

# **ISRAEL/LEBANON**

## **ISRAEL AND HIZBULLAH MUST SPARE CIVILIANS**

### **Obligations under international humanitarian law of the parties to the conflict in Israel and Lebanon**

#### **Introduction**

The armed conflict between Israel and Hizbullah continues to be characterized by killing of civilians, mass forced displacement and attacks on civilian infrastructure. The evidence so far, including the pattern of attacks, the extent of civilian casualties and statements by the parties indicates that serious violations of the laws of war have been committed and continue to be committed by both sides in the conflict. Both sides must comply with fundamental tenets of international humanitarian law, including the principles of proportionality, distinction and civilian immunity. They must also comply with international criminal law.

The following paper is a summary of the relevant rules of international humanitarian law and international criminal law with which the warring parties are legally bound to comply. It is a framework for examining accountability for violations of international humanitarian law, including individual criminal responsibility for war crimes and the responsibility of states and individuals to provide full reparations to the victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Israel and Lebanon also have obligations under applicable international human rights law. These obligations are not analysed here. This paper does not examine the legality or legitimacy of the resort to force itself by either party under international law (i.e. *jus ad bellum*).

The paper contains a number of important recommendations designed to end the killing of civilians by both sides and to bring to justice those responsible.

#### **International humanitarian law and war crimes**

International humanitarian law is the body of rules and principles which seek to protect those who are not participating in the hostilities, including civilians but also combatants who are wounded or captured. It limits the means and methods of conducting military operations. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of international humanitarian law. Israel and Lebanon are parties to the 1949 Geneva Conventions, but neither is a party to the Protocol I relating to the Protection of Victims of International Armed Conflicts (Protocol I – adopted in 1977.) Grave breaches of the Geneva Conventions and of Protocol I are war crimes. As an armed group, Hizbullah is not a party to international conventions.

But it is a party to the conflict and it and its members are bound by applicable customary international humanitarian law. The fundamental provisions of Protocol I, including the rules cited below (unless otherwise noted) are considered part of customary international law and are therefore binding on *all* parties to the conflict. The rules of customary international humanitarian law are largely reflected in Article 8 of the Rome Statute. For example, the US delegate to the UN Preparatory Commission for the International Criminal Court expressly stated in June 2000 that the adoption of the Elements of Crimes further defining Article 8 “was an historic accomplishment that cannot be overstated” and that the USA was “happy to join consensus in agreeing that this elements of crimes document correctly reflects international law”.

### **Amnesty International’s demands:**

All parties to the conflict must issue clear instructions to their forces:

- prohibiting any direct attacks against civilians or civilian objects, including in reprisal;
- prohibiting attacks which do not attempt to distinguish between military targets and civilians or civilian objects (indiscriminate attacks);
- prohibiting attacks which, although aimed at a legitimate military target, have a disproportionate impact on civilians or civilian objects;
- prohibiting attacks using inherently indiscriminate weapons;
- requiring that they ensure humanitarian access for civilians in need;
- to treat humanely all prisoners, the wounded and those seeking to surrender – prisoners must never be killed or held as hostages
- to take all other necessary measures to protect the civilian population from the dangers arising from military operations, including not locating military objectives among civilian concentrations;
- to punish all breaches of the laws of war by ensuring those responsible are brought to justice and to ensure reparations are provided to victims of violations.

All other High Contracting Parties of the Geneva Conventions should take action to “ensure respect” for international humanitarian law, in accordance with common Article 1 of the Conventions.

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## 1.0 No direct attacks on civilians

Article 48 of Protocol I sets out the "basic rule" regarding the protection of civilians (often referred to as the principle of distinction) in the context of international armed conflict, but the rule is the same for non-international armed conflict:

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

No states, and very few armed political groups, admit to deliberately targeting civilians. Direct attacks on civilians are often justified by denying that the victims are actually civilians. Civilian immunity is also undermined by the manner in which definitions of military objectives/civilian objects are interpreted by attacking forces.

In practice, of course, civilians are targeted in most conflicts. In addition, unfortunately, the current conflict between Israel and Lebanon is one in which civilians are overwhelmingly the victims of the hostilities. Israeli officials have denied deliberately targeting civilians, but they have launched attacks on civilian objects, including essential infrastructure, without adequate explanation of why the objects they have attacked could be making an effective contribution to military action.

Hizbullah leader Sheikh Sayyed Hassan Nasrallah suggested that rocket attacks against civilian population centres were justified by illegal Israeli actions: "When the Zionists behave like there are no rules and no red lines and no limits to the confrontation, it is our right to behave in the same way."

According to the Rome Statute, intentionally directing attacks against the civilian population as such or against individual civilians not taking a direct part in hostilities is a war crime. (Article 8 (2) (b) (i)) The states negotiating the Rome Statute did so on the basis that the list of war crimes in the statute reflected customary international law.

## 2.0 Targeting – military versus civilian objects

According to Protocol I, Article 52 (1): "Civilian objects are all objects which are not military objectives." Article 52 (2) defines military objectives as "those objects which 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."

Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, "it shall be presumed not to be so used" (Article 52(3)).

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The authoritative Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 published by the International Committee of the Red Cross (ICRC Commentary) interprets the expression “definite military advantage anticipated” by stating that “it is not legitimate to launch an attack which only offers potential or indeterminate advantages.”

Overbroad interpretations of military advantage are often used to justify attacks aimed at harming the economic well-being of the state or demoralizing the civilian population in order to weaken the ability to fight. Such interpretations that distort the legal meaning of military advantage undermine civilian immunity and other fundamental principles of international humanitarian law, posing a severe threat to civilians. As the commentary on the German Military Manual explains: “If weakening the enemy population’s resolve to fight were considered a legitimate objective of armed forces, there would be no limit to war.”

Israel has deliberately and extensively targeted public civilian infrastructure, including power plants, bridges, main roads, and Beirut’s airport. Such objects are presumed to be civilian. Even if it could be argued that some of these objects qualify as military objectives (because they serve a dual purpose), Israel is obligated to ensure that attacking these objects would not violate the principle of proportionality. For example, a road that can be used for military transport is still primarily civilian in nature. The military advantage anticipated from destroying the road, must be measured against the likely effect on civilians who are trying to flee the conflict.

The fact is that the destruction of infrastructure is having devastating consequences for the civilian population indicates that the bombing campaign is disproportionate. It also raises the strong possibility that Israel may have violated the prohibition against targeting objects indispensable to the survival of the civilian population.

Israel has attacked the offices of Al-Manar, Hizbullah’s television station, and the transmitters of several other Lebanese television stations. This is another example of a dangerous distortion of the meaning of military advantage. The fact that Al-Manar television broadcasts propaganda in support of Hizbullah’s attacks against Israel does not render it a legitimate military objective. Only if the television station were being used to transmit orders to Hizbullah fighters or for other clearly military purposes could it be considered to be making “an effective contribution to military action”. Even then, Israel would need to take required precautions in attacking it and choose the manner least harmful to civilians.

Intentionally directing attacks against civilian objects is a war crime (ICC Statute, Article 8 (2) (b) (ii)).

### **3.0 No indiscriminate or disproportionate attacks**

Article 51(4) of Protocol 1 prohibits indiscriminate attacks, including:

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“those which employ a method or means of combat which cannot be directed at a specific military objective” and “those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol”.

Consequently, in each case, indiscriminate attacks “are of a nature to strike military objectives and civilians or civilian objects without distinction.”

Article 51(5) defines a further type of indiscriminate attack:

“an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

Disproportionate attacks, as well as indiscriminate attacks generally, occur when armed forces disregard the principle of distinction and attack a military target without regard to the likely consequences for civilians. They might use weapons which are not capable of hitting a military target with precision -- either by their nature or as a result of the circumstances in which they are employed. Or their tactics or method of attack might show a disregard for civilian lives.

As of 25 July more than 300 civilians have been killed in Lebanon and thousands have been injured. According to the Save the Children, 45% of those killed have been children. Israel claims that it has been launching surgical strikes against military targets using precision weapons. The death and injury toll and the massive damage to civilian objects indicate that some attacks may have been indiscriminate or disproportionate.

Hizbullah’s attacks on Israeli towns and cities have killed at least 17 civilians and injured scores of civilians. It is unclear whether any of Hizbullah’s rocket and missile strikes have been aimed at military targets. If they were, they would be indiscriminate attacks, given the nature of the weapons used.

Intentionally launching a disproportionate attack is a war crime (ICC Statute, Article 8 (2) (b) (iv)). Launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects is a war crime (ICRC, Customary International Humanitarian Law, Vol. I: rules; Rule 156, p589).

#### **4.0 Precautions in attack**

Under Protocol I, “In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.” (Article 57). Where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used” (Article 52(3)).

Article 57 (2) specifies precautionary measures required:

“With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

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- (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
- (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
- (iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
- (b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
- (c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

Israel has attacked sites that it claims were used to fire rockets into Israel, resulting reportedly in the deaths of many civilians. Even if Israel verifies that rockets have emanated from a particular location, it needs to take necessary precautions before attacking. This includes determining whether the objective remains military in character (if a rocket has been fired from the roof a civilian house and then the rocket launcher and combatants leave, it cannot be considered a military objective), ascertaining whether civilians are in the vicinity and ensuring that if they proceed with the attack it will not be disproportionate. Since Israel will have quickly perceived a pattern of Hizbullah fighters removing rocket launchers after firing them, this would suggest that its forces would anticipate little or no military advantage from pursuing this strategy of attack, which is needlessly risking civilians and civilian objects.

Reports that Israel has warned all civilians living south of the Litani River to leave suggest it is distorting the concept of effective warning. If anything, such warning to over 400,000 people seems to result in spreading panic among the civilian population, rather than enhancing their safety. Some may simply not be able to leave.

There were reports of Israel giving more specific warning earlier in the conflict. But in several of these instances Israeli forces then attacked the very civilians who had been warned, while they were fleeing. Its bombing of roads and bridges has also made it extremely difficult for civilians in south Lebanon to flee north following warnings from Israel. In any case, even when warning is given, this does not relieve Israel from taking other required precautions to ensure its attack respects IHL. There cannot be any "free-fire" zone.

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## 5.0 Humanitarian access and prohibition of starvation

The use of starvation of the civilian population as a method of warfare is prohibited. Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited (Protocol I, Article 54 (1,2)). The parties to the conflict must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief (Protocol I, Article 70). They must respect and protect medical personnel and their means of transport (Protocol I, Articles 15 and 21).

Israel is imposing a naval and air blockade of Lebanon. It has attacked Beirut's airport and bombarded the main road out of the country to Syria and dozens of other roads. The humanitarian situation for civilians remaining in the south is worsening by the day, including in the southern port city of Tyre, which is also having to cope with a large influx of internally displaced from villages in the south of the country. The destruction by Israel of electricity power plants and other infrastructure has left hospitals, clinics and other medical facilities without the necessary resources and supplies at a time when they have to cope with a massive increase in casualties. Ambulances and rescue crews have reportedly been attacked by Israeli forces as they have tried to reach victims of the bombing.

While blockades are not prohibited *per se*, they must strictly comply with the right of the civilian population in need to receive humanitarian relief, as set out in the Fourth Geneva Convention and Protocol I. Israel reportedly agreed on 22 July to allow humanitarian supplies through the naval blockade. But this will not address the plight of civilians trapped in isolated towns and villages where the fighting has been most intense.

Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by wilfully impeding relief supplies, is a war crime. (ICC Statute, Article 8 (2) (b) (xxv)). Intentionally directing attacks against humanitarian personnel, installations, material, units or vehicles is a war crime. (ICC Statute, Article 8 (2) (b) (iii)). Making medical or religious personnel, medical units or medical transports the object of attack is a war crime (Article 8 (2) (b) (ix and xxiv)).

## 6.0 Rights of the displaced

The displacement of the civilian population is prohibited unless the security of civilians involved or imperative military reasons so demand. Parties to a conflict must prevent displacement caused by their own acts, when those acts are prohibited in themselves.

According to the UN at least 500,000 Lebanese have already been internally displaced by the conflict. More than 150,000 have crossed the border into Syria. Israel has been dropping leaflets warning all civilians in southern Lebanon to evacuate the areas south of the Litani River.

Tens of thousands of Israeli civilians have fled northern Israel for fear of further rocket and missile attacks by Hizbullah.

To the extent that much of the displacement in Lebanon and Israel has been caused by indiscriminate attacks or other unlawful attacks, the displacement itself is also unlawful.

## **7.0 “Human Shields”**

Warring parties also have obligations to take all feasible precautions to protect civilians and civilian objects under their control against the effects of attacks by the adversary. Protocol I requires each party to avoid locating military objectives within or near densely populated areas (Article 58 (b).) This rule is reflected in the Israel-Lebanon Ceasefire Understanding of 1996.

Protocol I also expressly prohibits the use of tactics such as using “human shields” to prevent an attack on military targets. Article 51 (7) states: “The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.”

However, the Protocol also makes it clear that even if one side is shielding itself behind civilians, such a violation of international law “...shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians.”

Furthermore, Article 50(3) of Protocol I states that: “The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

Hizbullah reportedly have been launching rockets and missiles from residential areas, thereby endangering civilians in the vicinity. Their fighters are also said to be sheltering among civilians in villages and cities, and Israeli officials claim that Hizbullah are storing weapons in civilian homes.

Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations is a war crime. (ICC Statute, Article 8 (2) (b) (xxiii)).

## **8.0 No use of indiscriminate weapons**

Article 51 (4) Protocol I prohibits indiscriminate attacks, including “those which employ a method or means of combat *which cannot be directed at a specific military*

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*objective*” and “those which employ a method or means of combat *the effects of which cannot be limited as required by this Protocol*” (emphasis added).

Consequently, in each case, the attacks “are of a nature to strike military objectives and civilians or civilian objects without distinction.”

The ICRC Commentary to the Protocols mentions “long-range missiles which cannot be aimed exactly at the objective” as examples of weapons which cannot be directed at specific targets and refers to bacteriological weapons and to the poisoning of sources of drinking water as obvious cases of weapons which “by their very nature have an indiscriminate effect.”

Indiscriminate effects can derive from factors such as the design of the weapon, the intention and professionalism of those using it, and the circumstances in operation at the time of the attack (weather, visibility, reliability of intelligence, etc). An indiscriminate weapon can therefore be defined as a weapon deemed to have indiscriminate effects either because of inherent characteristics or because of the way it tends to be used, or both. Where evidence shows that a weapon has a high potential for indiscriminate effects, for whatever reason or combination of reasons, then banning the weapon might be the most effective way to prevent such indiscriminate effects.

Hizbullah’s use of Katyusha rockets and longer-range missiles against Israeli cities and towns violates the prohibition on indiscriminate attack, even when they appear to have been directed at legitimate targets, such as military bases. This is due to the inherent inaccuracy of these weapons at long distances.

## **8.1 Anti-personnel landmines**

AI opposes the use, manufacture, stockpiling and transfer of anti-personnel landmines because of their inherently indiscriminate nature.

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (‘Ottawa Mine Ban Treaty’) has been signed by 150 countries. It came into force on 1 March 1999. Neither Israel nor Lebanon is a party to the treaty.

According to the Landmine Monitor, mines and other ordnance were used extensively in Lebanon from 1975 to 2000, including by Israel and Hizbullah, leaving behind a legacy of anti-personnel and anti-vehicle mines, with the heaviest concentration of mined areas in the south, in territory formerly occupied by Israeli forces. An estimated 75 percent of the more than 400,000 suspected landmines still in the ground are in the immediate area of the “blue line,” the UN-defined border between Israel and Lebanon, affecting more than 90,000 inhabitants. The remaining 100,000 mines are littered throughout the remainder of the country. In June 2005, Lebanon stated that 3,975 landmine casualties (1,835 killed and 2,140 injured) had been identified since 1970.

## 8.2 Cluster weapons

Cluster bombs or shells scatter scores of bomblets, or submunitions, over a wide area, typically the size of one or two football fields. These can be dropped by aircraft, or fired by artillery or rocket launchers. Depending on which type of submunition is used, between about five and twenty per cent or more cluster bomblets fail to explode. They are then left behind as explosive remnants of war, posing a threat to civilians similar to anti-personnel landmines.

AI is calling for a moratorium on the use of cluster weapons. These bombs present a high risk of violating the prohibition of indiscriminate attack, because of the wide area covered by the numerous bomblets released and the danger posed to all those, including civilians, who come into contact with the unexploded bomblets.

Human Rights Watch (HRW) has reported that Israeli forces fired artillery cluster shells on the Lebanese village of Blida on 19 July, killing one and wounding 12 civilians. According to HRW, the type of cluster munition likely to have been used in this attack is the M483A1 Dual Purpose Improved Conventional Munitions, which are U.S.-produced and -supplied, artillery-delivered cluster munitions. The M483A1 artillery shells deliver 88 cluster submunitions per shell, and have failure rate (dud rate) of 14 percent.

Israel also used cluster munitions in Lebanon during the 1970s and 1980s.

## 8.3 Depleted Uranium Weapons

Depleted uranium is a chemically toxic and radioactive heavy metal used particularly in armour-piercing ammunition. DU weapons are denser than conventional arms, meaning they can penetrate heavy armour more easily. They burn up on impact, creating a radioactive dust, the effect of which remains the subject of safety debates. Like other heavy metals, DU is toxic and constitutes a health risk independent of any residual radioactivity.

AI is calling on governments to consider refraining from the transfer and use of depleted uranium (DU) weapons. There is much controversy over their long-term effects. Some studies suggest that DU dust, which remains in the vicinity of targets struck by DU weapons, poses a significant health risk if inhaled or ingested. AI calls for a moratorium on their use pending authoritative conclusions on their long-term effects on human health and the environment.

According to media reports, the USA is transferring GBU 28 bunker-buster bombs containing depleted-uranium warheads to Israel for use against targets in Lebanon.

## 8.4 Other weapons

In addition to the prohibition on the use of inherently indiscriminate weapons, IHL prohibits weapons that cause superfluous injury or unnecessary suffering (e.g. blinding laser weapons). The use of other weapons is governed by the fundamental principles of IHL. They should not be used to target civilians and should not be used in indiscriminate or disproportionate attacks.

There are reports that Israel has used incendiary weapons, such as white phosphorous shells, in attacks in Lebanon. Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (a Protocol additional to the 1980 UN Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons) prohibits the use of such weapons against civilians. And it prohibits making any military objective located within a concentration of civilians the object of attack by incendiary weapons. According to the ICRC, it is unclear whether this latter rule is customary law.

Israel is not a party to Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons.

There are also reports that Israel has used vacuum bombs in this conflict. These are a type of thermobaric weapon, also called fuel air explosives. This type of weapon introduces an aerosol cloud of volatile gases in the target area, which is then ignited to create a fireball that sucks air out of the atmosphere and produces lethal effects, such as severe burns and lung collapse, to individuals in the target area. Like all weapons of modern warfare they pose a danger to civilians and could be used in indiscriminate or other unlawful attacks. Their great destructive potential raises concerns that they are more likely to result in indiscriminate killing.

An example of the horrific toll on civilians of such weapons came in 1982, during the Israeli army's siege of Beirut. The Israeli air force dropped a vacuum bomb on an apartment block in which they believed PLO leader Yasser Arafat was hiding. Around 200 people were reported to have been killed in that attack. Arafat is said to have left the building moments before the attack.

## 9.0 Prisoners of War

The Geneva Convention (III) relative to the Treatment of Prisoners of War (POWs) defines who is eligible for POW status and gives detailed provisions on the treatment that should be afforded to POWs.

According to Article 4 of GCIII, Prisoners of War include "persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
- (2) Members of other militias and members of other volunteer corps, including those

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of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates;
- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;
- (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power...

Article 5 requires that: "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

With regard to treatment of POWs, Article 13 of Geneva III states that "prisoners of war must at all times be treated humanely." And according to Article 14, "Prisoners of war are entitled in all circumstances to respect for their persons and their honour." No prisoner of war may at any time be sent to or detained in an area where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. [Geneva III, 22, 23]

Hizbullah captured two Israeli soldiers on 12 July. Israel reportedly has captured several Hizbullah fighters in recent days. Neither Israel nor Hizbullah have in the past treated as POWs each other's captured combatants. Amnesty International believes that Israel and Hizbullah should treat enemy combatants they have captured as POWs. Accordingly, they should be treated humanely. They must never be held as hostages. And they should be granted access to the ICRC without delay.

Torture or inhuman treatment is a war crime (ICC Statute, Article 8 (2) (a) (ii)). Taking of hostages is a war crime (ICC Statute, Article 8 (2) (a) (viii)). Killing or wounding a combatant who has surrendered is or is otherwise *hors de combat* is a war crime (Article 8 (2) (b) (vi)).

## 10.0 No impunity

Article 86 of Protocol I requires that "Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so."

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Article 91 makes clear that each party to the conflict "shall be responsible for all acts committed by persons forming part of its armed forces". Accordingly, a "Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation."

Individuals, whether civilians or military, regardless of rank, can be held criminally responsible for serious violations of international humanitarian law. Commanders can be held responsible for the acts of their subordinates. In the words of Article 86(2): "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Superior orders cannot be invoked as a defence for violations of international humanitarian law although they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials which followed World War II and is now part of international customary law.

There are several possible mechanisms for investigating and suppressing violations of international humanitarian law committed during the course of the conflict between Israel and Hizbullah:

***By the parties***

Each party to the conflict must bring to justice any of their nationals suspected of being responsible for serious violations of international humanitarian law during military operations. If investigations into possible violations lead to prosecution of suspected perpetrators, AI calls for proceedings to be conducted in accordance with international standards for fair trial and without the possibility of the death penalty. States whose forces have committed violations must ensure that victims receive adequate redress, including compensation, through a mechanism set up for this purpose.

***By other states***

Other states should exercise their obligations to conduct criminal investigations of anyone suspected of grave breaches of international humanitarian law during the conflict. If there is sufficient admissible evidence and the suspect is within their jurisdiction, such states should prosecute or extradite the suspect to another state willing and able to hold a fair trial without the possibility of the death penalty.

In addition to being obliged to exercise universal jurisdiction for grave breaches of the 1949 Geneva Conventions and Protocol I, states are permitted to exercise universal jurisdiction for other serious violations of international humanitarian law. If, following

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an investigation, there is sufficient admissible evidence and the suspect is within their jurisdiction, states should prosecute, in a fair trial, or extradite the suspect to another state willing and able to hold a fair trial.

***By the International Humanitarian Fact-Finding Commission***

All parties to the conflict should commit themselves to seek the services of the International Humanitarian Fact-Finding Commission (IHFFC), established under Article 90 of Protocol I, to investigate incidents where serious violations of the Geneva Conventions and the Protocol are alleged to have taken place. Scrutiny by the IHFFC will be essential to ensure that the facts are independently and authoritatively established and appropriate follow-up action recommended. It can also act as a deterrent against further abuses by the parties to the conflict. The IHFFC may decide, if appropriate, to ask the UN Security Council to refer the situation in Israel and Lebanon to the Prosecutor of the International Criminal Court.

In order to avail themselves of the services of the Commission, states should ratify Protocol I and make a declaration under Article 90(2)(a) which provides that states parties to the Protocol "may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to enquire into allegations by such other Party, as authorized by this Article."

States which have not ratified Protocol I, such as Israel and Lebanon, may nevertheless declare their readiness to use the Commission, as provided for under Article 90(2) (d) which explains that "In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned". The IHFFC is composed of "fifteen members of high moral standing and acknowledged impartiality", including legal and military experts, judges and medical doctors drawn from all regions of the world. The Swiss Government, in its capacity as the depository of the Geneva Conventions and Protocols, acts as the secretariat for the Commission.

***By the International Criminal Court***

Neither Israel nor Lebanon has ratified the Rome Statute of the International Criminal Court. The situation in Israel and Lebanon would not come under ICC jurisdiction unless it was specifically referred to the court by the UN Security Council, in accordance with Article 13 (b) of the Rome Statute. Israel and Lebanon could recognize the Court's jurisdiction by making a declaration under Article 12 (3) of the Rome Statute.