-up truck with Maryam's son, daughter-in-law and 6 grandchildren, the youngest being only 2 1/2 years old. During their journey, they were fired upon by the Israeli Navy (whose ships were blockading the Lebanese coast) and, she told us, any survivors trying to flee were strafed by gunfire. In total 27 villagers were killed here, including 14 children. The car Maryam was in was not hit but did not stop as they were too frightened to do so. Homes were also blown up in the Israeli airstrikes.

We could see no sign of any military fortifications, structures or weapons. HB fighters had not been in the village according to Maryam. The villagers are Sunni and have long-standing tensions with HB.<sup>36</sup> It was just a small tobacco farming community with extremely limited means. What is

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<sup>34</sup> See figs. 74 and 75

<sup>35</sup> See fig. 76

<sup>36</sup> 'Fatal Strikes: Israel's Indiscriminate Attacks against Civilians in Lebanon' *Human Rights Watch* (Aug 2006)

evident from the testimonies we received is that Israel gave them specific instructions to leave the village and when they did, they were killed.

On the evidence available to us, this appears to have been an attack upon a convoy which was acting in accordance with 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. Our firm view is that the attack on the vehicles was unlawful. We further conclude that the subsequent strafing of it, when it should have been clear that it was a convoy including many non-combatants, was clearly unlawful. We do not have sufficient information to enable us to form any conclusions in relation to the attack on the village itself.

Maryam repeatedly pointed to pictures stuck to the wall outside her house asking “why” and telling us that this was all she had left of her family. Perhaps the IDF will be able to answer her question. We could not.

### **Yaroun**<sup>37</sup>

**Yaroun** is rather different from many of the other villages. Most of the property owners here are living abroad. It is a very well built area with an exceptional standard of housing. We saw some devastation and the effects of some attacks. We met an ex-patriot called Muhammad Farhad, who is now living in the US. He was in the US when his father’s home here was struck by Israeli missiles on the 14th August, the day before the ceasefire. The house next to his was targeted (he does not know why – he says that it was civilian) but this 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 2 young nieces who were only 5 years old and 7 months old respectively. The latter’s body was eaten by a dog and the bits of flesh and limbs found outside the house later. His 76-year old father died while lying on the bed, the entire

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<sup>37</sup> See figs. 77 to 81

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.

Most of the houses belonged to ex-patriates and were of very high standard. It is very difficult to imagine someone storing missiles in a house after spending half a million dollars on it. We came across a villa which the Israeli army made into their own base, shovelling soil and sand around it to protect it<sup>38</sup>. According to local villagers if there were any fighters inside these houses, it was the Israeli army.

We are unaware of any purported justification for this attack. Our provisional view is that it was unlawful.

### El Qaa<sup>39</sup>

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, we visited a fruit farm. This was about as far as it is possible in Lebanon to be from Israel without being in Syria. We spoke to the watchman on the farm, who recounted an attack upon the farm. On the 4<sup>th</sup> August, 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 hiding from the heat.

Our inspection of the site revealed nothing which was consistent with the storage of arms there.

What we were told by the watchman was that the vast majority of the dead workers were seasonal

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<sup>38</sup> See fig. 82

<sup>39</sup> See figs 83 to 88

workers from Syria and nearly all Kurds. The remains of their shattered lives were still evident. At least 26 people were killed.

The ethnic makeup of the dead strongly militates against this building being used by HB. There is no support for the suggestion from the IDF that this was some form of warehouse. It was clearly in the middle of a fruit farm and the sad remnants of personal possessions told their own story.

We have come to the firm conclusion that this attack was unlawful.

## **CHAPTER 7: CLUSTER MUNITIONS**<sup>40</sup>

Whilst we did not inspect any sites where there were unexploded cluster bomblets or ERW, 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. We nevertheless feel that it is necessary to consider the evidence relating to the manner of use of this weapon in the present conflict.

On 15 September, we interviewed Colonel Mohammad Fehmi, the Director of the National Demining Office (NDO) of the Lebanese Armed Forces who provided us with 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 utilized some 1,800 cluster bombs in its offensive against Lebanon in the recent conflict.<sup>41</sup> The Haaretz 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”. The amount of cluster submunitions released were 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 use of them<sup>42</sup>.

As of 13<sup>th</sup> September, the Electronic Mine Information network had identified 482 locations at which cluster bombs had been used. Their latest map of the locations is included at 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.

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<sup>40</sup> Figure 59 depicts examples of cluster submunitions

<sup>41</sup> Meron Rappaport reports in the Haaretz on 12<sup>th</sup> September, 2006, <http://www.haaretz.com/hasen/spages/76781.html>

<sup>42</sup> BBC, quoting Chris Clerk, head of UN mineclearing operations in Lebanon, 26<sup>th</sup> September, 2006



It is reported that the rate of failure of the cluster munitions deployed by IDF was in the order of 40%<sup>43</sup>. This is a very high figure and represents a continuing legacy of death for the civilian population. According to Colonel Fehmi of the NDO, this is the average failure rate for the older type of cluster submunitions. The average failure rate for the newer cluster submunitions is about 10% and they are thus considered more humane, relatively speaking. For Israel to have deliberately employed the use of older cluster submunitions with a far greater failure rate indicates a complete disregard for human life.

As noted later, the IDF state 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<sup>44</sup>, they do not fit easily into the definition of land mines set out in that Convention.

However, the law does explicitly state that attacks should not be carried out indiscriminately.

One could therefore defend the use of cluster bombs when fired at an enemy deployed in fixed positions or massing in a particular area. This would be a discriminate use of such munitions and would be directed. However, the sheer weight of cluster bombs and also their use near to 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 near to population centres. In addition, Multiple Launch Rocket System (MLRS) platforms were heavily used in spite of the fact that they were known to be highly inaccurate.

MLRS is a track or tire carried mobile rocket launching platform, 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 kilometers. The rockets are designed to burst into submunitions

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<sup>43</sup> Idem

<sup>44</sup> 1997 Ottawa Convention.

at a planned altitude in order to blanket enemy army and personnel on the ground with smaller explosive rounds.

The use of such weaponry is controversial mainly due to its inaccuracy and ability to wreak great havoc 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 hit.<sup>45</sup>

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 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.

It is self-evident that cluster munitions have significant negative humanitarian effects. Firstly, they spread their submunitions over a broad area and secondly, as a result of the high failure rate of these submunitions, there are usually large numbers of unexploded bomblets that have the same effect as landmines.<sup>46</sup> 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<sup>47</sup>, during 4 weeks, from 14 August until 10 September, 87 people were victims of mines and unexploded ordnances, this almost equaling the yearly rate of the years 2000 and 2001. More children are being also affected causing 15 injuries and one death.

While it is perhaps correct to state that “International law does not include a sweeping prohibition of the use of cluster bombs”<sup>48</sup> we would respectfully submit that the absence of an express provision is a significant loophole in the current state of international law.

The IDF has claimed that in the course of the conflict ,HB were deliberately locating rocket launchers and fighting men in the vicinity of civilians. One can properly deduce therefore that when

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<sup>45</sup> Supra n42

<sup>46</sup> Human Rights Watch News , 18-8-2006(Human Rights Watch

<sup>47</sup> See Appendix ....

<sup>48</sup> IDF SPokeman’s Office response to the revelation that 1,800 cluster bombs were fired into Lebanon

a decision was made by the tactical commanders of the IDF to utilize this form of munition, it was in the knowledge that there would, or might, be a significant amount of civilian non-combatants in the targeted area. Despite finding no evidence of this in our observations and in the information we received from locals we interviewed in the towns and villages we visited while traveling the length of Lebanon, and there being no evidence from other organizations that have carried out similar exercises we cannot exclude the possibility that at some stage, in some locations, there may have been rockets fired at Israel from close to civilian inhabited locations, as a selection of video clips on the Israeli Ministry of Foreign Affairs website seems to show. *The available information suggests that if this was the case then it was only on very limited occasions.*<sup>49</sup>

The statement of the Israeli Minister of Justice to the effect that anyone remaining in the south was linked to terrorism, yet again, chimes with the evident preparedness to use this type of munition close to civilian areas.

On 30<sup>th</sup> August 2006, at the Convention on Conventional Weapons (CCW), Steve Goose, the Director of Human Rights Watch Arms Division stated the following key findings:<sup>50</sup>

- Israel used cluster munitions extensively in south Lebanon, with particularly heavy use in the final days prior to the ceasefire.
- The density of cluster munition contamination in south Lebanon in the immediate post-conflict period appears to exceed that of Iraq, Afghanistan, or Kosovo at the same stage.
- Israeli cluster strikes frequently hit towns and villages, including many sizeable locations; these sites were apparently deliberately targeted.
- Israel primarily employed surface-delivered cluster munitions, especially 155mm artillery projectiles, as well as Multiple Launch Rocket Systems (MLRS). An apparently smaller number of very old air-dropped cluster bombs were also used.
- The number of hazardous unexploded submunition duds is very large and the failure rates for Israeli submunitions appear in many cases to be very high.

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<sup>49</sup> HRW report: Volume 18. No 3(E) op.cit., pp 33-34

<sup>50</sup> Convention on Conventional Weapons, 15<sup>th</sup> Meeting of the Group of Governmental Experts, 20 August 2006, Geneva, Switzerland

- Little is yet known about civilian casualties caused by cluster munitions at the time of attack, but there have been numerous civilian deaths and injuries caused by submunition duds since the ceasefire. Submunition duds and other explosive remnants of war have impeded the return home of many Lebanese and have hindered relief efforts.

Mr. Goose went into some detail about the type of cluster munitions used and the amount of submunitions that had been located and destroyed (some 2,171 by UN Mine Action Coordination Centre, South Lebanon alone) up to 29<sup>th</sup> August 2006.

As stated above, 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 landmines.

It can be argued that cluster bombs come within the category of “other devices” under Art. 3 of the 1980 UN Convention, Amended Protocol II, in that they are “...of a nature to cause superfluous injury or unnecessary suffering.”<sup>51</sup> Given their failure rate ( which, although variable, is inherent ), their nature is such that many victims will be civilians unrelated to the fighting, after the fighting has concluded. This would appear to be superfluous injury. 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.”

The lack of clarity requires addressing urgently. We would add our voices to those who call for a new protocol or the suitable amendment of 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. 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.

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<sup>51</sup> Art. 3 (3).

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 at Appendix, Figure 60, amounted to deliberate or indiscriminate targeting of civilians and we therefore condemn the policy itself as unlawful.

Finally, the head of the UN mineclearing operation in Lebanon reports 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 to us 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 HB, with serious humanitarian consequences. This would ignore the needs of the civilian population, who cannot safely bring in their crops. Alternatively the IDF simply do not have accurate maps or coordinates of the areas where they deployed these munitions, which would suggest indiscriminate rather than planned bombing.

## **Chapter 8: INFLAMMATORY REMARKS / INCITEMENT**

We have already referred to statements made by Israeli officials, such as the Israeli Minister of Justice, Haim Ramon<sup>52</sup>, and Lt.General Dan Halutz of the IDF. The statements themselves were inflammatory and we consider that they ought to be considered carefully in the light of responsibility for putting plans into action or inciting IDF soldiers to carry out orders which were, arguably under International Humanitarian Law, illegal.

International Law and convention as regards War Crimes and Crimes against Humanity have continued to develop over the last 60 to 70 years. There is ample authority to suggest that the issue of war crimes has been considered since the Middle Ages, through the American Civil War and both World Wars. For the purposes of this report only it perhaps suffices to commence with the Treaty of Versailles in 1919 which established the right to try and punish individuals responsible for “violations of the laws and customs of war”.<sup>53</sup> The Hague and Geneva Conventions followed the same theme, providing rules to deal with the conduct of war.

Following the Nuremburg and Tokyo trials after the end of the Second World War, the General Assembly of the United Nations met<sup>54</sup> and affirmed “the Nuremburg principles.” These principles sought to set out the process by which one could assess individual criminal responsibility for crimes against peace, war crimes and crimes against humanity. In short, the principles expressly established a legal basis for trying individuals accused of the crimes set out in Article 5.<sup>55</sup>

By its affirmation the General Assembly had admitted the principles into international law. There then followed the establishment of ad hoc tribunals for the prosecution of crimes in conflict situa-

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<sup>52</sup> See page 10

<sup>53</sup> Treaties of Peace, 1919-1923

<sup>54</sup> In 1950

<sup>55</sup> Crimes against peace, War Crimes and Crimes against Humanity.

tions<sup>56</sup>. All these principles and rules were amalgamated into a single body of law within the Rome Statute of the International Criminal Court (ICC). Needless to say not all countries, including Israel, have ratified the Rome Statute or accepted the Jurisdiction of the Court. Nevertheless it is clear that there is a body of law which is either part of International Law or the conventions relating to the same as regards the conduct of parties, individuals or bodies, in a situation of conflict or war. As such, we feel it necessary to comment on the remarks, to which we have already referred, made by high ranking political and military officials in the course of the conflict.

Whilst it can be argued that the Rome Statute itself does not apply in view of Israel not being a signatory to it, it is clear that the Instrument itself is a codification of what is considered to be the laws and customs applicable in International Armed Conflict. Clearly this conflict was an international one, in terms of two countries being involved, although as we have stated previously it was in law an asymmetrical conflict in view of the HB militia being the party against whom, initially at any rate, Israel was said to be in conflict. We have therefore set out sections of the Statute which we believe apply for reference. It is our view that these ought properly to act as a firm guideline for any state or party engaged in armed conflict and that accordingly the laws and customs codified therein can be applied in national courts in Israel and Lebanon. The reality however is that there is a need for this to be capable of being applied internationally.

Article 25 of the Rome Statute provides ICC jurisdiction for individual criminal responsibility where a person has:

- a) committed a crime<sup>57</sup>,
- b) ordered solicited or induced the commission of such a crime (actual or attempted),
- c) aids , abets or otherwise assists in its commission or attempted commission

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<sup>56</sup> ICTY (Former Yugoslavia) and ICTR (Rwanda); Sierra Leone and East Timor

<sup>57</sup> Article 8 of the Rome Statute defines war crimes and other serious violations, para. 2(b) lists those serious violations.

or

- d) in any other way contributed to the commission or attempted commission of such a crime

Article 8 of the Statute defines war crimes and “other serious violations”<sup>58</sup> of the laws and customs applicable in international armed conflict within the framework of international law. For present purposes the following paragraphs of Article 8 (2)(b) are of particular import:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities
- (ii) Intentionally directing attacks against civilian objects, that is objects which are not military objectives
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission....
- (iv) Intentionally launching an attack in the knowledge that such attack will cause will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives  
.....
- (xi) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places

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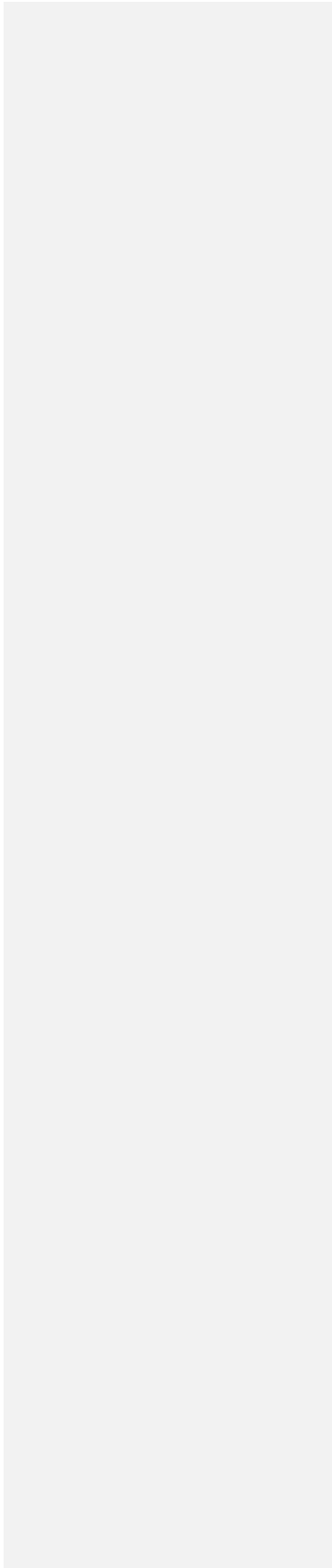
<sup>58</sup> Article 8 (2)(b)



where the sick and wounded are collected, provided they are not military objectives

.....

- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations.



## **CHAPTER 9: CONCLUSIONS**

Throughout our considerations, our primary focus has been upon the effect which military action has had upon its civilian victims. We have not commented upon the way in which each of the combatants dealt with its military opponents. This is because we have neither the information to come to any conclusions, nor do we see it as within the scope of our enquiry. We remind combatants, however, that there are clearly defined rules dealing with the treatment of combatants.

We are also conscious of the fact that international law, more than any other branch of law, operates within a political dimension where the degree to which states have been prepared to limit their freedom of action and where classification and condemnation of war crimes depends upon political loyalties.

Nevertheless, the work of the UN and international jurists in developing rules, for example, banning the use of landmines shows that significant elements of the international community are recognising that the dictates of humanity demand that military action, when taken, must be carefully controlled so that it is properly targeted, uses weapons which do not cause unnecessary damage and suffering, and is only taken as a last resort.

We further appreciate the difficulties of enforcing the rules of war where one is dealing with a body, such as HB, which is not a state and which will never be a signatory to any international protocols. Nevertheless, we repeat our call for action to be taken to deal with the situation where one or more of the combatants is not a state. **Recommendation 1: The time has long since come when the international community should explicitly recognise that all combatants should be bound by a common set of rules, founded upon respect for the basic human rights of others, and that such rules will be enforced.**

There is, in our view, a particular burden upon political and military leaders to institute and act in accordance with a culture whereby such rules are valued and observed.

In the particular circumstances of this conflict, we were struck by the yawning chasm between what is contained in the IDF literature about the way in which military action should be conducted and the rhetoric of those political and military leaders who should have been ensuring that those rules were followed. There was, on the part of both IDF and HB, an escalating rhetoric of threat of reprisals, followed by action, which was completely unacceptable.

If one considers, for example, the statement of the Israeli Minister of Justice cited at page 10 of this report and discussed in chapter 8, this seems to be an incitement to troops to act in a way which was bound to amount to war crimes against the remaining civilian population.

Similarly the threat by the IDF Chief of Staff to put Lebanon back 20 years demonstrated a lack of respect for the rules of war and the need to protect civilian objects and population which was deeply disturbing.

The statement at page 10, reported by the BBC, to the effect that any village from which a rocket was fired would be completely destroyed was, in our view, a statement of a policy which could not be legal. It was an explicit threat of collective punishment and reprisal.

Any policy of destroying 10 buildings for each Israeli building hit was, again, simply unlawful.

All of these statements were calculated to encourage troops and commanders to act without appropriate restraint and respect for the law and the interests and rights of civilians.

**Recommendation 2: A mechanism whereby those who incite such action or set such policy can be brought to book would be a significant step towards ensuring that those who have the direction of military action, whether from the political or military standpoint, ensure that respect for civilian life and rights are a necessary part of the conduct of warfare, not window dressing which can be discarded at will.**

**The reach of such rules should be universal.** This would also act as a necessary restraint upon the political and military leadership of HB, whose own escalating rhetoric similarly inflamed the situation.

**Recommendation 3: We have called, in Chapter 7, for action to be taken to either give clear control over the situations in which cluster bombs can be deployed or, given the failure rate demonstrated in this military action, simply banned. They present similar dangers to land mines and urgent action is required.**

The United Kingdom, in incorporating the European Convention on Human Rights<sup>59</sup>, has explicitly recognised the particular status of a charter of human rights as a document which, in legal terms, has an enhanced normative status. It is not our task to deal with political arguments such as might point out the effect upon the UK's reputation of seeming to give greater weight to the human rights of people from some national and ethnic backgrounds than others, but we were struck by the universal resentment in Lebanon towards the policy of allowing Israeli arms shipments to pass through British airports.

**Recommendation 4: We strongly urge that states supplying, or approving the supply of, arms to combatants should give careful and explicit consideration to the record of the combatants in complying with the basic rules of warfare, particularly in relation to the rights and interests of civilians.**

We recognise, of course, the difficulty inherent in a situation where one of the combatants is not a state and therefore will be obtaining arms from sources who may not be inclined to act in accordance with this recommendation, but it seems to us that it is not unreasonable to say to a state ( such as Israel ) which does have need of arms for legitimate self-defence, that any future supplies will be dependent upon demonstrating a clear undertaking to obey the basic principles which we have set out in Chapter 1. Legitimate means of self-defence would not be inhibited by such action.

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<sup>59</sup> Human Rights Act, 1998.

### **Brigadier General Dan Halutz**

We have already referred to statements made by the IDF Chief of staff at page 9 of this report. In our view these statements were clearly inflammatory and phrased such as 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) 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).

### **Major General Amir Eshel**

This IAF spokesman was quoted in the International Media<sup>60</sup>, ten 12 storey buildings would be struck in the Dahieh region of south Beirut in retaliation for each rocket falling on Israel. From our observations this seems exactly what happened as a result of IAF attacks on the region. Clearly, Major General Esher was rallying his troops and predicting what would happen in Lebanon once the IAF's efforts had been expended. Again, we conclude that these were inflammatory remarks aimed at suggesting that Israel would retaliate against the attacks made by IDF, with very little, if any, thought being given to the civilian population. Accordingly we conclude that this too amounts to a breach of Article 25 (3)(b). If this was a policy, as the results seem to suggest, it was clearly unlawful. At the lowest, it was a clear incitement to unlawful action.

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<sup>60</sup> See pages 9 to 10 of this report

**Haim Ramon – Israeli Minister of Justice**

This minister suggested that all those remaining in southern Lebanon after the IDF warning for them to leave the area were “terrorists who are related in some way to Hizbullah” and that massive firepower should be used in the area before any ground troops were sent in.

This statement makes the bold assertion that the IDF had, indeed, given sufficient notice to the said villagers, and that the unilateral timeframe imposed by the IDF enabled them to attack areas in the south indiscriminately. Our observations suggest that the statement was followed up by action consistent with it. The minister’s statement does however fail to take into account the realities that faced the people of the south. They did not necessarily have the fuel, transport or the means to comply with the IDF edict for them to leave and, as we have already mentioned, some of those who did attempt to comply lost their lives in attacks as they tried to do so.

In our view this too amounted to the ordering of, or inducement to, the commission of a crime, or other serious violation envisaged by the Rome Statute.

Accordingly, in all the above cases, we find that, were the Rome Statute to apply, the individuals named herein 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. We also conclude that, as the Rome Statute was created in order to codify the laws and customs applicable in international armed conflict as stated above, the general state of international law is that these are prohibited acts which are themselves actionable particularly in view of the fact that the military action by Israel seems to be exactly in line with these statements. There can be no justifiable reason for making, let alone making good, this sort of threat in a military conflict between parties to an international conflict, asymmetrical or otherwise.

In all the circumstances, therefore, we conclude that statements of this nature are in breach of International Law as it relates to the conduct of an International Armed Conflict and ought, properly, to be actionable as unlawful or reprehensible behaviour from a party to an international conflict.

Appendices referred to herein are to be found in a separate PDF here:

<http://ihrc.org.uk/activities/campaigns/10370-the-33-day-war-summer-2006>

A further report made by one team member on a subsequent visit is presented below.

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#### NOTE ON FURTHER VISIT

1. These are notes of information I derived from my further visit. In this visit there was more emphasis on gaining access to political figures and therefore on the schedule of visits, were the President of the Republic, the Prime Minister and the Deputy to the speaker of the Parliament as well as senior figures in the opposition, General Michele Aoun and the Deputy General Secretary of HB. The group included MPs from Westminster and Scottish executive, therefore there was an element of Politics, but some useful information as well
2. So far as the use of Depleted Uranium, the President did confirm that the weapons such as depleted uranium containing munitions, and phosphorous bombs were used in the conflict. It is to be noted that at the time the IDF were denying the use of Phosphorous bombs, but have now admitted their use following mounting evidence, to now suggest that they are not banned in international law as they are not chemical weapons. The last time I checked the periodic table Phosphorus was there, and it kills like all other chemical weapons do, in fact it is more lethal than mustard gas. So if not banned it should be banned.
3. The president also confirmed a high level of radiation around sites of bombs, suggesting use of nuclear tipped missiles, I visited the Pre-Fabricated housing plant, the crater was 22 metres across, and 15 metres deep, it was certainly more than the 3.5 tonne bomb, especially when considering the colour of the remaining soil, which is no longer reddish but more purple. Other weapons included the use of vacuum munitions to bring down tower blocks, the Dahia.
4. All persons visited including the prime minister, who is anti HB and a US ally did however confirm that the idea that Dahieh or other civilian areas being used to store weapons or fighters were false propaganda. They all said just look at the scene and try and find any weapons. They all criticised the press who simply without going to see the aftermath, and were stuck in the safety of down town Beirut, or lapping up Israeli propaganda. General



Aoun, who in 1990 was anti Syrian, said the Israeli's deliberately targeted civilians so that the People would turn against HB, and also try and incite a new civil war. In fact at one stage his home was going to be targeted, so that his calming non-sectarian influence could be eliminated. The Planes sent to bomb his home were at last minute diverted to strike the Fidar and other 2 bridges in east Beirut, as the Israeli's thought it was too big a risk kill the leader of the Christian Maronites.

5. The politicians were all challenged about the firing of rockets, into Northern Israel, and whether pro or anti HB, they were all in agreement, on the necessity of doing it. They were of the view that the majority of the rockets landed in militarily sensitive areas, and they were never accessible to the world media. The one which drifted off course were not deliberately targeted at civilians, and if the plan was to kill civilians why fire not so powerful missiles at areas which were known to have been evacuated. The idea of deliberate targeting of civilians was rejected, by all sides. What they did however say was 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. The parties took the view that the Human Rights organisations, were living in a surreal world, and did not have to live with the reality of having their own civilians slaughtered, and the president and some Lebanese Parliamentary deputies, commented, by saying that the Allies during World War 2 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 be slaughtered.
6. Finally all parties were of the view that those who claim that the Lebanese were deliberately targeting civilians had to look at the figures and compare. The Israeli's lost 43 civilians and 127 soldiers, when it is said that HB were deliberately targeting Civilians with inaccurate weapons. Whilst the Lebanese lost 1600 civilians and 150 HB fighters, at the hands of the IDF, who claim that they were using sophisticated and smart bombs. If they were accurate munitions then the Israeli's were deliberately picking their targets to kill as many civilians as they could. The arguments put forward certainly persuaded many of the MPs who were visiting.
7. There are also a few issues which were also clarified. The first was the fact that the Dahieh had nothing more than HB, political and social welfare offices. Such places were not places

which had any military significance, as the army command was locally based in south. Targeting of civilian areas is prohibited in international law period. Even if it was permissible to kill a senior member of HB, did it necessitate in the murder of dozens of civilians too? The IDF were simply targeting areas on very weak information, eg: they struck a mosque with 23 tonnes of bombs killing dozen civilians only because the car of a senior member of HB was parked near it. Therefore on pure speculative whim they thought that the whole leadership may have been at the mosque. As it turned out there were none.

8. Other examples include poor intelligence, or guess work, was the assault on the Al Hikma hospital in Baalbeck. They thought that the 2 captured soldiers may have been receiving treatment there. So they had a huge aerial drop. They arrived there was no one other than the nurse, who they shot. The Maronite mayor in the area, said that there was no one at the hospital, no weapons, nothing, and even if the IDF were entitled to conduct the raid under rules of International Law, they were not allowed to ransack place. Asked where could the weapons which Israelis showed on TV have come from, he said that it is not beyond the Israeli army who are masters of propaganda, to have planted them there, pointing out the fact that AK 47 is so widely available. In any event he said if there were fighters, then why was it that the fire fight broke out in the village several Km away and not around Hospital. He said that following raid local army and HB units tried to get to hospital to cut the commandos off, but the way was cut by bombing of roads few Km away. He said all that happened was having got there and so nothing they decided to thieve the money in safe, and trash place. He said to justify the raid they ended up taking few local villagers, and then release them later.
9. I then visited the pre-fabricated housing factory. The Dalal housing company, was the largest in the region, employing 700 people. It cost 25 million US dollars to set up. The manager who is a Maronite, confirmed that the Israelis had deliberately targeted the factory to settle scores. The company had become a thorn in the side of Israeli companies. They had won a contract to supply US troops in Afghanistan and Iraq, beating off Israeli competition. Further they became so big that they were competing with Spanish companies to supply units in North Africa including Morocco, and in middle of June, they beat off competition from a Joint Israeli and Turkish company to supply 5000 pre-fabricated 2 bedroom units to the Kurdish autonomous authority in Northern Iraq. The contract was worth \$10 million dollars and was signed a matter of weeks before the factory was bombed.

10. The manager took for a tour, it was made up of 2 factory units running side by side and covering 25000 m sq. in each unit the IAF, had fired 4 missiles, each missile leaving a hole 22 m across, and 15 m deep. He pointed out that the economic targets were carefully studied so that they chose which weapons to use to cause complete destruction of target. In his factory it needed 8 3.5 t missiles, where as Liban Lait covering smaller area only needed 4 and La-martine needed only 3 smaller missiles. He to his credit got off and started to re-build, and he was now running at about 25% of pre-war capacity, having rebuilt from new a part of one of the hangers. He is now employing some 270 people, and hopes to be fully up and running in 18 months, although he accepts that he has lost out on the pre-war contracts.
  
11. The manager was of the view that the nature of the craters suggest use of non conventional weapons but no one came to take any soil samples.