

Lebanon, the Targeting of a Palestinian Group by Israel

INTRODUCTORY TEXT: *According to Lebanese media, the Israeli military carried out air strikes on a Palestinian militant group backed by Syria's government in eastern Lebanon. The attacks were allegedly launched using armed drones and without the consent of Lebanon. This case discusses the IHL rules applicable to extraterritorial drone strikes.*

Case prepared by Ms. Jana Ruwayha, Master student, under the supervision of Professor Marco Sassòli and Mr. Pavle Kilibarda, research assistant, all at the University of Geneva (Switzerland).

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.

‘ISRAELI STRIKES’ TARGET PALESTINIAN GROUP IN LEBANON

[**Source:** BBC News, “‘Israeli strikes’ target Palestinian group in Lebanon”, 26 August, 2019, available at: <https://www.bbc.com/news/world-middle-east-49471495>]

[1] The Israeli military carried out air strikes on a Palestinian militant group backed by Syria's government in eastern Lebanon overnight, Lebanese media say.

[2] A position of the Popular Front for the Liberation of Palestine-General Command [PFLP-GC] near Qusaya was hit, the state-run National News Agency reported.

[3] The group responded with a barrage of anti-aircraft fire, it added.

[4] On Sunday, the Iran-backed Hezbollah movement accused Israel of trying to carry out a drone attack in Beirut.

[5] After two drones came down in the capital, Hezbollah leader Hassan Nasrallah said its fighters would shoot down any drones that entered Lebanese airspace.

[6] Two Hezbollah members were killed on Saturday night when Israel struck targets in Syria to prevent what it said was a drone attack by Iranian forces and their allies.

[7] The National News Agency reported that Israel carried out three air strikes on the outskirts of Qusaya, a village in the Bekaa valley near the border with Syria, early on Monday.

[8] A top official from the PFLP-GC told the BBC that a drone carried out the raid.

[9] There were no reports of any casualties and the Israeli military did not comment.

[10] The PFLP-GC has been operating in Lebanon for decades and has close ties to the Syrian government, whose forces it has supported in the country's eight-year civil war along with Hezbollah.

[10] "This aggression is a continuation of what happened in Beirut and a provocative attempt that is a direct reaction to Nasrallah's statements," Khaled Jibril, a PFLPGC official, told al-Mayadeen TV.

[11] Early on Sunday, two drones that the Lebanese army said were Israeli crashed in the southern Beirut district of Dahiya, which is dominated by Hezbollah.

[12] One of the drones hit a building that houses Hezbollah's media office, while the other exploded and crashed nearby, causing material damage.

[13] Again, no-one was injured and Israel declined to comment.

[14] "What happened... was an attack with a suicide drone," Hassan Nasrallah said in a televised speech later on Sunday. [...]

[15] The Hezbollah leader called it a "very, very, very dangerous development" and a "clear breach of the rules of engagement" established after the month-long war between Hezbollah and Israel in 2006.

[16] "The time when Israeli aircraft come and bombard parts of Lebanon is over," he warned. [...]

[17] Lebanese President Michel Aoun, a Hezbollah ally, said on Monday: "What happened was similar to a declaration of war which allows us to resort to our right to defending our sovereignty."

[...]

[18] Hassan Nasrallah also said the Israeli air strikes south-west of the Syrian capital, Damascus, on Saturday had hit a Hezbollah rest house and not a military facility.

[19] An Israeli military spokesman said the strikes had thwarted a plan by the Quds Force, the overseas operations arm of Iran's Islamic Revolution Guard Corps (IRGC) and allied Shia militias to launch a number of attack drones loaded with explosives at targets in northern Israel.

[...]

DISCUSSION

I. Classification of the Situation and Applicable Law

1.

a. How would you classify the situation discussed in the case? Is there an armed conflict between the PFLP-GC and Israel? What about Israel and Lebanon? Does IHL of international armed conflicts (IACs), IHL of non-international armed conflicts (NIACs) apply or do both apply in parallel? Would your analysis change if Israel had acted with the consent of Lebanon? Does it matter whether Lebanon tolerated the presence of PFLP-GC?

b. (Paras 1 and 5) Assuming that the attack took place in the context of an armed conflict, what is the geographical scope of said conflict? If the context was a conflict between Israel and the PFLP-GC, where does IHL apply? Is IHL applicable in the entire territory of Lebanon regardless of whether it is a party to the conflict? Only in the parts controlled by the PFLP-GC? If both IHL of IACs and IHL of NIACs are applicable, how do we distinguish which body of law to apply? (GC I-IV, Arts 2 (1) and 3; AP I, Arts 1 and 3; AP II, Art. 1; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70)

2. Can fighting against a terrorist organization amount to an armed conflict? What criteria should be fulfilled for such fighting to be regarded as an armed conflict? Does IHL apply to armed conflicts against terrorist groups? (GC I-IV, Arts 2 and 3; AP I, Art. 1; AP II, Art. 1; see also *United States, Hamdan v. Rumsfeld*)

3.

a. Does IHL describe how an IAC begins? Does it require a certain threshold of violence? Does it matter against whom or what force is used (e.g. the armed forces, a civilian object, an uninhabited area, an armed group not linked to the territorial State)? Must there be an 'intention to fight' (*animus belligerendi*) by the attacker for an IAC to erupt? What does the ICRC Commentary on CA2 say about this? Is the attack described in the case at hand sufficient to trigger an IAC in itself? (GC I-IV, Arts 2; AP I, Art. 3)

b. Traditionally, it has been held that there exists no threshold requirement for an IAC, with some arguing that the first shot fired triggers the application of IHL. How reasonable would it be to apply that logic to this case? What would be the advantages and disadvantages of doing so?

4.

a. (Paras 15-17) Does the claim by Lebanese President Michel Aoun that “what happened was similar to a declaration of war” trigger the application of IHL? What about the fact that there was a “month-long war between Hezbollah and Israel in 2006”?

b. (Paras 1 and 10) Can the fact that the targeted Palestinian militant group is “backed by Syria's government” be sufficient to trigger an IAC? If so, who would be the parties to this conflict? What level of control by Syria over the group would be necessary to classify the conflict as an IAC? To attribute the group's acts to that State? (ICJ, *Nicaragua v. United States*, para. 115; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 131)

5. Which IHL rules apply here? Is it relevant in this regard that an armed conflict (occupation) was already ongoing between Israel and Palestine at the time? What is the legal status of the persons affected by the violence? If IHL is not applicable, what rules are applicable in the case at hand?

6.

a. Are IHRL rules also applicable in such situations? If yes, do all the parties to the conflict have to respect such rules? Are derogations due to the exigencies of the situation admissible?

b. Does IHRL apply to cross-border activities of States? All of them or only specific acts? What is the difference between the geographic scope of application of IHL and that of IHRL?

c. If both IHL and IHRL apply to the same situation, what is their relationship? Does IHL prevail over IHRL? How may it be determined whether IHL or IHRL rules prevail in the event of conflict of norms? Is IHL always the *lex specialis* in case of an armed attack?

II. Conduct of hostilities

7.(Paras 4-14) Is the use of drones prohibited *per se* under IHL? Do IHL rules on the conduct of hostilities apply to drone strikes? If the drone strike is carried out in the context of an IAC? NIAC? If the target is located outside the territory of the State deploying the drones? (AP I, Arts 48, 51 (2) and (5) (b), 52 (2), 57 and 58; CIHL, Rules 1, 7, 14, 15, 21 and 22)

8. Is the current legal framework sufficient to respond to the development and use of drones or similar new

technologies? Are armed drones a challenge for ensuring respect for IHL? Conversely, can their use also improve respect for the law?

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