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The Israeli Defense Forces in the 21st Century: Humanitarian Complier or Human Rights Violators? An assessment of IHL compliance in the Second Lebanon War and Operation Cast Lead

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*The Israeli Defense Forces in the 21st Century: Humanitarian
Complier or Human Rights Violators?*

An assessment of IHL compliance in the Second Lebanon War and Operation Cast Lead

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Fall 2012

Switzerland: International Studies and Multilateral Diplomacy

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Preface

My reasons behind writing this paper are very personal and its conclusion will have a direct impact on my future. I am Jewish by blood and have always had a strong connection with the tradition even though I do not consider myself religious. I have respected more so the traditions and culture that have come from the faith of my mother. The fact that my grandfather, great grandfather, and the dozen more before him, carried on these same rituals that I carry out on Shabbat or on the high holidays, is beyond the realm of being special. Many cannot say that they can share something so similar with their ancestors. It is rare that you have an identity as an American outside of sharing your American citizenship with another 310 million people. Not that I am not proud to be an American, I am very much so, I just have always felt however that I was a Jew before an American. There are only around 16 million Jews on the planet out of 7 billion people. It's a very unique identity. Yes, like many others I stand for American democracy, the freedom it brings, and its attempt to do the right thing around the globe (keyword "attempt"). I would die for my country if necessary but it is not so urgent that I come to America's aid as quickly as possible. Israel is a different story.

As I write this right now hundreds of rockets and mortars have been raining down upon the civilian population of Israel from terrorists in the Gaza Strip. Hezbollah waits to the north bent also on the destruction of Israel. Their benefactor Iran wishes for the Jewish state to be wiped off the face of the earth. It is not such a friendly place for Israel to be located. But it is there and it's not going anywhere. I will never forget something one of uncles said to me this summer when I was in Israel serving in an international volunteer Israeli Defense Forces program, Sar-El. He said "my grandfather told my father when he was a boy that he was going off to war so that he would never have to in the future. My father said the same thing to me in yet I still had to fight. I told my kids that, but I know they will still have to serve and risk their lives and there isn't much hope that their kids will not have the same fate." I looked at his young kids, my other cousins, playing in the yard and couldn't imagine saying that to my kids or anyone in my family. There is something that is deeply wrong when everyone *has* serve in the military because the defense of the country demands it. It's not like Switzerland where they never have to actually spill blood to protect their way of life. I felt like it was my obligation to protect something that is in my heart and soul permanently in order to try to make it so that the next generation doesn't have to serve to risk their lives. I wanted to make that sacrifice so that they don't have to just because of the location of their home or what name they call G-d. I would think that anyone who was human would think that that is wrong in the world we live in today. Just as it's wrong that Palestinians live under occupation in West Bank, essentially in a big prison. Many evil men have tried to exterminate the entire Jewish population throughout their 3500 year history and to think that there are still many men who wish to still do the same is unacceptable. Leaving out the politics of the situation in Israel and just focusing on the principle is very important. I have a strong sense of honesty and morality which is why the answer to this paper is vital to my decision of serving in the IDF after I graduate in May. I want to be a part of something that is noble and just. Protecting those who can't protect themselves

is a call to service and I hear that call to defend those that share my identity. No decision is emanate or final. This paper will examine modern history with an emphasis on the IDF's cooperation with the noble principles of International Humanitarian Law and will attempt to answer the question of how they conduct the defense of Israel against an enemy who hides among its own population, essentially holding them hostage. I do not agree with Israel's occupation of the West Bank and do believe the Palestinian people should have the right for true self-determination. The issue is complex but the fact of the matter is clear to me, no child born into any society should be condemned to serve in the military in order for his existence to continue. I want to do my part to ensure that my cousin doesn't have to pick up a weapon to defend himself and his family. Israelis *and* Palestinians deserve that chance to be born into a world without being threatened, just like every American gets that opportunity.

The IDF has had a difficult mission to accomplish in their last two conflicts. Dealing with a much stronger force than expected in 2006, that force being Iranian trained, funded, and armed Hezbollah, hidden amongst the population of southern Lebanon. In December of 2008 increased rocket fire at the Israeli civilian population from within the sixth most densely populated place on earth was at the hands of Hamas. Both groups are political and social organizations in addition to their militant arm. The fighting environments were very difficult and the IDF walked a thin line distinguishing the combatants amongst the bystanders. The IDF made major mistakes that cost lives in both conflicts. However, at the same time, they went to extraordinary efforts to ensure that civilians weren't harmed. This is an assessment of those conflicts and how they should be looked at. War is chaos and we are all geniuses after the fact. This paper will attempt to properly identify the relationship the Israeli Defense Forces' and International Humanitarian Law had during the Second Lebanon War in 2006 and Operation Cast Lead in Gaza in the winter of 2008-2009.

Skyler Scoggan

21 November 2012

I: Introduction

“To defend the existence, territorial integrity, and sovereignty of the state of Israel. To protect the inhabitants of Israel and to combat all forms of terrorism which threaten the daily life¹.”

Mission of the Israeli Defense Forces

Jewish immigrants seeking refuge from Europe during their *Alyiah*² could not have established their state in a more dangerous location. In the 64 year history of Israel there were many times where its destruction seemed imminent and its sustainability difficult to foresee continuing under such circumstances. But each time the people of Israel stood strong against the forces that wished for their permanent exit from the holy land and the Jews continued to do what they had done for the better part of their 3500 year existence, they survived. Controversy has always surrounded the Israeli Defense Forces (hereafter IDF) when concerning human rights and the circumstances under which they defend the state of Israel. Since the end of the Yom Kippur War in 1973, the IDF has been the most dominant army in the Middle East, which has allowed the world to view their opponents as the victim being aggressed against. This paper will weigh the IDF's conduct during two recent conflicts, the 2006 Second Lebanon War and Operation Cast Lead³ in Gaza in the winter of 2008-2009, and will compare the facts which will determine if the IDF did enough to prevent civilian casualties (compliance with IHL) and were legally correct in using force to protect Israel. Comments and reports will be cited from different and credible angles of the conflicts with ones that are predominantly accepted by the international community. Both of the conflicts have been judged harshly based on the perceptions of the media, who occasionally distort the facts and have an agenda of their own. An unbiased

¹ IDF doctrine on IDF official webstie. See <http://www.idf.il/1497-en/Dover.aspx>

² Aliya is the immigration of Jews to the land of Israel and is a base principle of Zionism. The first large wave of Jewish immigrants coming to Israel began in 1882.

³ Also known as the Gaza War.

approach will be put forth with the right tools necessary to make an accurate assessment of the conflicts and their contexts.

II: A Threatening Neighborhood

During the 1948 War of Independence the Jews were able to protect themselves adequately and collectively for the first time since the destruction of the Second Temple by the Romans in 70 CE. The primary reason that Israel has been able to survive in a neighborhood of enemies for so long is because of the ability and strength of the Israeli Defense Forces (IDF), along with the morale strength of Israeli society that it instills. The IDF, whose origins come from the early militias before the state was officially born (such as the Hagganah, Palmach, and Irgun), are one of the most experienced and decorated military force in the history of warfare. Having astonished observers with their resilience and speed. Due to their environment everyone in Israel is conscripted to serve in the military so that maximum man power is utilize for the defense of the country⁴.

At some point in their brief history they have taken on the military forces of Syria, Jordon, Egypt, Saudi Arabia, Iraq, Lebanon, Algeria, Sudan, Tunisia, Morocco, Cuba, and North Korea⁵, all with the vicious intent of not just defeating the Israelis, but wiping the country off

⁴ Males must serve 3 years while females serve 1 ½ years.

⁵ Most of the Arab countries outside of bordering Israel sent forces and supplies to fight in the 1948-49 War of Independence, 1967 Six Day War, and the 1973 Yom Kippur War. A little known fact is that Cuba and North Korea also participated in both wars, mostly showing solidarity in their alliances with the Arab states. Cuba sent 1,500-4,000 military personal including 500 tank commanders who did see significant action alongside the Syrians during the war. North Korea sent an air battalion to Egypt. See John Hoyt Williams article *Cuba: Havana's Military Regime*. The Atlantic. August 1988. www.theatlantic.com/magazine/archive/1988/08/cuba-havanas-military-machine/305932/. See George Jochnowitz's article *North Korea's Enemy: Israel*. www.jochnowitz.net/Essays/NorthKorea.html.

the face of the Earth. The 1973 Yom Kippur War was the last non-asymmetrical⁶ war that Israel fought in terms of the use of conventional means against another equally strong military force. Starting with the 1982 First Lebanon War the enemy became harder to identify and fought with guerrilla style tactics against a much more advanced and dominant military force. As seen in the American War in Vietnam, the enemy could blend in with the civilian population and make small, but effective strikes on a vastly superior military force. As the enemies of Israel turned mostly into non-state actors who targeted the civilian population in order to spread fear, the structure of the way the IDF functions had to adapt to their new threats. International Humanitarian Law (IHL) has played an important role in the way the IDF conducts their current and future operations. This paper will address the current and past relationship between IHL and the IDF in recent operations, primarily focusing on two conflicts that Israel has been involved in since the beginning of the 21st century.. In both of these conflicts Israel has had to fight those engaging in asymmetric warfare⁷ which makes eliminating one's enemy a more difficult task with the fallout of major collateral damage and unintended civilian casualties. In each of these armed conflicts you had a different asymmetrical environment to deal with. In 2006 you had a surprisingly conventional war against Hezbollah in Lebanon whom showed the capability to fight the IDF with deadly effect, due to the latest in weapons technology from Iran. With Operation Cast Lead the IDF had to deal with targeting rocket launching sites and Islamic militants in one of the most densely populated areas on Earth. In a response to daily rocket and mortar attacks on the Israeli civilian population in Southern Israel, by the governing and militant body Hamas, the IDF launched a major military operation to rid Palestinian combatants of their

⁶ Asymmetric warfare is "leveraging inferior tactical or operational strength against the vulnerabilities of a superior opponent to achieve disproportionate effect with the aim of undermining the opponent's will in order to achieve the asymmetric actors strategic objectives." Kenneth F. McKenzie Jr., *The Rise of Asymmetric Threats: Priorities for Defense Planning*, QUADRENNIAL DEFENSE REVIEW. 75,76 (2001).

⁷ *Id*

offensive capabilities using rockets and mortars. The IDF in “Operation Cast Lead” was controversial with its compliance with IHL, notably within the principles and laws of *jus in bello*⁸, *jus ad bello*, and *jus contra bellum*. I will also point out the roles of these IHL principles during the Second Intifada and the Second Lebanon War. Studying the role of the IDF attempting to comply with IHL is the key objective of this paper and an answer to the final question: Has and have the Israeli Defense Forces been a major human rights violator that neglects IHL or do they and have they, put in the best effort to ensure that innocent civilians are not harmed, their property not damaged, and their human rights recognized. While dealing with this topic due to the flared intensity on both sides of the issue I will present a centre opinioned paper without bias to the best of my abilities. As the conflicts continues in Israel and the occupied territories along with the surrounding region, the relationship between the IDF and IHL is a constantly adapting one that has major consequences for the entire population of the region.

III: Trouble to the North

“The strong do as they can, and the weak suffer as they must.”

Thucydides

Bad blood between Israel and groups in Lebanon goes back to the fallout of Black September in Jordan in 1970 when King Hussien moved to expel Palestinian militants from his country who attempted to overthrow him⁹. The broken Palestinian Liberation movement fled into Southern Lebanon which would lead to a festering problem for the region for the next three

⁸ USLEGAL.COM, Latin for “the law of waging war,” Legal definition: an aspect of international law of war which addresses the practices forbidden to belligerents during a war. Defines standards by which a country can conduct war and the actions during the war should be just and fair.

⁹ See film *PLO: The History of a Revolution-Black September*. Aired by Al-Jazeera, 20 July 2009. www.aljazeera.com/programmes/plohistoryofrevolution/2009/07/200971385345398771.html

decades.¹⁰ The first conflict in Lebanon when Israel unilaterally used military action was following the 1978 Coastal Road Massacre¹¹ and the subsequent Operation Litani three days later. Prime Minister Menachum Begin responded with a major military operation involving 25,000 IDF personnel aimed at crippling the Palestinian Liberation Organization's (PLO) and other terror networks ability to launch attacks out of Southern Lebanon.¹² The operation failed to drive the PLO fully out and Israel began dangerously investing itself into the Lebanese Civil War (1975-1990) by aligning itself with Christian Lebanese Maronite militias¹³. The political establishment in Israel wanted to create a "Red Line" buffer zone in Southern Lebanon to defend from future attacks into Northern Israel.¹⁴ The Israelis attempted to use the Maronite dominated Lebanese Front (LF) as a proxy to fight both the PLO and the primarily Muslim Lebanese National Movement (LNM) in the ongoing sectarian Civil War in order to ensure that any new Lebanese leadership in Beirut would be Israeli friendly.¹⁵ The war would prove to be messy for all Western parties involved. On 3 June 1982 an assassination attempt was made on Shlomo Argov, the Israeli ambassador to the United Kingdom's life with the operation being carried out by members of the Palestinian National Liberation Movement (PNLM), who were in hiding in

¹⁰ Conflicts as a result of Palestinian militants fleeing from Jordan and the West Bank include: Various terrorist attacks on Israel, Syrian Invasion and occupation, 1978 Coastal Road Massacre and subsequent major military offensive launched in response (Operation Litani), Lebanese Civil War (1975-1990), Israeli invasion and occupation of Southern Lebanon aka First Lebanon War(1982-2000), the creation of Hezbollah in 1985, skirmishes between Hezbollah and the IDF (2000-present), Second Lebanon War in 2006.+

¹¹ The Coastal Road Massacre was an operation carried out by 12 members of the Palestinian organization, Fatah, hijacked a bus of vacationing civilians and in between shooting at random cars and killing hostages, lead to the deaths of 38 Israelis along with 71 wounded. 10 out of the 12 attackers were killed by Israeli security forces which halted the slaughter. Still regarded as the 'worst terrorist attack in Israeli history.' See <http://www.jpost.com/Israel/Article.aspx?id=150852>

¹² <http://www.ynetnews.com/articles/0,7340,L-3686831,00.html>

¹³ Maronites are a Christian sect that resides predominantly in Lebanon and Syria. The leadership of the Maronite militias supported the Lebanese Front (LF)

¹⁴ The United Nations Interim Force in Lebanon (UNIFL) also intervened to monitor the border. The mission started on 23 March 1978 and continues to this day.

¹⁵ For overview of Lebanese Civil War see <http://www.globalsecurity.org/military/world/war/lebanon.htm>

Lebanon¹⁶. It was the last straw for Begin who said: “This is the moment in which courageous choice has to be made. The criminal terrorists and the world must know that the Jewish people have a right to self-defense, just like any other people.”¹⁷”

Similar to the actions four years prior during Operation Litani, Begin ordered another invasion to cleanse the PLO from Lebanon. On 6 June 1982, 80,000 IDF troops executed Operation Peace for the Galilee and advanced rapidly to the outskirts of the capital Beirut by the seventh day of the invasion, mostly eliminating the PLO quasi-government’s infrastructure and weapon capabilities in Lebanon.¹⁸ The IDF came upon a situation that would be the prequel to their compliance with IHL for the rest of the 20th century and 21st century. One of the main objectives was a pocket of heavily armed PLO fighters embedded with a large civilian population in the Rashidiyeh refugee camp south of the coastal city of Tyre. For nine days the IDF conducted artillery and air attacks on the camp to soften up the PLO fighters who hid among the civilian refugee population. The IDF used loudspeakers and leaflets to call upon civilians to leave the area, a method used in the Second Lebanon War and Operation Cast Lead. The estimated casualties of the battle for the Palestinian refugees range close to nearly 6,000, with the Israelis suffering around 800 dead and wounded.¹⁹ The cost of life on both sides stunned Prime Minister Begin and the rest of the Israeli political establishment. The war drew out and the IDF began a two month siege of the capital city of Beirut that would draw international condemnation as the IDF pounded the city with artillery, naval bombardments, and, air strikes. A large force of PLO fighters alongside Syrian regular troops embedded themselves with the civilian population,

¹⁶ Howard M. Sachar, *A History of Israel from the Rise of Zionism to our time*, second edition, Page 903-904 (Alfred A. Knopf Inc. 1996)

¹⁷ From Avi Shlaim’s *The Iron Wall*, p. 404-405

¹⁸ SACHAR, *supra* note 15. P. 906

¹⁹ *id* p. 908

but the IDF was reluctant to take the fighting to the streets of West Beirut for they knew their own losses would be too high for the standards of the Israeli public. According to Lebanese sources over 17,825 civilians died along with 30,000 wounded during the 88 day siege²⁰.

The IDF mostly failed in their obligation to Customary International Humanitarian Law with the “distinction of civilian objects and military objectives”, during their bombardment of Beirut. However, the contradicting factor of the non-state actor of which being the PLO and the state actor being Syrian Army regulars, whom were being engaged by the IDF in West Beirut during the siege, violated Article 13 of the 1956 New Delhi Draft Rules which provides “parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives, with the idea of inducing the enemy to refrain from attacking those objectives²¹.” This put the IDF in a very difficult situation in weighing the collateral damage of civilian property and life, and attacks of military necessity needed to end the conflict. Israel’s Manual on the Laws of War states that “legal combatants are “soldiers serving in the army (regular or reserve) or in a well ordered militia forces (e.g. the SLA or State National Guard in the United States)²².” The preview of asymmetrical warfare opened the door for decades of controversial operations by the IDF as they attempted to stay within the bounds of IHL while fighting a cheap enemy that targeted civilians. The IDF’s humanitarian credibility and their efforts to avoid civilian casualties took a major hit on 12 September 1982 when they surrounded the refugee camps of Sabra and Shatila, where the remaining PLO forces were thought to be hiding²³. The IDF dispatched members of the Christian Phalangist militia to clear

²⁰ Best figure for casualties during the Siege, see <http://www.country-data.com/cgi-bin/query/r-6824.html>

²¹ ICRC.org

²² From document *Customary International Humanitarian Law : Volume II, practice*. Article 590 in *Distinction between Civilians and Combatants*, P. 116

²³ See for full casualty overview www.massviolence.org/Sabra-and-Chatila?artpage=3

the village of fighters, over the next two days the militia massacred over 700 Palestinian civilians as Israeli military leadership stood by. The First Lebanon War of 1982 is similar to the United States' efforts in Vietnam, for it was drawn out and difficult to engage the enemy without causing civilian casualties.

The political and social environment was incredibly complex which entangled Israel in a sectarian clash. The 1982 War in Lebanon would highlight the IDF's new tactical doctrine forming around the principles of distinction and proportionality when engaging in armed conflict (both *jus in bello* and *jus ad bello*). The IDF succeeded in halting into Israel for a short period, but the PLO wasn't completely destroyed and Israel's subsequent 18 year occupation of Southern Lebanon created a future enemy that would prove very difficult to neutralize, Hezbollah. The "First" Lebanon War starting in 1982 pushed the IDF to the limit in attempting to destroy an enemy who's main strategy in order to survive was "hugging"²⁴ with the civilian population. The IDF limped out of Lebanon with a tattered public image both with the international community and within Israel.

2006 Second Lebanon War

"Israel's final departure from Lebanon is a prelude to the final obliteration from existence and the liberation of Jerusalem from the talons of occupation." "Our struggle will only end when this entity is obliterated. We recognize no treaty with it, no cease fire, and no peace agreements"²⁵.

1985 Hezbollah Manifesto

²⁴ Hugging- Hiding tactics designed to force Israel to abstain from attacking due to fears of collateral casualties. Strategies of Hamas and Hezbollah. From Penny L. Mellies paper *Hamas and Hezbollah: A Comparison of Tactics*. Chapter 2, P. 62

²⁵ Citing open letter from Hezbollah (as cited in Major Jennifer B. Bottoms's paper *When close doesn't count: an analysis of Israel's jus ad bello and jus in bello in the 2006 Lebanon War*. Pg.2

“To the Inhabitants of Lebanon”

“Due to the terrorist activities carried out by Hezbollah which destroys the effort to find a brighter future for Lebanon. The Israelis Army will continue its work within Lebanon as long as it deems to fit to protect the citizens of the state of Israel. For your own safety and because we do not wish to cause anymore civilian death, you are advised to avoid all places frequented by Hezbollah. You should know the continuation of terrorist activities against the state of Israel will be considered a double edged sword for you and Lebanon.” The State of Israel²⁶

Pamphlet translated from Arabic dropped by the IDF into Lebanese population centers.

On the morning of 12 July 2006 an above average border attack by Hezbollah militants on a motorized patrol ended with three IDF soldiers dead and two” kidnapped²⁷” who were taken in order to use their bodies to set up a prisoner exchange. A helicopter, a ground unit, and a *Merkava Mark II* tank were ordered over the Lebanese border to attempt to locate the kidnapped soldiers. The tank hit a massive anti-tank mine which killed all four of the crew. Another soldier was killed attempting to reach those in the knocked out *Merkava*, bringing the total to eight dead and two missing²⁸. Hezbollah crossed an international border and conducted an armed attack which is an outright breach of International Law. Just a few weeks prior, an IDF checkpoint near Gaza was attacked by Hamas affiliated militants who kidnapped Gilad Shalit, an IDF corporal, making him the first abduction of an IDF soldier since 1994. The border attack ended any peaceful solutions for the state of Israel which had observed an ever growingly militarized Hezbollah assisted by the regimes of Syria and Iran. Prime Minister Ehud Olmert, Defense Minister Amir Peretz, and Chief of Staff for the Israeli Defense Forces Lt. General Dan Halutz

²⁶ Taken from special report from <http://www.psywarrior.com/IsraeliLebanon.html>

²⁷ The two IDF soldiers were actually killed during the ambush and their bodies taken back into Lebanon. The remains of the bodies were returned to Israel two years later on 16 July 2008. See Israel’s Ministry of Foreign Affairs article, www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+from+Lebanon+Hizbullah/Hizbullah+attack+in+northern+Israel+and+Israels+response+12-Jul-2006.htm

²⁸ From Israel Ministry of Foreign Affairs, 12 July 2006.

<http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+from+Lebanon+Hizbullah/Hizbullah+attack+in+northern+Israel+and+Israels+response+12-Jul-2006.htm>

confided that the seizing of the soldiers was an “act of war²⁹” and ordered a full out offensive into Lebanon against Hezbollah to rid the rising threat to Israel. The Israelis blamed the government of Lebanon for not asserting its authority over its sovereign territory in the south and stated that “responsibility for this belligerent act of war lies with the Government of Lebanon, from whose territory these acts have been launched into Israel³⁰.” For the next 34 days the IDF’s compliance with International Humanitarian Law would be controversial on the world stage with heavy opinions making claims of violations on both sides. As in most military operations carried out by any armed force from any state, the line between legality and recklessness was thin. By the end of the conflict the seemingly “invincible” IDF would come out of Lebanon unsure of its purpose and justification. Hezbollah, although damaged significantly, was celebrated in the Arab world for inflicting significant casualties on the Israelis. 114 IDF soldiers would be killed and the public’s support of the operation expanding deeper into Lebanon was low³¹. “Israeli politicians and planners displayed strategic blindness. While denying the IDF victory, they squandered an opportunity to destroy the bulk of Hezbollah’s military presence in southern Lebanon, settle regional scores, enhance Israel’s deterrence, and strengthen Jerusalem’s alliance with Washington³².” Israel was condemned by many in the international community who saw an overreaction that littered Lebanon’s economy and its people’s way of life. The IDF was ill prepared for a war and it would take years to reform the structure so that when tested again, they would be fully ready for an effective response.

²⁹ See Urquhart, Conal (12 July 2006). Israelis invade Lebanon after soldier are seized. *The Guardian* (London)

³⁰ Stated in a letter by the Permanent Representative of Israel to the United Nations. See article *Security Council calls on all sides in Middle East to cooperate with UN team*. *UN News Service*, 14 July 2006.

<http://electronicintifada.net/content/security-council-calls-all-sides-middle-east-cooperate-un-team/2492>

³¹ http://www.ariel-sharon-life-story.com/Ehud_Olmert_2nd_Lebanon_War_2006_Casualties.shtml

³² From Efraim Inbar’s article *How Israel Bungled the Second Lebanon War*. *Middle East Quarterly*. Summer 2007. Pg. 57-65.

IV: Israeli compliance with Article 52 of the Geneva Conventions to warn civilians

“Both for principled and pragmatic reasons, Israel set certain limits on the conduct of its hostilities with Hezbollah. The mission was informed by IDF representatives that Israel followed its practice of drawing up lists of potential targets, with each individual target, as well as the type of weapon to be used, being reviewed by an IDF expert in humanitarian law³³.”

UN Human Rights Council report: Mission to Lebanon & Israel

This paper will also examine the claim that the IDF believed that it gave full effort to comply with Article 57 of the Geneva Conventions which stipulates that the attacker complies with the following:

“(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 minimize, 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 permit³⁴.”

³³ *supra* note 30. From Human Rights Council Report, Para 35.

³⁴ From the Geneva Conventions, Article 57 Paragraph 2. Taken from Amnesty International’s report *Israel/Lebanon: Out of proportion-civilians bear the brunt of war*. P. 10-11

The IDF seemingly complied with these laws during the Second Lebanon War, albeit still in a destructive manner that was disproportionate in response to the border attack. However after Hezbollah started firing rockets into Northern Israel indiscriminately it was justified in order to protect their population from the major threat. The IDF followed protocol by dropping nearly 17,000,000 propaganda leaflets during the conflicts into civilian population centers that communicated the mission of the IDF to protect Israel from Hezbollah and, statements that communicated for civilians to leave the areas where Hezbollah operatives were concentrated. The interpretations of Article 57 when applied to what the IDF did to warn civilians of attack and to protect them from unintended harm, seems to be adequately followed which justifies their conduct in the campaign that they waged against Hezbollah under IHL and Customary International Law. One leaflet stated the following in Arabic to residents in Beirut:

“The Israeli army will increase its actions in Lebanon against the continuing terrorist actions of Hezbollah to defend the citizens of the state of Israel. For the sake of your own safety, and in our wish not to harm any civilians that are not implicated, you must keep away from the locations where Hezbollah is present and acting against the state of Israel. Including: Locations where missiles are fired in the direction of the state of Israel; Locations of Hezbollah's arsenals and military equipment; Hezbollah's centers south of Beirut and areas under its control in the south of Lebanon; Beirut's southern suburb, the center of terrorism. The Israeli defense army calls on the Lebanese residents and Lebanese army to refrain from aiding, either directly or indirectly, elements of Hezbollah. Anyone who does will be putting their life in danger. Know that the persistence of terrorism against the state of Israel is keeping you from a better future³⁵.”
The State of Israel

Targeted phone calls were made with an automated message telling residents to leave the area for an attack was imminent. While doing this is in theory is fully in compliance with IHL,

³⁵ From SGTm. Herman A. Friedman's website article: *Israeli Propaganda Raids on Lebanon*. See <http://www.psywarrior.com/IsraeliLebanon.html>

post-war investigations were mixed on the efforts of the IDF. According to the UN Human Rights Council report conducted by the Commission of Inquiry on Lebanon stated “with regard to precautions taken by Israel to minimize civilian casualties, the Commission came to the conclusion that IDF did not give effective warning as required under IHL. Where warnings were given, they often did not allow sufficient time for the population to leave, and in any event, civilians were at risk of being attacked if they did leave and did not have access to safe humanitarian exit corridors³⁶.”

It is reasonable for the international community to be disturbed by the quantity of Lebanese civilians killed, but each state needs to look at the context of what the IDF needed to do, what the situation was at the time, and what most states would do to protect their citizens. There is a large difference between intentionally targeting civilians and then “unintentionally” harming them because they are caught in the collateral damage of a strike. Thomas Hurka argues “that a nation, may kill somewhat more enemy civilians if that is unavoidable in saving a smaller number of its own [assuming it makes serious efforts to minimize collateral harm]³⁷.” It is unfair to suggest that the government of Israel and IDF commanders would choose their own soldiers injuries over collateral civilian deaths which is an unintended consequence in the targeting of enemy combatants. Commenting on Hurka’s statement, M.L. Gross says “this view [Hurka’s] is very attractive because it arithmetically compares the number of enemy civilians an army harms to the number of compatriot civilians it hopes to save by military action. It thereby avoids the common pitfall of comparing the number of civilians killed on each side and declaring war or

³⁶ Report on the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1. Paragraph 14.

³⁷ Hurka, Thomas (as cited in *Civilian vulnerability in asymmetric conflict*, Chapter 8- Lessons from the Second Lebanon War and Gaza Wars.)

engagement disproportionate when the one side kills far more civilians than the other³⁸.” This theory would also be applicable in Operation Cast Lead nearly two and a half years later when the IDF engaged Hamas in a more densely populated urban environment. While not acceptable on the international stage, the legality of unintentionally killing civilians around combatants during international armed conflict is justified under IHL if the targeting and killing of those enemy fighters offers a clear military advantage. Therefore if the IDF’s intentions were sincere to just eliminate Hezbollah fighters to win the conflict, then they were then legally allowed to do so in order to protect the citizens of Israel.

V: Failures in the conduct of IDF operations

The IDF conducted immediate airstrikes and used mobile artillery to pound Hezbollah’s fortified positions following the events on the northern border. A land, air, and sea blockade of Lebanon was executed the next day on 13 July. IDF airstrikes hit Hezbollah infrastructure and installations across the entire country with a shock and awe air campaign. Israel wanted to cripple Hezbollah’s ability to communicate and move supplies to the south, with the intention of obliterating their institutions. The military had waited for an excuse to launch an offensive aimed at completely ensuring that Hezbollah would never pose as a threat to the state of Israel ever again. The Israeli Air Force (IAF) “flew some 15,500 sorties over Lebanon, attacking some 7,000 ‘targets.’ The Israeli Navy conducted over 2500 bombardments of targets within range of the Lebanese coast. The Israeli Army fired tens of thousands of artillery shells and multiple

³⁸ Gross, M.L. in *Civilians and Modern War: Armed conflict and the ideology of violence*. Chapter 8: Civilian vulnerability in asymmetric conflict. 2012

launch rockets³⁹.” By the end of the 34 day conflict it was estimated that the IDF hit 109 bridges, 445,000 sq. km of roads, 25 fuel stations, 900 commercial enterprises, and about 30,000 residential properties⁴⁰. They had also destroyed most of Beirut’s International Airport because the IDF stated “[it] had been serving as a way station for the transfer and shipping of weapons and infrastructure of the Hezbollah terrorist organization⁴¹.” However, the UN Commission of Inquiry in Lebanon concluded differently with a report that is controversial among the international community due to the fact that the commission was not mandated to report on Hezbollah’s violations, only Israel’s. James G. Baker’s summarized legal appraisal on the commission stated that the mission’s main points were that the IDF used “an excessive, indiscriminate, and disproportionate use of force” and “an overall lack of respect for the cardinal principles regulating the conduct of armed conflict. Israeli forces ‘clearly failed to distinguish between military and civilian targets’⁴².” Baker additionally pointed out:

“On the one hand, the Commission is correct that Hezbollah offices and political headquarters are not necessarily military targets-particularly since the organization is also responsible for medical facilities, schools, groceries, an orphanage, a garbage service and a reconstruction programme for homes damaged during Israel’s invasion. On the other, these and other buildings in Southern Lebanon could be legitimate military objectives if Hezbollah’s use of them made an ‘effective contribution to military action’ and if their destruction would have delivered a ‘direct military advantage.’ Regrettably the Commission did not envisage this possible inquiry whether the incidental civilian losses were disproportionate to the military advantage gained⁴³.”

³⁹ From Human Rights Council report: *Mission to Lebanon and Israel*. 7-14 September 2006. Section A, Para 33.

⁴⁰ From Georgios Kosmopoulos’s paper, *Collective Punishments under International Humanitarian Law: An Analysis of the 2006 War in Lebanon*. P. 110. Found in the Library of the ICRC in Geneva.

⁴¹ Israel Ministry of Foreign Affairs statement on summary of IDF operations against Hezbollah in Lebanon. 14 July 2006. www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/IDF+operations+against+Hizbullah+in+Lebanon+14-Jul-2006.htm

⁴² See James G. Stewart’s *The UN Commission of Inquiry on Lebanon: A Legal Appraisal*, Journal of International Criminal Justice. 1 November 2007. Oxford University Press 2007.

⁴³ *Id.* P.4

The Commission also came to the conclusion “that damage inflicted on some infrastructure was done for the sake of destruction⁴⁴.” While a reason could most likely be put forth by the Israelis as to how most of the civilian infrastructure destroyed would assist Hezbollah moving arms and supplies to the front lines, the damage done to the civilian population’s quality of life was disproportionate to what the IDF’s mission of targeting the area that was an immediate threat to Israel, Hezbollah’s militarized south⁴⁵. However at the same time any government would mandate its armed forces to protect its population and go to any disproportionate means to ensure that casualties on the home front were as low as possible.

An example that Stewart highlights that is of major concern is when the IDF established a free-fire zone south of the Litani River in which civilians were given a strict curfew and restriction applying to their movement in the area, those that remained could be fired upon with little justification other than they violated the curfew. This distorts the principle of distinction and removes any protection that a civilian has to not be attacked by the IDF. The fact that civilians immediately become just military targets because of their location during a certain time of day is major violation of the principle of distinction and does not justify the IDF to open fire. An unacceptable example of this and violation of IHL was when the IDF entered the village of Marjayoun and requested the Lebanese military to fully evacuate the village. The United Nations Interim Force in Lebanon (UNIFIL) escorted a convoy of civilian vehicles out of the city when an IDF air strike destroyed a few cars killing six people and wounding 16⁴⁶. The IDF released a statement explaining the justification for attack stating that they “identified suspicious movement along a route forbidden for travel which had been used by Hezbollah to transport rockets and

⁴⁴ Report on the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1. Para 21

⁴⁵ Many neighborhoods hit in Beirut were opposition to Hezbollah in the political spectrum of Lebanese politics. Christians, Sunni, and other non-supporters of Hezbollah were unfairly affected.

⁴⁶ Whitaker, Brian. Article 14 die as bombardment goes on across Lebanon. 12 August 2006. The Guardian.

other weapons. Acting on a suspicion that these were Hezbollah terrorists transporting weaponry, an aerial attack was carried out⁴⁷.” The nature of the comment “suspicious” is incredibly concerning and can be linked with the IDF violating IHL for not fully having factual proof that the cars attacked were military objects. These scenarios were prevalent during the majority of the conflict which majorly hurt the credibility of Israel’s legal justifications attacking other targets that actually were military objects, not just “suspected.” While the majority of the strikes were legal under IHL it was incidents like the Marjayoun Convoy attacks that lead to the UN Human Rights Council Inquiry to discredit the rest of the IDF’s claims that certain engagements were legal.

The attack on Beirut Rafic Hariri International Airport, a mainly civilian installation was justified due to long standing intelligence stating that “Beirut's airport has long been a key Hezbollah supply line, a gateway for weapons, funding and personnel, mainly from Iran⁴⁸.” Although the claim is broad and is subject to undisclosed intelligence reports, all attacks by the IDF on what would be commonly called on as civilian infrastructure, were “dual use” facilities and could be classified as military objects. Under IHL those targets hit by the IDF within Lebanon were legal due to Article 52 (2) of the Geneva Conventions which states that “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 advantage⁴⁹.” These strikes on infrastructure only increased as Hezbollah launched mid ranged rockets indiscriminately into Israel targeted mostly on the Israeli civilian population. 3,970 mostly Iranian made short and medium range rockets were fired into Israel

⁴⁷ Public communique by IDF spokesperson unit (as cited in James G. Stewart’s *The UN Commission Inquiry on Lebanon: A Legal Appraisal*).

⁴⁸ Richard Engal’s article, *Q & A: What’s happening in Lebanon*. NBCnews.com

⁴⁹ Article 52 (2) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Retrieved from *icrc.org*.

during the 34 day conflict with the overall casualties on the Israeli civilian side numbering in at 44 dead and nearly 1,000 wounded⁵⁰. Although Hezbollah was justified to defend themselves in response to IDF strikes, even though they sparked the conflict, they "violated the applicable principles of humanitarian law, in some cases by targeting the civilian population in northern Israel, and in others by disregarding the principle of distinction⁵¹."

The final casualty numbers according to Lebanese authorities for the 34 day conflict were 1,191 killed and 4,409 injured, including both civilians and Hezbollah fighters⁵². The final figures of what percentage of those killed were enemy combatants and members of Hezbollah are factually unknown. As seen in other parts of history, collective punishment, outlawed by Article 33 of the IV Geneva Convention⁵³, has been employed by many powerful armies including the Germans in WWI against Belgian resistance fighters, the Nazis in WWII in all occupied territories, and Saddam Hussein against the Kurds for their opposition to his regime. "Of course the IDF carried out collective punishment against the Shi'a population of Southern Lebanon for their hosting of Hezbollah, look at what they did on the last days of the war⁵⁴." During the final 72 hours before a ceasefire was agreed upon, the IDF dropped 90 percent of the total amount of cluster munitions used during the war over southern Lebanon⁵⁵. "The UN Mines Action Coordination Center South Lebanon (UNMACC) estimates that one million bomblets

⁵⁰ *Supra* note 30. pg 4, para 9 from the report. Megan David Adom statistics show originally that 43 Israeli civilians were killed during the conflict. One other died nearly a year later in a hospital due to injuries suffered from a rocket attack.

⁵¹ Stated by UN human rights envoy 3 October 2006. Found through Israeli NGO website, theisraelproject.org. http://www.theisraelproject.org/site/c.hsJPKOPIJpH/b.2904939/k.6FEB/Hezbollahs_Violations_of_Human_Rights_during_the_Second_Lebanon_War.htm#16

⁵² Report on the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1. Paragraph 11.

⁵³ See note 31. Georgios Kosmopoulos. P. 96

⁵⁴ Riccardo Bocco, Professor, Anthropology and Sociology Development at the Graduate Institute of Geneva. Interviewed 14 November 2012.

⁵⁵ *Supra* note 30. From Human Rights Council Report, para 24.

remained on the soil after the end of the war⁵⁶. Since the conclusion of the conflict 26 people have been killed and 186 have been injured by left over ordinance⁵⁷. The Inquiry Commission concluded that the use of cluster munitions “were used deliberately to turn large areas of fertile agricultural land into ‘no go’ areas for the civilian population. Furthermore, in view of the foreseeable high dud rate⁵⁸, their use amounted to *de facto* scattering of anti-personnel mines across wide tracts of Lebanese land. The presence of unexploded ordinance continues to act a major impediment to the return of IDPs and refugees, as well as threatening the lives and livelihoods of those who have chosen to return⁵⁹.” The IDF’s use of cluster munitions during the conflict and especially during the final 72 hours does bring up major questions pertaining to Israel’s ethical conduct and intentions during the deployment of cluster ordinance.

When looking at the IDF’s failures to comply with IHL during the Second Lebanon War in the summer of 2006, there are major causes of concern that were identified by the UN Human Rights Council report. The conduct of the IDF during the Second Lebanon War is looked at from two different contexts and two vastly different intentions; did the IDF intentionally follow IHL to best of their ability given the situation and did they make a full effort to comply with the principle of distinction while attacking positions where Hezbollah fighters were among civilians? Or did the IDF cause unnecessary and deliberate casualties in violation of IHL? Given the facts and the efforts made in the conflict given the circumstances, the Israeli Defense Forces cannot be described as not being in compliance with IHL and should be judged within the language of M.L. Gross’s article on lessons learned from the Second Lebanon War:

⁵⁶ UNMACC (as cited in Georgios Kosmopoulos article)Pg. 112. See note 31.

⁵⁷ Amnesty International report *number of cluster bombs deaths continue to rise*. 20 December 2006. Source found through <http://electronicintifada.net/content/number-cluster-bomb-deaths-continues-rise/3020>

⁵⁸ High dud rate- when deployed munitions fails to explode, leaving a very dangerous munition on the ground that is indiscriminate towards whatever triggers it. Major issue in the Vietnam War.

⁵⁹ *Supra* note 30. Para 24

“During war, civilians are subject to collateral and direct harm. By law and ethics, the principle of proportionality mitigates collateral harm and the principle of noncombatant immunity forbids direct harm. Each principle hopes to limit civilian death and injury significantly. During asymmetric war between a large and technologically superior state army and a small and far less sophisticated nonstate guerrilla organization, two phenomena weaken these principles. First, noncombatants are outwardly indistinguishable from the guerrillas who operate in their midst. As a result, state armies inevitably subject noncombatants to unnecessary and disproportionate harm as they attempt to destroy guerrilla forces, Second, state armies are redefining the status of civilians who provide war-sustaining aid. By law, civilians who do not directly participate in the hostilities retain their immunity despite the essential financial, educational, welfare, telecommunications, and legal support they provide a military organization⁶⁰.”

Jan-Shai Deniz, a four year veteran and former IDF soldier in the elite special forces units, Sayeret Matkal⁶¹ and Duvdevan⁶², stated “I cannot imagine another country doing more” to ensure that IHL is complied with⁶³. Deniz also specified that the Geneva Conventions are tied into the Laws of War, which is the IDF doctrine that is taught to every member of the military and stresses compliance with IHL. The IDF was at the very least, unorganized in its conduct during the Second Lebanon War along with being unprepared for a 34 day operation. The lessons learned in terms of warning civilians of impending attack would carry over to Operation Cast Lead. In the three years between the end of the Lebanon conflict and start Operation Cast Lead, the IDF increased funding for training reserve soldiers in order to increase their preparedness along with a structural reform in communication between air support and elements on the ground. The better prepared, the better that IHL would be complied in the next conflict.

⁶⁰ *Supra* note 36. Gross, M.L. Pg. 148

⁶¹ Sayeret Matkal is another elite IDF unit that deals with counterterrorism, reconnaissance, and hostage rescue,

⁶² Duvdevan, meaning cherry in Hebrew, is the most elite unit of the Paratroopers brigade. They specialize in urban combat, hostage rescue, and counterterrorism.

⁶³ Interviewed Jan-Shai Deniz, a Swiss-Israeli national, over the phone in Beersheba. 35 minute interview on 20 November 2012.

Operation Cast Lead

“In these circumstances, there is no question Israel was legally justified in resorting to the use of force against Hamas. As explained above, this resort to force occurred in the context of an ongoing armed conflict between a highly organised, well-armed, and determined group of terrorists and the state of Israel. The Gaza operation was simply the latest in a series of armed confrontations precipitated by the attacks perpetrated without distinction against all Israel citizens by Hamas and its terrorist allies (Sassoli, Bouvier and Quintin)⁶⁴.”

The Gaza Strip has been a constant place of suffering and oppression since Israel acquired it via force from Egypt after the 1967 Six Day War. Decades of living in refugee camps fueled anger towards the State of Israel as the Palestinians were denied autonomy time and time again. The First Intifada or “uprising” began in 1987 as radical Islam began spreading through the Arab world which ultimately led to the creation of the Palestinian political and militant organization better known as Hamas⁶⁵. The organization is an offshoot of the Egyptian political group, the Muslim Brotherhood (MB), in which Hamas originally was the MB’s Gaza affiliate⁶⁶. Hamas was founded by Sheikh Ahmed Yassin, who preached violence and for jihad against Israel, including encouraging the employment of suicide bombings as a preferred method of terrorism⁶⁷. Hamas stated in its charter, “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it⁶⁸.” The First Intifada was mostly rioting by

⁶⁴ *How Does Law Protect in War?* Volume II, Third Edition, page 1024. Marco Sassoli, Antoine A. Bouvier, Anne Quintin. International Committee of the Red Cross, Geneva, Switzerland

⁶⁵ For full overview on Hamas see <http://www.cfr.org/israel/hamas/p8968#p2>

⁶⁶ *id*

⁶⁷ See article after Yassin was assassinated in 2004. Leyden, Joel, *Israel kills Hamas terror leader Ahmed Yassin*. Israeli New Agency. 22 March 2004. <http://www.israelnewsagency.com/israelahmedyassinterrorism120320.html>

⁶⁸ The Covenant of Hamas. Obtained through <http://www.fas.org/irp/world/para/docs/880818a.htm>

Palestinian youths in the West Bank and Gaza, which went on till the Oslo Accords were signed in September of 1993. Hamas mostly remained out of the picture during the uprising except for conducting its first suicide bombing five months before the Oslo Agreement⁶⁹. The Second Intifada or *Al-Aqsa intifada*⁷⁰ would prove to be psychologically devastating to Israeli society and would thin the line between a combatant and noncombatants as the enemy wore no uniform. “While the stone and the bottle were the symbols of the First Intifada, in the second uprising they were superseded by rifles, pistols, hand grenades, mortars, and suicide bombs⁷¹.” From 2000 to 2007 the Second Intifada was responsible for the deaths of nearly 4,228 Palestinians and 1,024 Israelis⁷², with over 151 suicide bombings⁷³ occurring throughout the conflict, with forty percent of them being carried out by Hamas⁷⁴. Hamas and other militant organizations launched nearly 12,000 rockets and mortars from Gaza towards towns in Southern Israel from 2000 up until the beginning of Operation Cast Lead in December of 2008⁷⁵. According to many in the academic community, the Intifada continues to the current day.

In August of 2005 Israel unilaterally withdrew all military personnel and Jewish settlers, from the Gaza Strip hoping for a legitimate government to emerge. The Palestinian Authority (PA) took control for a brief time which allowed the Palestinian nation-state to be linked with the West Bank. Extremists still launched operations out of the enclave into Southern Israel with PA security forces too weak and powerless to control the threat. In January of 2006 Hamas won 76

⁶⁹ *Supra* note 65

⁷⁰ Reasoning for the Al-Aqsa title is for when the Intifada started. On 28 September 2000, Ariel Sharon, the famed military man and candidate for Prime Minister entered the holy Temple Mount along with 1,000 security personal. Riots broke out due to Sharon’s “provocation” and Palestinians clashed with Israeli police.

⁷¹ Edited by Martel, Gordon. *The Encyclopedia of War: Volume I, A-Cr.* Berhman, Bregman. Arab-Israeli conflict PG. 132 .

⁷² Data provided by the UN Office of Coordination for Humanitarian Affairs. 31 August 2007

⁷³ Between 2000 and 2005. Data provided from Benmelech, Efraim, Berrebi, Claude, *Human Capital and the Productivity of Suicide Bombers*. http://www.economics.harvard.edu/faculty/benmelech/files/JEP_0807.pdf

⁷⁴ Id. Pg. 227

⁷⁵ *Supra* note 51 From pg. 1024, para 38

seats out of 132 in the Palestinian Parliamentary elections which were judged as being free and fair elections by the international community⁷⁶. After it was decided that Hamas would be the majority party in the Palestinian Authority, the United Nations, United States, European Union, and Russia cut all funding to the Palestinian government. Hamas made a power move in June 2007 by engaging in a bloody *coup d'état* which led to a brief Palestinian Civil War between the Islamists and the PA. The end result would be the complete control of Gaza by Hamas with the West Bank governed by the PA, essentially splitting Palestinian society into two separate governing factions. Hamas was engaged in all of Gaza's political, social, and military levels while designating their charter, which calls for the complete destruction of the Jewish state and the use of terrorism to achieve that, as their main doctrine for governance. The spokesperson for Hamas, Ismail Radwan, called for all Palestinians to "liberate Palestine" by attacking and killing Jews rather than engaging in diplomatic efforts⁷⁷. Following Hamas's violent takeover of Gaza, Israel and Egypt imposed a blockade which would set a limit on the amount of goods and people allowed in and out of the territory. The economy and daily life of Gazans has greatly suffered under the blockade with the population nearly entirely reliant on Israeli discretion on the terms of fuel and goods, including food, which was measured by the calorie being allowed in⁷⁸. The blockade was brutal and led to increased anger within the Palestinian population, especially with the second highest share of people aged 0-14 worldwide along with 51% of the population under 18⁷⁹.

⁷⁶ Article *Hamas sweeps to election victory*. BBC News. 26 January 2006. <http://news.bbc.co.uk/2/hi/4650788.stm>
⁷⁷ *ibid.* Pg 1024, para 39

⁷⁸ See Associated Press's article *Document on calorie figures in Gaza blockade stirs dispute*. 18 October 2012. <http://www.nytimes.com/2012/10/18/world/middleeast/israel-counted-calories-needed-for-gazans-in-blockade.html>

⁷⁹ From UN report by the UN Country team in the occupied territories, *Gaza in 2020: A livable place?* August 2012

Hamas continued to smuggle weapons and rockets in tunnels that went under the Egyptian border which expanded their arsenal many fold.

“Not surprisingly, rocket attacks increased considerably following Hamas’ assumption of control of Gaza. In 2006, 1,130 missiles were fired from Gaza toward Israel. In 2007, the year following the Hamas takeover, 2,433 rockets were launched from Gaza, more than double the amount the previous year. The trend continued upward in 2008 when Hamas militants launched 3,278 rockets into Israel. These attacks did not cease until the “Tahadiya” or “lull arrangement” on June 19, 2008⁸⁰.”

. Those six months during the Tahadiya would be the quietest since Hamas took control a year before, with 223 rockets and 139 mortars being fired into Israel over that period, a relatively low number compared to the months before and after the *tahadiya*⁸¹. On 19 December Hamas announced they would not extend the ceasefire and launched an operation on Christmas Eve when they renewed firing rockets and mortars into Israel. A collision course was unavoidable as “military hostilities were a culmination of the long process of economic and political isolation imposed on the Gaza Strip by Israel, which is generally described as a blockade⁸².” The blockade suffocated those in Gaza leading to additional attacks on the borders against IDF forces and civilians in nearby villages. “Of course they’re going to fire rockets at the Israelis. They are trapped in a prison. There is nothing more for them to lose⁸³.” A major confrontation was imminent and it would be a show of force against the Palestinians on a scale never seen before. During the disengagement in September of 2005 the last IDF soldier locked the gate vowing never to return to Gaza again. Unfortunately within three years, they would have to return due to the increase in rocket fire in Southern Israel. “Operation Cast Lead is a reaction to Hamas’ s

⁸⁰ *Rocket attacks toward Israel*. IDFspokesperson.com (as found in Kessler, Joshua L.’s paper in the Military Law Review)

⁸¹ Figures from the *Goldstone Report*. Timelines of events. <http://www.goldstonereport.org/facts/chronology/224-timeline-of-events>

⁸² *Supra* note 64. Pg. 1038 para 311

⁸³ *Supra* note 53. Prof. Ricardo Bocco interview

action⁸⁴.” Under customary international law, a blockade constitutes an act of war and is therefore regulated by the law of self-defense⁸⁵,” which according to some would justify Hamas’s armed attacks on IDF personal.

“Since 2001, armed groups within the Gaza Strip have fired thousands of rockets into Israel, conducted suicide bombings, and staged vehicular assaults, killing nearly 1,200 Israeli residents and wounding nearly 10,000 more. Indiscriminate rocket attacks are the daily reality of over 950,000 Israelis currently living within range of mortar, Qassam rocket, and M-210F (a.k.a. “Grad”) rocket attacks fired from Gaza⁸⁶.” While the civilian population of Gaza suffered from the Israeli blockade, Israeli civilians were being terrorized by indiscriminate rocket attacks being fired by militants.

“After exhausting other alternatives and after issuing warnings that Israel would attack if the rocket and mortar assault from Gaza did not stop, the IDF launched a military operation against Hamas and other terrorist organizations in the Gaza Strip. The operation was limited to what the IDF believed necessary to accomplish its objectives: to stop the bombardment of Israeli civilians by destroying and damaging the mortar and rocket launching apparatus and its supporting infrastructure, and to improve the safety and security of Southern Israel and its residents by reducing the ability of Hamas and other terrorist organizations.⁸⁷”

On the morning of 27 December, the IDF launched a massive air campaign backed by artillery, pounding positions within Gaza. The first day casualties were astonishing with 221 Palestinians killed within the first 24 hours of the offensive⁸⁸. Within Article 51 of the UN

⁸⁴ Ministry of Foreign Affairs video announcement on the buildup to Cast Lead.
<http://link.brightcove.com/services/player/bcpid1140772454001?bckey=AQ~~,AAAA4Q00iRE~,zBDGy0QkIBIMT3nMCupudyS5B02SHi6B&bctid=1139261573001>

⁸⁵ From Noura Eraket’s paper, *It’s not wrong, it’s illegal: Situating the Gaza Blockade between International Law and the UN Response*. American University of Beirut.:

⁸⁶ Article by Major Joshua L. Kessler, *The Goldstone Report: Politicization of the Law of Armed Conflict and those left behind*. Military Law Review. Pg. 70

⁸⁷ *Supra* note 64. Pg. 1025

⁸⁸ From Dr. Pal Tavel paper *Hamas Casualties in “Operation Cast Lead.”*
http://www.ict.org.il/Portals/0/Articles/ICT_Hamas_Casualties_Final_Report.pdf

Charter Israel was obligated to their citizens to act legally in the name of inherent self-defense by means of armed force. For a week the IDF targeted weapon storage sites, rocket launching apparatuses, command and control centers, and individual high ranking officials of Hamas. Major collateral damage accompanied the IDF's destruction of Hamas's offensive capabilities. While the IDF was not prepared for the War in Lebanon they had taken the lessons learned in 2006 and applied them to the ground force that would invade Gaza on 3 January. The fighting would last until 18 January when the IDF would withdraw its forces from Gaza, leaving a massive amount of destruction in their wake. Due to the population density the IDF went to great measures to warn the civilian population. After the military shortcomings in the IDF, the military reverted back to the basics during the operation, albeit in an environment that is guaranteed to have major collateral damage to the civilian population. Those fundamentals included "audacious combined arms maneuver warfare supported by devastating firepower," something that had been greatly successful in the past for the Israelis⁸⁹. Because of the overuse of firepower in order to protect soldier's lives, a number of disturbing reports came out of Gaza of incidents where IDF soldiers shot and killed Palestinians holding a white flag to surrender. Along with the destruction of property due to the commander considering any structure to be a "military advantage," if used by Hamas. There were known human rights violations documented by Amnesty International and those involved in the IDF have yet to be convicted of any crime. Israel accomplished their mission of halting rocket fire coming from the Gaza Strip but major questions would persist on the principles of proportionality and distinction.

VI: IDF efforts in compliance with IHL during Operation Cast Lead

⁸⁹ From Lt. Col Abe F. Marrero's chapter *The Tactics of Operation Cast Lead* in the book, *Back to the Basics*

“The truth is that the IDF took extraordinary measures to give Gaza civilians notice of targeted areas, dropping over 2 million leaflets, and making over 100,000 phone calls. Many missions that could have taken out Hamas military capability were aborted to prevent civilian casualties. During the conflict, the IDF allowed huge amounts of humanitarian aid into Gaza. To deliver aid virtually into your enemy's hands is, to the military tactician, normally quite unthinkable. But the IDF took on those risks.

Despite all of this, of course innocent civilians were killed. War is chaos and full of mistakes. There have been mistakes by the British, American and other forces in Afghanistan and in Iraq, many of which can be put down to human error. But mistakes are not war crimes.

More than anything, the civilian casualties were a consequence of Hamas' way of fighting. Hamas deliberately tried to sacrifice their own civilians.

Mr. President, Israel had no choice apart from defending its people, to stop Hamas from attacking them with rockets.

And I say this again: the IDF did more to safeguard the rights of civilians in a combat zone than any other army in the history of warfare⁹⁰.”

*UN Watch Oral Statement
Delivered by Colonel Richard Kemp
UN Human Rights Council
12th Special Session, 16 October 2009
Debate on Goldstone Report*

“ Hamas strategy was twofold: (1) to take advantage of the sensitivity of the IDF to civilian casualties on the Palestinian side, in an attempt to deter the IDF from attacking legitimate targets; and (2) where the IDF did attack, to wield an excellent propaganda war against Israel, featuring civilian casualties as well as damage to homes and public institutions⁹¹.” The task at hand for IDF ground forces entering Gaza had “difficulties of both interpreting events during asymmetric war and fighting effectively while trying to preserve the traditional distinction between combatants and noncombatants⁹².” The tactics of Hamas who placed many rocket launching sites in school yards and next to hospitals forced the IDF to make a tough decision on what would classify as a military objective near a civilian structure. “In other

⁹⁰ UN Watch Oral Statement, Delivered by Colonel Richard Kemp, UN Human Rights Council, 12th Special Session, 16 October 2009, Debate on Goldstone Report. Found at <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=7536409>

⁹¹ *Supra* note 51. Pg 1029, para 154

⁹² Neta Oren. Chapter 7: Israeli soldiers' perceptions of Palestinians during the 2009 Gaza War. *Civilian vulnerability in asymmetric conflict*, Pg.155

words, Hamas chose to base its operations in civilian areas not in spite of, but because of, the likelihood of substantial harm to civilians. The IDF could not forgo a legitimate military objective without undermining its mission and jeopardizing both its soldiers and Israeli civilians. In those circumstances, the result of Hamas' approach was to make it difficult, and sometimes impossible, for IDF forces to avoid harm to civilians and civilian objects⁹³.”

The IDF knew the risks going into Gaza and that the proximity of civilians and civilian objects next to any target was a given. In these following examples the IDF was in full compliance with International Humanitarian Law and the 4th Geneva Conventions according to the independent mission and their report in the book, *How Does Law Protect in War?* In which reported on the legality of the operation being carried out:

I: “The Israeli Government has stated it took the following steps to warn the civilian population of Gaza:”

One leaflet drop stated the following before air attacks commenced: “To the residents of the Gaza Strip: the IDF will act against any movements and elements conducting terrorist activities against the residents of the State of Israel. The IDF will hit and destroy any building or site containing ammunition and weapons. As of the publication of this announcement, anyone having ammunition and/or weapons in his home is risking his life and must leave the place for the safety of his own life and that of his family. You have been warned⁹⁴.”

Customary International Law (CIL) requires that party in control of the area exercises article 57 (1) of Additional Protocol I which states “in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians, and civilian objects⁹⁵.” The

⁹³ *id*

⁹⁴ *How Does Law Protect in War?* Volume II, Third Edition, page 1050. Para 508. Marco Sassoli, Antoine A. Bouvier, Anne Quintin. International Committee of the Red Cross, Geneva, Switzerland

⁹⁵ Article 51 (1) of Additional Protocol I (as found in *How Does Law Protect in War?*). See note 93. Pg. 1047, para 491.

IDF was not in control of the areas where leaflets were dropped, even though before attack each party has the duty under CIL to “remove civilian persons and objects under its control from the vicinity of military targets⁹⁶.” Because the areas were governed and protected by Hamas, it should have been taken upon them to remove their civilians from areas where they stored weapons, had underground rocket launching apparatuses, and where soldiers were located. However this was not complied with by Hamas because the presence of civilians drastically made it more difficult for the IDF to target just military objects with being guaranteed that civilian collateral would most likely occur while using heavy ordinance. The IDF also dropped leaflets to areas that were specifically going to be attacked including this one to the neighborhood of Rafah:

“Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defense Forces (IDF) will attack the areas between Sea Street and till the Egyptian border... All the residents of the following neighborhoods: Block O-al-Brara-al-Shu’ara-Keshta-al-Salem neighborhood should evacuate their houses till beyond Sea Street. The evacuation enters into force from now till tomorrow at 8 AM. For the safety and for the safety of your children, apply this notice⁹⁷.”

While these warning comply with IHL, it also gives militants a warning to leave the area in which the threat of attack had been announced by the IDF, giving the militants time to prepare for an assault or leave, in which the leaflets can have an opposite effect of driving Hamas regulars to areas where the civilian population was told to flee too. The IDF overlooked the possible consequences to their mission of striking at rocket crews in residential neighborhoods. The mission also identified that rocket launching crews from Hamas were moving so rapidly to avoid being targeted by drones or aircraft monitoring the area closely, that they did not make the civilian population aware of their presence, which would be difficult none the less, however this

⁹⁶ *id*

⁹⁷ *Id* pg. 1050. Para 509

renders the protection of the area as being a civilian object due to a mobile military object now being there. Due to the heavily populated urban areas of Gaza, IDF forces and Hamas militants were always amongst civilians wither knowingly or unknowingly, which isn't a violation of international law per say, but parties should be aware when they are entering a habited zone.

One of the more effective warnings that were issued to Palestinian civilians announcing of an impending attacks were targeted phone calls. "The mission notes the credible account of Mr. Abu Askar of the telephone warning he received as a result of which he was able to evacuate up to 40 people from his and other houses. He received that call around 1:45 a.m. and Israeli forces destroyed his house with a missile strike seven minutes later⁹⁸." However there were instances where phone calls were made and no strike occurred or occurred later with no warning. One instance identified by the mission is the case of the AL-Bader Flour Mills Co. which received two separate messages in which no attack took place. Five days later in the early hours of the morning the factory was destroyed⁹⁹. This was particularly rare and the phone calls were seen as a great success. Due to a total of 165,000 advanced targeted telephone warnings, thousands of lives were spared with little effort on behalf of the IDF¹⁰⁰.

"From the information available to it, the mission found no evidence to suggest that Palestinian armed groups either directed civilians to an area where attacks were being launched or forced civilians to remain in the area¹⁰¹." Concrete evidence of Hamas being caught red handed employing human shields has not been proven by any international commission.

Although there were instances of the IDF capturing suspicious positioning of militants around

⁹⁸ *Id* pg. 1049, para 504

⁹⁹ *Id* para 504

¹⁰⁰ From IDF report *Operation Cast Lead: Humanitarian Aspects*. Pg. 4. For specific leaflet messages see the rest of the report

¹⁰¹ *Supra* note 94. pg. 1048, para 494

civilians when they knew the IDF was observing them, many international outlets did not seem convinced, especially the admittedly flawed Goldstone Report. Amnesty International concluded that both Hamas and the IDF, endangered civilians equally due to house to house fighting, where families would be trapped inside their homes during engagements between the warring parties. According to Richard Kemp, the former commander of British Forces in Afghanistan who investigated and testified to the UN Human Rights Council on Operation Cast Lead said “In Gaza, according to residents there, Hamas fighters who previously wore black or khaki uniforms discarded them when Operation Cast Lead began, to blend in with the crowds and use them as human shields. We have seen all this before, in Lebanon, in Iraq and in Afghanistan¹⁰².” While it is a fact that Hamas did not distinguish themselves from the civilian population there is little credible evidence outside of the Israeli government backing up the IDF’s numerous claims that Hamas directly used human shields during Cast Lead.

Another method used by the IDF to assist the civilians was through radio warnings and information. It informed residents of safe areas to go, in which case they stated to go to the city centers to avoid areas because ground forces were attacking from the outskirts of the urban areas. The fiercest fighting would take place in those areas. Radio announcements also indicated where civilians could go to receive food and humanitarian aid from the United Nations Relief and Works Agency (UNRWA). Civilians would know that those corridors would be safe zones. Due to the IDF’s superior technology and means, their ability to warn civilians was their obligation along with it being required by IHL. Their domination of the airwaves and control of communications allowed targeted areas to be evacuated before a strike.

¹⁰² From Richard Kemp’s paper, *International Law and Military Operations in Practice*. In the Jerusalem Center for Public Affairs publication *Hamas, the Gaza War, and Accountability, under International Law*. http://jcpa.org/wp-content/uploads/2012/02/Hamas_Gaza_War_Accountability_Under_International_Law.pdf

“From the first briefings before going in, it was clear that the army had changed its entire mindset. Instead of getting the usual precautions on not harming civilians, we were told about the need to make a very aggressive entry. We were told: ‘any sign of danger, open up with massive fire’. In previous training, we prepared for fighting against guerrilla forces, but this time they told us that we would be facing Hamas fighting in full military formation - something that, obviously, did not happen. Some of us were very uncomfortable with these orders others were pleased that finally the IDF [Israel Defense Forces] was taking off the kid gloves...”¹⁰³”

Arik Dubnov, reconnaissance company of a reserve brigade of the Israeli army,

1,417 Palestinians were killed and 5,303 wounded during the 22 days of Operation Cast Lead, while the Israelis had 13 deaths, three civilians and ten IDF soldiers, during the offensive.¹⁰⁴ It is debated as to how many Palestinians that were killed were combatants and noncombatants. It is obvious that more civilians were killed than militants during the conflict. In the eyes of the international community the efforts of the IDF in trying to avert civilian casualties was oppressed by the conduct of ground forces and the targeting decisions made at the time based on quick intelligence. The strategy imposed by the IDF and the mindset that they instilled in soldiers before the ground maneuver commenced is of serious concern. There were human rights violations and a select few that can be constituted as war crimes. The IDF took it upon them to neutralize threats within the sixth most densely populated place on earth.

There were some flaws within their warnings to a Palestinian population caught in the crossfire and terrified with few places to go that guaranteed safety. The mission notes that radio

¹⁰³ From *The Jewish Chronicle*. 5 March 2009 (as cited in Amnesty International’s report *Operation Cast Lead: 22 days of destruction and death*).

¹⁰⁴ Numbers provided by Palestinian Centre for Human Rights, Press release March 12th 2009. Obtained from Reem Salahi’s paper *Israel’s War Crimes: A First Hand Account of Israel’s Attacks on Palestinian Civilians and Civilian Infrastructure*

broadcasts and some leaflets only stated to go to the city centers in which “most cases were lacking in specificity and clarity: people could not be certain that the warnings were directed at them in particular, since they were being issued as far as they could tell to almost everyone. Furthermore, in the circumstances created by the Israeli Armed Forces, people could not reasonably be expected to flee to what appeared to be even less safe places on the basis of such non-specific warnings¹⁰⁵.” The mission was highly critical of such methods in which there were just general warnings but the majority of the leaflets did disclose the exact location for noncombatants to flee too.¹⁰⁶

During the ground invasion on 3 January, the IDF used three brigades along with *Merkava* tanks to invade Gaza, attempting to secure grounds from where militants could continue their rocket fire into Israel. The mission was highly successful in neutralizing militants during intense ground combat in mostly urban areas. The destruction that the IDF left during the fighting, especially from artillery, tank fire, and white phosphorous were devastating and could be classified as overkill. During the duration of the ground operation a number of serious breaches of IHL occurred, some of which according to many NGO’s, including Amnesty International and Human Rights Watch, could be classified as war crimes. The IDF was intent to do everything in its power to ensure that casualties from its ground forces would be as minimal as possible. The IDF stated that the rules of engagement during the Gaza operation “state that a civilian objective loses its immunity if it is used by the enemy for a military activity¹⁰⁷.” This became problematic as “ Hamas continued to launch attacks from densely populated areas and protected sites. In fact as IDF forces advanced into Gaza, Hamas began to rely even more heavily

¹⁰⁵ *Id* pg. 1053 para 356

¹⁰⁶ *Supra* note 99 From IDF report *Operation Cast Lead: Humanitarian Aspects*

¹⁰⁷ *Supra* note 91.

than before on rocket and mortar launches from the midst of urban centers. In addition to staging rocket attacks from civilian areas, Hamas conducted much of its fighting during the Gaza operation from bases within private residences and public facilities, which Hamas assumed the IDF would be reluctant to attack¹⁰⁸.” Targeting is the number one issue as human life between Palestinian civilians and Israeli soldiers is weighed and decided on in the span of a few minutes, if not seconds. “Additional Protocol I allows the targeting of otherwise protected civilian structure “by its nature, location, purpose or use makes 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 advantage¹⁰⁹.” Israeli commanders have to make a decision in the heat of the conflict that if a unit is taking heavy fire from an apartment complex that has civilians in it still, under IHL, that apartment complex renders it use as a civilian object and immediately becomes a military objective that if neutralize, will save Israeli soldiers in the field. It is his duty to his men and country to make the choice that will save Israeli civilian and soldiers.

Human Rights Watch reported that there had been seven separate instances where Israeli soldier fired upon and killed 11 Palestinian civilians whom were waving the white flag, this included five women and four children¹¹⁰. Another incident occurred when about 100 members from a family were hiding in a home when it was attacked by an airborne projectile killing 29¹¹¹. Two soldiers did stand trial for forcing a boy to search bags for booby traps during a home

¹⁰⁸ *Id.* Page 1030 para 159 & 163

¹⁰⁹ Additional Protocol I, art. 51 (3) (as cited in Major Joshua L. Kessler’s paper *Politicalization of Law of Armed Conflict.*)

¹¹⁰ See Globalsecurity.org report on Operation Cast Lead

¹¹¹ Marian Houk article on UN-truth.com. *IDF announces disciplinary action + one indictment for Operation Cast Lead*

invasion, they served three month sentences in prison and were demoted¹¹². A number of IDF soldiers were indicted on manslaughter charges but none were convicted. The IDF has had the luxury of being able to maneuver their way through criminal charges against their soldiers because one of their main policies is to ensure that their soldiers protected legally because “it could lessen the motivation of prospective soldiers to serve in combat units¹¹³.” “The commanders and soldiers who were sent to Gaza need to know they’re safe from various tribunals¹¹⁴.” Accountability is one of the IDF’s main principles which contradicts the actions of criminal suites being brought forward against soldiers after Cast Lead. The IDF’s protection of soldiers accused of war crimes drastically hurts their credibility in the international community and obviously does not own up to some isolated actions during Cast Lead that was against IHL. Some soldiers dodged justice which adds fuel to the fire of the argument against the IDF.

VIII: Conclusion on the Assessment of the IDF during the Second Lebanon War and Operation Cast Lead

“I don’t think any country would find it acceptable to have missiles raining down on the heads of its citizens. The first job of any nation-state is to protect its citizens. And so I can assure you that if...somebody was sending rockets into my house where my two daughters sleep at night, I’m going to do everything in my power to stop that. And I would expect Israel to do the same thing¹¹⁵.”

Barack Obama

The overview of IDF compliance with IHL during their two most recent large scale conflicts offers a picture where arguments on both sides are valid and invalid. It seems as though

¹¹² Article by B’Tselem, an Israeli human rights group. *Operation Cast Lead 27 Dec 08 to 18 Jan 09*. 1 January 2011

¹¹³ Harel, Amos. *Israel examining ways to protect IDF troops from legal actions*. “Hareetz”

¹¹⁴ Statement by Prime Minister Ehud Olmert (2006-2009). As cited in Amnesty International report: *Operation Cast Lead: 22 days of destruction and death*

¹¹⁵ Speech in Sderot, Israel 23 July 2008 by Senator Barack Obama (as cited in work of Major Joshua L. Kessler, see note 108)

IHL is abstract and seems to fit the user based on the information they choose to disclose. It is difficult to get to the center of the story as you deal with two highly motivated sides in which academics and those in the international community are split. The assessment of the IDF during the Second Lebanon War yielded that the IDF responded to an armed attack with overwhelming power that was questionable in its use. However, at the same time once rockets were being fired indiscriminately at Israeli population centers it was justified under the laws of war, *jus in bello*. A response to protect the people of Israel was warranted but the size of the response will be forever questioned under the laws of proportion. Israel left destruction in its trail after the 33 day conflict but a mission was accomplished. They set back Hezbollah years, showed a reason for future deterrence, and established a relative calm along the northern border for the past six and a half years. Ultimately the conclusion of the war and the rearming of Hezbollah to a level that has upgraded their capabilities and weapons, will lead to a cycle repeating itself where another conflict in the not so distant future is highly plausible. The IDF's attempts to clear civilians away from the battlefield were unnoticed as the certain possibility of civilian damage was a given due to the strength of the response. It is difficult for any state to justify killing innocent bystanders who were imbedded unwillingly with armed militants but the fact remains that Israel acted in self-defense to an armed attack even though the IDF response was in major question in terms of the proportionality.

The Gaza War or better known as Operation Cast Lead, was a justified response to indiscriminate rocket fire raining down on civilian population centers in Southern Israel. "It is unreasonable to expect the military planners would have the capability to definitively determine the exact number of casualties or civilian property damage a military operation would cause¹¹⁶."

¹¹⁶ *Supra* note 108

Those critical of Israel's response fail to identify that there is a fully democratic government that has an obligation to its citizens to protect their lives and livelihood which under the circumstances in the many years prior to a major military offensive, was legal. An enemy that hides amongst its people and aims to purposely kill women and children is not one that any government would take lightly in responding to. "In particular, how should one measure military advantage against human lives? How should one assess the worth of human lives on both sides of the conflict? Are the parties entitled to protect their own citizens or soldiers at the cost of endangering uninvolved enemy civilians, and if so, at what ratio¹¹⁷?" The answer to these questions are left up to the warring parties to decipher for themselves in the context of IHL. The conclusion remains that "the application of the principle of proportionality in military operations is ambiguous and very hard to verify¹¹⁸." To this paper given the accusations and contexts that Israel complied with IHL and had full right to respond with armed force to Hezbollah and Hamas in order to protect its citizens from certain harm.

¹¹⁷ Aminchai Cohen's paper *The Principle of Proportionality in the context of Operation Cast Lead: Institutional Perspective*. Rutgers Law Record. Vol. 35. Spring 2009

¹¹⁸ *id*

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