

The 33-Day War between Israel and Hezbollah

Written by {ga=jp-katib}

Monday, 16 November 2009 09:34

The following section addresses aspects of the rules of International Humanitarian Law (**IHL**), known as

jus in bello

, which govern the way each party to an armed conflict must conduct itself in the course of hostilities. It does not address whether Hezbollah was justified in attacking Israel or whether Israel was justified in attacking Lebanon for the conduct of Hezbollah.

The purpose is to provide rational and consistent guidance for those interested in gaining an objective appraisal of the one-month conflict between Hezbollah and Israel. Given the scope of IHL and our inability to conduct an on-the-field investigation, this section briefly highlights the rights of civilians and use of weapons in armed conflicts, as well as the findings of some local and international non-governmental organizations. Primarily, we have relied on the Four Geneva Conventions of 1949 with their First Additional Protocol of 1977 and the circulated results of Human Rights Watch (**HRW**), Amnesty International (**AI**) and the Foundation for Human & Humanitarian Rights/ Lebanon (**FHHR/L**)



The Rights of Civilians in Armed Conflicts

- ***Listing of Rights***

According to the Basic Rules of IHL in Armed Conflicts, “persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.” Two fundamental tenets of IHL then, are those of “civilian immunity” and the principle of “distinction.” They impose a duty to distinguish at all times in the conduct of hostilities between civilian objects and military objectives and between combatants and civilians and to target only the former [Art. 48, Additional Protocol I, 1977] It is forbidden in any circumstance to direct attacks against civilians; indeed, to do so intentionally amounts to a war crime [Art. 8.2 (b) (ii) of ICC Statute/ Rome Statute, 1998]

Civilians lose their protected status when they are engaged in hostilities. As the International Committee of the Red Cross (ICRC) puts it, direct participation in hostilities means: “acts of war which by their nature and purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces,” and includes acts of defense.

- ***Using Civilians as Shields***

IHL obliges all belligerents to avoid harm to civilians or civilian objects. In addition, parties to the conflict must to the extent feasible avoid locating military objectives, such as weapons, ammunition and headquarters, within or near densely populated areas. They must never use the presence of civilians to purposefully shield themselves from attack, which is a war crime. Under IHL, the crime of “shielding” has been defined as “using the presence of civilians to render certain points, areas, or military forces immune from military attack.”

According to HRW and several testimonies reported to the FHHR/L, Hezbollah did sometimes hide among civilians, breaching its duty to do everything feasible to protect civilians and possibly committing the war crime of deliberate shielding ¹. But even in situations of Hezbollah’s illegal location of military targets, or shielding, Israel must refrain from launching any attack that may be expected to cause excessive civilian loss in comparison

The 33-Day War between Israel and Hezbollah

Written by {ga=jp-katrib}

Monday, 16 November 2009 09:34

to the concrete and direct military advantage anticipated.

[1](#) *Indiscriminate Bombardment*, By Kenneth Roth, Executive Director Human Rights Watch, published in Jerusalem Post, August 20, 2006.

- *Dual-Use-Targets*

According to Article 52 (2) of Additional Protocol I of 1977, lawful attacks are only those where the targets by their “nature, location, purpose or use make an **effective contribution** to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a **definite military advantage.**”

As noted above, it is generally forbidden to direct attacks against what are called “civilian objects,” such as homes and apartments, places of worship, hospitals, schools or cultural monuments, unless they are being used for military purposes. Hence, the mere fact that an object has civilian uses does not necessarily render it immune from attack. It, too, can be targeted if it makes an “effective contribution” to the enemy’s military activities and its destruction, capture or neutralization offers a “definite military advantage” to the attacking side. However, such “dual-use” objects might also be protected by the principle of proportionality, that is, even when a target is serving a military purpose, the attacking force must refrain from attack if it would disproportionately harm the civilian population or be launched in a way that fails to discriminate between combatants and civilians. Where there is doubt about the nature of an object, it must be presumed to be civilian [Art. 52 (3), Additional Protocol I, 1977].

Testimonies reported to the FHHR/L claim that Hezbollah fighters launched missiles from rooftops and orchards adjacent to populated quarters in several southern villages, which often called for heavy and indiscriminate retaliation from Israel. In other cases, when the Israeli Defense Forces (IDF) saw a civilian home or vehicle that Hezbollah might use, it often bombed, even if, as in Qana, Srifa, Marwahin, or Aitaroun, there was no evidence that Hezbollah was in fact using the structure or vehicle at the time of attack [1](#). The IDF seemed to assume that, because it gave warnings to civilians to evacuate southern Lebanon, anyone who remained was a Hezbollah fighter. But giving evacuation warning, as required by IHL, does not mean that all civilians did in fact flee, nor does it relieve the attacker of the duty to distinguish between civilians and combatants and to target only combatants.

The 33-Day War between Israel and Hezbollah

Written by {ga=jp-katrib}

Monday, 16 November 2009 09:34

¹ Ibid.

The Weapons Used in the Conflict

- *Prohibited Weapons*

During the month-long conflict, evidence corroborated by HRW indicates that Israel has used cluster munitions in populated areas in Lebanon, especially in the South, and that Hezbollah has launched rockets containing thousands of metal ball bearings towards Israeli towns and cities, most extensively in Haifa.

Cluster munitions are weapons, delivered from the air or ground, that disperse dozens, and often hundreds, of sub-munitions over a large area, thereby increasing the radius of destructive effect over a target; these pose similar risks to civilians as antipersonnel landmines. Likewise, the use of rocket heads filled with metal ball bearings cannot be targeted precisely and are indiscriminate weapons when used in populated areas. Their use in rockets fired into populated areas appears intended to maximize harm to civilians.

The FHHRL is of the view that neither weapon should be used in or near civilian areas as a matter of IHL, because as HRW stated, "the wide blast effects of these weapons cannot be directed at military targets without imposing a substantial risk of civilian harm and the weapons cannot distinguish between military targets and civilians."¹ Hence, the use of such weapons by Israel and Hezbollah in civilian areas violated the prohibition on indiscriminate attacks and is therefore tantamount to a war crime. A recent report by AI underpins the case for a comprehensive and independent UN inquiry into grave violations of IHL committed by both Hezbollah and Israel during their one-month conflict. It carries on adding that "the serious nature of violations committed makes an investigation into the conduct of both parties urgent. There must be accountability for the perpetrators of war crimes and reparation for the victims."

¹

¹ See HRW press release, Lebanon: Hezbollah Rocket Attacks on Haifa Designed to Kill Civilians, July 18, 2006.

² See AI report titled: Deliberate destruction or 'collateral damage'? Israel's attacks against civilian infrastructure, August 23, 2006.

The 33-Day War between Israel and Hezbollah

Written by {ga=jp-katrib}

Monday, 16 November 2009 09:34

Jean Pierre Katrib is Member of the Foundation for Human & Humanitarian Rights (Liberator)