

Israel, Navy Sinks Dinghy off Lebanon

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Brilliant, J., *The Jerusalem Post*, August 1, 1990]

NAVY SINKS DINGHY OFF LEBANON

HAIFA - An IDF [Israel Defence Force] Dabur patrol boat early yesterday morning sank a small rubber dinghy, off the south Lebanese coast, apparently killing the two men in it. The dinghy appeared to be on its way to Israel but it is unclear whether its passengers were armed.

The Dabur suffered no losses.

The Dabur's crew sighted the dinghy at about 3 a.m. some 2.5 kilometers offshore between Tyre and Ras al-Bayda, in the security zone, shortly after receiving a warning about a possible target from a radar station in the area. A few minutes later the Dabur's cannon and machine guns sank the dinghy with a few bursts.

The rapid chain of events was described at a press conference yesterday with the Dabur's commander, identified as 'Uri,' and Navy Commander Micha Ram. [...]

On this radar screen Uri detected a small dot moving down the coast at about 25 knots, in the direction of Israel.

He ordered his crew to battle stations, manning the cannon, machine guns and detection devices. The Dabur proceeded on an interception course. Three minutes later the crew spotted the dinghy's foam and then the vessel itself.

Uri came within 300 meters of the target and turned on the Dabur's projector. He saw two men on board the dinghy. The Dabur gunners opened fire.

Several Dabur crew members said later they believed the enemy had returned fire but Ram suggested that they were mistaken. Uri said he did not spot any guns aboard the dinghy.

Apparently the enemy vessel was hit immediately. The men on board "tried to disengage, turning southeast, then northwest and later northeast," but the Dabur gunners kept firing.

Thirty to 40 seconds after the initial burst of fire the two men on the dinghy were "blown into the water," Uri related. The dinghy's engine continued working and it began to run around in circles. Two more bursts from the Dabur and the dinghy began to sink.

The Dabur's crew spotted one of the men 50 meters ahead. The Dabur turned both its cannons on the man, and "opened fire and he drowned." The second man was not found.

Asked about the shooting of men in the water, Ram said the "terrorist" did not raise his hands to indicate he was surrendering. There had been cases in which the enemy, under similar circumstances, fired at Israeli craft.

A Red Cross legal expert said that the second Geneva Convention stipulates that shots may not be fired at wounded navy men or "as soon as someone is shipwrecked." But the Convention does not cover someone "swimming around and fighting."

Uri, a first lieutenant, turned to leave the press conference, but Ram detained him and promoted him to the rank of captain.

Discussion

1. Is IHL applicable here? Because since 1949 Israel has been in a state of war with Lebanon? Because Israel occupied a "security zone" in southern Lebanon?
2.
 - a. Were the men in the dinghy combatants? Or civilians? Did the crew of the Dabur have an obligation to ascertain before initially firing whether the men in the dinghy were combatants or civilians? (P I, Arts 51(2) and 85(3); P II, Art. 13; CIHL, Rules 1 and 6)
 - b. Is the distinction between combatants and civilians relevant for being considered shipwrecked? (GC II, Arts 12 and 13; P I, Arts 8(b) and 10) Does this distinction result in different protection for the shipwrecked in the present case?
3.
 - a. When is one considered shipwrecked? Does protection depend on a further indication of surrender, e.g., raising one's hands? Is there a difference between the regime of protection for shipwrecked persons and that for the wounded and sick? Must wounded and sick surrender in order to gain protection under IHL? (GC II, Art. 12(2); P I, Art. 8(b) and 41(2); P II, Art. 7; CIHL, Rules 109-110)

- b. Once the men from the dinghy were in the water, was it a violation of IHL to fire upon them? To destroy the wreckage? (GC II, Arts 12(2) and 18; P I, Art. 10) Do such acts constitute grave breaches of IHL? (GC II, Art. 51; P I, Art. 85(2)) Could firing on shipwrecked persons consequently ever be justified under IHL by military necessity?
 - c. Did the crew of the Dabur not have a responsibility to rescue the shipwrecked and take them aboard their ship? (GC II, Art. 18; P I, Art. 17(2); P II, Art. 8; CIHL, Rule 109)
4. How would some answers to the above questions change if the man in the water had fired at the Dabur? Would he still be considered shipwrecked? (GC II, Art. 12; P I, Art. 8(b))

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