

**International Humanitarian Law violations in the current
conflict opposing Hezbollah (Lebanon) to the State of Israel**

Preliminary report

August 1st, 2006

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Introductory note

The Lebanese-Israeli conflict which started on July 12, 2006 has sparked loud criticisms regarding violations of International Humanitarian Law. NDH-ALEF's will be issuing a series of reports covering International Humanitarian Law violations within the conflict.

This first report will examine specificities of the ongoing international armed conflict and the laws which govern it. It will also examines the relation of Hezbollah, the guerilla group, to international humanitarian law, the issue of the treatment of prisoners of war, the protection of civilians and its two correlates: indiscriminate attacks and access to humanitarian relief.

The legal issue of "military objectives" and "civilian property" will be examined later on. This report will be updated as and when necessary. It will be complemented by another one on the "respect of the Human rights of the displaced persons".

The Lebanese-Israeli conflict which started on July 12, 2006

On July 12, 2006, Hezbollah, the Lebanese Shiite armed group, launched an attack on Israeli positions, captured two Israeli soldiers on the other side of the Blue Line (the UN embarked line after the Israeli withdrawal from Lebanon on 25 May 2000). Nine Israeli soldiers were also killed. In response, Israel launched a large scale operation on Lebanon.

The death toll of the ongoing conflict has mounted as of August 1st to 800 Lebanese civilians killed and 51 Israeli civilians killed (casualties from sources differ). The Israeli army has been accused of disproportionate and indiscriminate attacks in its operations in Lebanon. The Israeli Defense Forces have said that they were doing "everything to minimize" civilian casualties in Lebanon. Hezbollah randomly launched its rockets on targets within Israel and has been accused targeting civilians and civilian objects within Israel.

Specificities of the conflict

Air and missile warfare. Both parties to the current conflict use rockets and missiles. Hezbollah's missile arsenal remains low tech, while Israel is using high precision guided missiles, launched from Israeli military vessels, fighter jets and military helicopters. But such means of combat cannot be employed without intelligence information from the ground necessary to distinguish between a civilian object and a military objective. This mean of war is not infallible and NDH-ALEF believes many civilian casualties haven fallen because of the false qualification of civilian objects as military objectives.

The use of aerial and missile technology as a strategic means for warfare has developed tremendously in recent years while the impact of this development has not been adequately reflected in the current legal framework. No manual compared to the San Remo manual (applicable to maritime warfare) exists to develop IHL rules specific to this type of warfare. Yet, the principles of humanitarian law remain applicable.

Guerrilla warfare. The type of organization of Hezbollah and relation with the population is close to that of a guerrilla force, but also reflects its social and political role within the Shiite community. This has led to the targeting of dual-use objectives by the Israeli Defense Forces, without necessarily qualifying as military objectives according to IHL principles. Hezbollah is leading a guerrilla warfare against IDF currently operating on the Lebanese side of the Lebanese-Israeli of the border. Guerrilla warfare has been apprehended by additional protocol 1.

Access to information. Insufficient and some inaccurate media coverage of ongoing hostilities and of Israeli targets in Lebanon made access to information hard. Secrecy and psychological war (propaganda) are two aspects of this conflict. The distinction between the "military" and the "civilian" becomes difficult to establish without ground investigation, due again to dual-use objectives. We have tried in our report to take into account these difficulties and will point out ambiguities. NDH-ALEF calls upon the Government of Lebanon, medics, media and civil society organizations to clearly investigate the nature of Israeli targets in Lebanon and the relation of Hezbollah to these targets in order to facilitate the role of jurists investigating IHL violations.

Human rights. The core section of human rights law remains applicable during these exceptional circumstances, but NDH-ALEF, as human rights NGOs, advocate for the respect of the full scope of human rights in areas in Lebanon less affected by the conflict, notably in institutions hosting internally displaced persons all over the country.

An international armed conflict

The Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia established in the 1995 Tadic case that an international armed conflict exists whenever there is a resort to armed force between States. The Israeli-Lebanese conflict that has started 12 July 2006 is not between two States, but between the State of Israel and Hezbollah, a non state Lebanese armed group. Yet, the conflict remains an international armed conflict due to the following elements:

1. The cross border attacks and the targeting by the Israeli army of Lebanese infrastructure and regions, affecting all the population, not just Hezbollah.
2. The State of Israel has affirmed on several occasions since hostilities began on July 12 that it considers itself to be responding to the actions of the sovereign state of Lebanon, not just Hezbollah.
3. The legal status of Hezbollah within Lebanese governmental structure and practice; Hezbollah has always been accepted as a legitimate Lebanese resistance movement working for the liberation of Shebaa farms and to free Lebanese prisoners in Israeli jails. This has been the case in the governmental declaration of the current cabinet, as well as of past cabinets; despite the fact that the government has declared itself not accountable for Hezbollah's actions on July 12.

Applicable law

The full scope of international humanitarian law governs this conflict. Lebanon has ratified all four Geneva conventions and its two additional protocols. The *Islamic Resistance*, Hezbollah's military wing, is bound by these rules being a Lebanese armed group launching attacks from within the Lebanese territory.

Israel has not ratified the additional protocol 1, but remains bound by the full scope of international customary law governing international armed conflict. Most rules governing international armed conflict have acquired customary law status, as documented by the ICRC's two-volume publication on customary international humanitarian law (Cambridge University Press, 2005). Israel recognizes the authority of additional protocol 1, as demonstrated in the latest communiqué by the Israeli Ministry of Foreign Affairs on July 25th, where it implicitly defends the conformity of its actions to its principles in its conflict against Lebanon.

Is the Lebanese army a party to the conflict? Despite recurrent attacks by Israeli Air Force against Lebanese army installations and bases, the Lebanese army has not responded except for limited anti crafts shootings. The ongoing hostilities are presumed to be still limited to date to Israel and Hezbollah. Lebanese army members will be presumed in our report as being non-combatants and thus enjoy the immunity of non-combatants.

Hezbollah, the guerilla group

Guerrilla fighters and tactics have been taken into account by the protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol 1 - 1977). Islamic Resistance fighters qualify as combatants according to article 44,

paragraph 3, of Additional Protocol 1 which takes into account the guerrilla *modus operandi*¹. They are bound as such by the full scope of international humanitarian law and they are also protected by it. Violations of IHL rules by Islamic Resistance combatants shall not deprive any of them of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, as long as he respects the conditions of article 4, paragraph 3 of additional protocol 1.

What about Hezbollah's institutions other than the *Islamic Resistance*?

Hezbollah is a political party represented in the government and has deputies in the parliament. It runs social, welfare and medical institutions. It also has its own media institutions. Israel seems to be targeting the Shiite movement as a whole, labeling it a "terrorist organization", and not distinguishing between its combatants (according to article 44 of AP 1) and Hezbollah party members who do not participate to hostilities and considered to be civilians.

NDH-ALEF would like to highlight the following three remarks:

1. Only combatants can be attacked. Combatants are determined by article 44 of the additional protocol. Civilians shall enjoy the protection afforded, unless and for such time as they take a direct part in hostilities. During this conflict, as well as during the two large scale operation in July 1993 and April 1996 against Lebanon, Israeli Defense Forces have targeted the homes of Hezbollah officials who have political and social duties and do not necessarily take part directly in the hostilities. This is a violation of the principle of distinction between civilians and combatants.
2. International humanitarian law stipulates that each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. But according to media reports, Hezbollah has scattered throughout the south in natural caves, tunnels, and homes, instead of storing weapons and ammunition in vulnerable stockpiles. Storing weapons in civilian objects (homes) makes them military objectives. Civilian objects are protected against attack, unless and for such time as they are military objectives.
3. The Israeli Ministry of Foreign Affairs has published on its website a legal document entitled 'Responding to Hezbollah attacks from Lebanon: Issues of proportionality' (25 July 2006). In this report, Israel quotes legal scholars in defending the legality of its strikes in Lebanon and uses legal literature applicable to international armed conflict between two States. Hezbollah is not a State and its institutions are not those of a State. And the Lebanese State is not at war with Israel, and Lebanese institutions – including the Beirut airport and fuel tanks – are not those of Hezbollah. IHL principles and rules should be adapted to the type of warfare and parties engaged in this conflict.

¹ Article 44, paragraph 3, of Additional Protocol 1 "In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

(a) during each military engagement, and

(b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate."

Treatment of prisoners of war

Civilians and persons *hors de combat* must be treated humanely. Captured combatants must be granted prisoner of war status and treated accordingly.

The two Israeli army seized by Hezbollah on July 12 are prisoners of war and Hezbollah has the obligation to respect the third Geneva Convention and additional protocol 1 rules applicable to prisoners of war, notably their right to be visited by ICRC delegates. Same rules apply to Hezbollah combatants captured by Israel.

Protection of civilians: The principle of distinction

The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. In order to respect this obligation, parties to the conflict must avoid any indiscriminate attacks, respect the principle of proportionality and must take precautions in attacks.

Indiscriminate attacks involve ignoring the risk involved in the attacks. The principle of proportionality states that incidental loss of civilian life or damage to civilian objects cannot be excessive in relation to the concrete and direct military advantage anticipated. Precautions in attacks are defined as a failure to exhaust reasonable options for minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects (i.e. collateral damage).

We will not be able to be exhaustive in our report with regards to violations of these three principles. In this preliminary report, we will address indiscriminate attacks, not distinguishing between civilians and combatants in the conflict opposing Israel to Hezbollah and Lebanon. We will also address the question of access to humanitarian relief. In the upcoming reports, we will examine violations to the principle of distinction between civilian objects and military objectives during the ongoing conflict, as well as other IHL violations.

Indiscriminate attacks

Indiscriminate attacks are those:

- (a) which are not directed at a specific military objective;
- (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;

Consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. (Additional Protocol 1, Article 51 “Protection of the civilian population”).

The Israeli army claims employing methods and means which demonstrates high precision. Yet, many of its attacks are questionable with regards to international humanitarian law. Hezbollah’s missile launching also poses serious questions as to its respect of IHL. This first report will expose the following five major cases: the excessive number of Lebanese civilians killed; the initial attacks against the Beirut southern suburb; attacks that occurred afterwards against the southern suburb; the Marwaheen case; and Hezbollah’s targeting of Northern Israel cities.

The excessive number of Lebanese civilians killed

The excessive number of Lebanese civilians killed raises the question of the proportionality of the ongoing Israeli attack against Lebanon. It raises as well the question of the respect of Israeli Defense Forces of the prohibition of indiscriminate attacks.

Over 800 Lebanese civilians have been killed. All over Lebanon, whole families have been killed by bombings. Convoys of civilians fleeing the onslaught upon Israeli warnings have come under Israeli fire. The number of children exceeds, according to certain sources, 30% of the total number of civilians killed. People have been buried under the rubble of their homes and kept there for long periods before relief workers and Red Cross rescuers could get access to them.

The Qana massacre of July 30th 2006 raises once more the question of the internationality of such attacks. NDH-ALEF calls on a full, thorough and neutral investigation of these attacks in order to determine the circumstances leading to these violations of international humanitarian law, and the role of each of the warring parties with regards to the violations.

Initial attacks against the Beirut southern suburb

Israeli Air Force attacks against Hezbollah's stronghold, Hezbollah offices and Hezbollah leadership in the Beirut Southern suburb raise many questions. Article 51 of additional protocol 1 prohibits attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects.

The Beirut southern suburb was – before the destructive bombardments – a densely populated area. The Israeli Army sent warnings to the population asking them to evacuate their homes in the southern suburb. Despite such warnings, the area had a high concentration of civilian property. The initial attacks at the heart of the southern suburb, leading to the destruction of dozens of buildings, can be considered a breach of article 51 of additional protocol 1.

Article 51 may also be applicable to Israeli attacks against targets in residential areas and homes in the border villages of Khiam, in Tyre, and in Baalbek where similar destruction has been reported.

In all cases, these attacks violate the principle of proportionality which prohibits launching an attack which may be expected to cause incidental loss of civilian life, and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. Over 100,000 civilians are presumed to have lost their homes in the Beirut southern Suburb.

According to a news report, “even for a targeted strike on a bunker, 23 tons is a massive amount of ordnance; large ‘bunker busting’ bombs are generally 1 ton and are generally not used in such numbers. That 23 tons of ordnance were dropped on a single complex indicates the target's importance.”

“This is destruction of block after block of mainly residential areas. I would say it seems to be an excessive use of force in an area with so many citizens,” UN humanitarian coordinator Jan Egeland told reporters in the southern suburbs of Beirut.

Attacks against the Beirut southern suburb that occurred afterwards

After the initial destruction of Hezbollah's "security zone" within the southern suburb of Beirut, Israeli Air Force launched strikes on targets in the same area. These strikes were not directed at a specific military objective and constitute a clear violation of international humanitarian law and its prohibition of indiscriminate attacks.

According to news reports, Israeli Army chief of staff Dan Halutz has given the order to the air force to destroy 10 multi-storey buildings in the Dahya district (of Beirut) in response to every rocket fired on Haifa. Israel Defense Forces Chief of Staff Dan Halutz had declared previously that "if the soldiers are not returned we will turn Lebanon's clock back 20 years." These declarations, as well as those calling for the leveling of entire whole villages in Southern Lebanon through aerial strikes, are calls for violating IHL and demonstrate, in conjunction with the attacks against the civilian population and civilians objects, the intentional aspect of such attacks.

NDH-ALEF reminds all parties that "intentionally launching an attack in the knowledge that such attack will cause (...) damage to civilian objects (...) which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" constitutes war crimes according to article 8. 2 (b) (iv) of the Rome Statute establishing the international criminal court.

The Marwaheen case

On July 15th 2006, a number of families fled the southern Lebanese village of Marwaheen after the Israel Defense Forces warned them to evacuate ahead of a threatened attack. On the road leading to the coast through Chamaa, however, Israeli missiles struck a convoy of the civilians. Maps of southern Lebanon show this road to be the only direct route for escaping the dangerous border area.

Initial reports suggest that the mini-truck transporting the persons fleeing the population was not covered and it was clear to the Israeli army that the truck was transporting civilians, notably women and children.

The Marwaheen massacre raises the issue of the deliberate targeting of civilians by the IDF. This chapter of the Israeli attacks against Lebanon remains to be fully investigated to verify if it qualifies as a war crime.

Hezbollah's attacks against Northern Israel cities

Hezbollah has been targeting civilian localities as well as military targets. During the 1990's and after the Israeli withdrawal of 2000, Hezbollah has targeted civilian settlements in Northern Israel in retaliation – according to the armed group – for the targeting of civilian infrastructure and the civilian population in Lebanon. In the July 2006 conflict, Hezbollah fighters have widened the scope of their targets attacking Israeli cities never targeted before. A Hezbollah statement said, "In case the southern suburb of Beirut or the city of Beirut come under direct Israeli attack, we announce that we will bombard the city of Haifa and its environs."

All parties remain bound to international humanitarian law despite any violations by opposing party to its rules. Retaliation measures must never violate IHL. Hezbollah's missile attacks against Northern Israel constitute at best indiscriminate attacks, and at worst deliberate attacks against the civilian population. They are violations of international humanitarian law and could constitute war crimes. Attacks may only be directed against combatants. Further more, International Humanitarian law prohibits acts of violence the

primary purpose of which is to spread terror among the civilian population (Additional Protocol 1, Article 13).

Access to humanitarian relief

International humanitarian law stipulates that the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

Despite talks about humanitarian corridors and despite declarations by the Government of Israel, the south of Lebanon remained, until recently, inaccessible to humanitarian relief workers and to aid. Israel turned down a demand from the UN Emergency coordinator Egeland for a 3 days truce for humanitarian purposes. Thousand of Lebanese are trapped in their villages. The ICRC and *Médecins Sans Frontières* have reiterated – before the 48-hour suspension of Mideast aerial bombing – that passage of humanitarian relief for civilians in South Lebanon has been held back by Israel, and is partly due to ongoing Israeli attacks.

Israel has the legal obligation to allow humanitarian relief to reach all villages in South Lebanon. Humanitarian relief personnel must be respected and protected. Objects used for humanitarian relief operations must be respected and protected.

This has been a first report on International Humanitarian Law violations in the conflict opposing Hezbollah (Lebanon) to the State Israel which started on July 12, 2006.

Upcoming NDH-ALEF updates will deal with the respect of the distinction between civilian objects and military objectives by warring parties, considering the large number and wide range of Israeli targets in Lebanon. NDH-ALEF will also deal with the issue of specifically protected persons and objects and the question of the use of prohibited weapons in this conflict.

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