



CRITICAL ANALYSIS OF ISRAEL'S WAR CRIMES DURING HEZBOLLAH-ISRAEL WAR OF 2006

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Abstract:

The following research work has given a comprehensive elaboration of questions vis-à-vis crucial legal aspects of the Second Lebanon war of 2006. The history of Jewish settlements in the occupied Palestinian lands and their activities after occupying and declaring sovereignty over these lands against Arab countries and Hezbollah has been given in the initial pages to understand the background of this conflict. These questions are closely related to 'jus ad bellum' which is the body of law that provides justifications for a state's transition from peace to use of armed force and 'jus in bello' which defines and describes code of conduct and liabilities of hostile and neutral nations along with individuals that are involved in armed conflict with each other. Most importantly, events leading to the second Lebanon war and questions regarding the assessment of this war under UN charter & interpretations of "use of force" and "armed attack" by ICJ along with analysis of Israel's right of self-defense against Hezbollah's actions during this ordeal will be mentioned in considerable detail as well in the latter part.

Keywords: Armed attack, *Jus ad Bellum*, *Jus in Bello*, International Law, Use of Force, Hezbollah, Israel.



Introduction:

From the beginning of the 20th century, Palestinians and other Arab nations repeatedly claimed that Jews from around the world have started to aggressively settle in the ancestral lands. The Balfour Declaration, issued by the British government in 1917, provided veracity to this plot (Encyclopedia Britannica, 2023). In this regard, the religious affiliation of Palestinians and other Arab nations along with Jews towards sacred Holy sites in Jerusalem and other parts of Palestine cannot be undermined. As a result, these religious sentiments have been used for more than a century now by both sides to legitimize their theocratic claims on this land. All three Abrahamic religions, i.e., Islam, Christianity, and Judaism claim their right on Palestinian territory and consider it sacred in their own right.

When Britain occupied Palestine under the command of General Edmund Allenby at the end of WWI, a British Mandate of Palestine was formed. As mentioned above, promises were made to Jewish people under Balfour declaration that a homeland will be created for them in this land as a result of which hundreds and thousands of Jews were encouraged to migrate to Palestine. The majority of these people were from different parts of Europe, and they established farmstead settlements in Palestine which were commonly known as Kibbutz (Encyclopedia Britannica, n.d.). Things were barely stable there until armed groups from both sides started to attack each other on different pretexts. These events kept exacerbating peace in Palestine, a sorry predicament that continues to this day (A&E Television Networks, 2017).

Three wars were fought after Israel declared independence in 1948, 1967, and 1973 between multiple Arab nations and Israel which escalated geopolitical tensions in the Middle East to unprecedented levels. However, in 1982, things took a new turn after Israel occupied various parts of Lebanon in a glaring breach of the latter's territorial integrity and sovereignty. This precarious situation prompted a swift reaction from the newly revolutionized religious State of Iran that succeeded in uniting various resistance groups in this region. Consequently, a new and highly disciplined resistance group named Hezbollah was formed (Encyclopedia Britannica, 2023).

To this day, Hezbollah remains a highly significant guerilla force in the Middle East with a sizeable arsenal of weapons that are constantly upgraded and funded by its allies. Moreover, Hezbollah has its own political and media wings, making it increasingly easier for them to assimilate themselves into Lebanese society and provide social welfare to its citizens.

Many botched plans to neutralize Hezbollah on the behest of Israel and its allies have been conducted on the international level. However, so far Hezbollah has grown into a stronger force with each passing day. Its recent participation in the Syrian civil war has made it a more potent force with on-ground combat experience and an increase in its stockpile of the latest precise rockets with the aid of Iran, a situation that has made Israel extremely worried despite their own wrongdoings. This has escalated tensions for its eternal enemy that considers it a genuine threat against its illicit occupation of Palestine (Blanford, 2022).



Literature Review:

The crux of this research work can be divided into two parts, i.e., construing the concepts of *Jus ad bellum* & *Jus in Bello* & their violations during the Second Lebanon War of 2006, and the principle of proportionality in international humanitarian law of warfare and its application vis-à-vis this war. The legal impetus for the understanding of the right of self-defense under the auspices of the topic mentioned herein can be traced back to Chapter VII of the UN charter. The terms *jus ad bellum* and *jus in Bello* in the context of the law of proportionality during wars have also been discussed herein below for which the research work of Andreas Zimmermann under the title *The Second Lebanon War: Jus ad bellum, jus in Bello and the Issues of Proportionality*. It was averred in this article that both sides in this conflict had conducted war crimes. The view in this regard was well balanced by the writer who used sources of international law to justify his opinion in an immaculate manner.

Various judgments that are given by the International Court of Justice during the past decades also considerably elaborate important facets of this topic. These judgments have been discussed in considerable length in the work I have done during the past week. Like in the Corfu channel case, it was averred that the rule that each state is obliged not to purposely permit its domain to be utilized to submit acts against the freedoms of some other state. Regarding the Corfu Channel, this implied that Albania was obliged to caution others that its regional waters were mined (Corfu Channel Case, 1949).

Background & Events of War:

After occupying southern parts of Lebanon in 1982, Israel had to withdraw most of its troops in the year 2000 due to constant pressure from Hezbollah's resistance. However, the small, disputed territory of Shebba farmland remained a contentious hostile flashpoint long after Israel's withdrawal from Southern Lebanon. Israel refused to withdraw its troops from this small piece of land and extended its jurisdiction to this land by annexing it in 1981 in direct contravention of UN resolutions. Hezbollah has maintained its stance since then that this part of the land which originally belonged to Lebanon or Syria should be evacuated by Israel (Rose, 2019).

Before the war started, both parties involved in the conflict had crossed the border between Israel and Lebanon (commonly known as Blue Line) on numerous occasions. Israel had persistently allowed its fighter jets to cross over into Lebanese territories for bombardments which continue to this day, an illegal practice that continues to this day. On the other hand, Hezbollah has infiltrated inside Israel time and again with the help of underground tunnels and guerilla fighters on the ground. One of Hezbollah's main objectives of these raids was to take IDF personnel as prisoners to use them as collateral for bilateral prisoner exchanges between both parties (Sousa, 2014).

On 12th July 2006, Hezbollah fighters crossed the Blue Line and captured two Israeli soldiers in an



attempt to exchange them for their prisoners incarcerated in Israel. Israeli leadership decided to give an aggravated reply to not only Hezbollah but to the whole of Lebanon and started giving threatening statements (Al Jazeera, 2006).

It was concluded in the aftermath of this confrontation that more than 300,000 and 900,000 people were replaced in both Israel and Syria. More than 1,000 people were killed in Lebanon which mostly included innocent civilians whereas around 150 people were killed in Israel among which only 40 civilians died.

Condemnation by HRW:

Israel was widely condemned by Human Rights Watch for its indiscriminate bombings of countless innocent civilians because these killings were way more than a country can justify under the wrongful claim of collateral damage. Hundreds and thousands of cluster bombs were thrown from the sky from Israel even when the end of the war was imminent, and these bombs are proving to be catastrophic to this day.

The link between Hezbollah & Lebanese government:

It is also worth mentioning here that Lebanon's forces were present in the country during this conflict but never participated in the war against Israel. This was mainly due to technical shortcomings and a lack of combat experience against the more disciplined and modern IDF. Hezbollah's destruction and neutralization of its weapons was the main motive of Israel which ignited such a strong reaction by it (Kéchichian, 2023).

Nevertheless, since Hezbollah is a part of Lebanese society and politics in so many ways, therefore it will be oversimplified and contrary to ground realities to say that Hezbollah was a separate militia within Lebanon and had nothing to do with its government. Although the Lebanese government initially denied that it permitted July 12 attacks by Hezbollah, Prime Minister Fouad Siniora eventually raised his voice in favor of the withdrawal of IDF personnel from Shebba farms on 29th July 2006 (Al Jazeera, 2006).

Understanding Jus ad Bellum, Jus in Bello and their violations during Second Lebanon War of 2006:

It is important to understand the conflict under consideration here in the light of *Jus ad Bellum* or "justified war". This term was coined in the western world by Saint. Augustine during medieval times. Nevertheless, its origin can be traced way before this time in the writings of Greek philosophers such as Plato, Aristotle, and Roman philosopher, Cicero. The idea or concept of just war can be addressed from two perspectives namely the *Jus ad Bellum* and *Jus in Bello*. The *Jus ad Bellum* is associated with the fundamental questions of when it is just to initiate a war. The *Jus in Bello* on the other hand



addresses the questions of how just the war is done (Gassama, et al., 2018).

According to just war theory, war should be ordered by a competent authority and should be conducted after an explicit declaration. Since Israel's higher officials supported military action and revenge against Hezbollah and Lebanon, these conditions for *Jus ad Bellum* were satisfied.

Justification and objectives given by Israel for initiating this conflict were mainly confined to liberating their captured soldiers back and striking Hezbollah targets within Lebanon. However, after 34 days, the conflict ended after UN resolutions and many objectives were left unsolved. The failure of IDF to achieve its war objectives in the state of Lebanon was depicted by its then Chief of Staff, Lieutenant Dan Halutz when he said: "*We were not successful in reducing the short-range rockets on Israel's north until the ceasefire*" (Gassama, et al., 2018).

Therefore, it can be averred that conditions related to *Jus ad Bellum* were satisfied by Israel to a certain degree although the goal and objectives under which they started the war were not achievable. This important assertion was proved when the war ended, and Israeli soldiers captured on 12th July 2006 returned home as fallen combatants, and Hezbollah's capabilities to attack its nemesis were not completely neutralized and destroyed according to Israel's plans (Gassama, et al., 2018).

Not only were these objectives of Israel's attacks remained unaccomplished, but they also went far beyond the limitations of principles about just war and proportionality and dropped cluster and phosphorus bombs on the civilian population well inside Lebanese territory. Thus, the oppressive regime in Israel violated the *Jus in Bello* principle which primarily addresses the justness of a war or conflict.

Proportionality Principle in International Humanitarian Law of Warfare:

Before moving any further, it is imperative to understand that both sides in this conflict, i.e., Hezbollah and Israel violated each other's sovereignty on multiple occasions for decades including the second Lebanon war which we are discussing right now. As it is clear that both sides have done such aforementioned acts in their interests, it is pertinent to understand the principle of proportionality to get a clear picture of who is to be blamed for violation of human rights in their enemy's territory and why?

The principle of proportionality prohibits the use of such methods and means in warfare that can exceed the military advantage sought. In other words, whatever military advantage an army desires should not result in collateral damage and loss of innocent civilian lives. Plan for seeking a particular military advantage should be designed and estimated in such a manner that the damage which is to be caused is controlled precisely on the location which is planned to be destroyed and nowhere else (Proportionality | How does law protect in war. n.d.).



Many news outlets in the world reported during the Hezbollah-Israel war of 2006 how Hezbollah fighters infiltrated and ambushed inside the Blue Line to capture two Israeli soldiers. Moreover, they also highlighted how Israeli vehicles struck a mine in Southern Lebanon while attempting to free their incarcerated soldiers and were shot by Hezbollah fighters, resulting in the extermination of eight Israeli soldiers. But what happened after that for more than a month saw a complete blockade of innocent Lebanese people and Hezbollah forces by land, sea, and air by Israel and brutal indiscriminate bombings on civilian targets which included Lebanon's only international airport situated in Beirut. All of these bombings by Israel led to the death of more than a thousand Lebanese people. Very few of these were Hezbollah fighters and the majority of those killed were innocent civilians. Therefore, it can be concluded that since Hezbollah is at war with Israel since its inception and targeted only military targets within Israel, they had the right to do so to achieve their goals whereas indiscriminate and merciless bombing by air and sea conducted by IDF all over Lebanon was way out of proportion of objectives which Israel wanted to achieve.

The most condemnable act by Israel was seen during the last three days of the war when the issue was almost solved with diplomacy, but they started to through thousands of cluster bombs inside Lebanon through the air which is still haunting and killing Lebanese people to this day. This act was condemned by many human rights organizations including the Human Rights Watch (Docherty, 2023). This is the reason why the Israeli prime minister at that time Ehud Olmert was criticized for his mismanagement of this conflict not only by European leaders but by opposition parties in the Knesset as well (Al Jazeera, 2006).

Assessment of Hezbollah-Israel War of 2006 under UN Charter and Interpretations of "Use of Force" and "Armed Attack" by the ICJ

Chapter VII of the UN charter gives directions regarding actions that can be taken in cases of acts of aggression. Article 51 states that:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security." (United Nations, n.d.).

This article 51 was used as a pretext by Israel's ambassador to the UN on 12th July 2006 for his country's malicious attack on Lebanon and Hezbollah. In separate letters to UN Secretary-General and UNSC, he wrote at the behalf of the so-called Israeli government that:



“.... Israel thus reserves the right to act per article 51 of the Charter of the United Nations and exercise its right of self-defense when an armed attack is launched against a Member of the United Nations. The State of Israel will take the appropriate actions to secure the release of the kidnapped soldiers and bring an end to the shelling that terrorizes our citizens.” (A/60/937-S/2006/515, 2006). However, the use of article 51 for self-defense is not as simple as it looks and requires interpretation of terms “armed attack” and “use of force” which will be given in considerable length herein below.

Interpretation of Armed Attack:

A question that can be raised is article 51 is a good excuse to attack any organization or country on the pretext of escalated border tensions that have existed for decades?

In the case *Nicaragua v. United States*, ICJ gave its judgment out that armed attack can be conducted by a state against another state only when the attack by the aggressive state or party could be classified as an "armed attack" and not mere frontier incidents or altercations. Even when such attacks are done by non-state actors like the one conducted by Hezbollah, may allow room for the applicability of article 51 of the UN charter on the following conditions:

- a. Such non-state actors have a significant link with the State from which they are launching their attack. A link must be established between a State and non-State actors working inside its territory so that the State which is being attacked can invoke provisions of article 51 for its defense.
- b. These kinds of attacks are of sufficient and effective scale and are not trivial (Kattan, 2006).

Analyzing the Nadelstichtakt doctrine:

It was further argued on different other platforms that Israel could invoke the Nadelstichtakt (needle prick) doctrine, according to which even if an attack does not essentially qualify to be declared as an armed attack, it can still be seen as one by taking into consideration the totality of the incidents.

ICJ's jurisprudence in both cases of Nicaragua and armed activities in Congo vehemently emphasizes that for this particular doctrine, essential requirements are that the attacks should be commutative and collective in nature and should be attributed to a State (Kattan, 2006). Nevertheless, since it's just a theory, it holds negligible weightage in international law and different scholars can interpret it in different ways according to their perceptions and understanding in pursuance of their interests.

Another relevant point here is that this doctrine can also be used by Lebanon and Hezbollah against Israel's persistent violations of its airspace which the latter calls "a form of international terrorism." Furthermore, Israel's blockade of Lebanon by sea and air can be seen here as acts of aggression under the UN charter and can provide Lebanon an opportunity to build its counterarguments (Kattan, 2006).



Interpretation of Use of Force:

Article 2(4) of the UN charter elaborates that:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations.” (Charter of the United Nations and Statute of the International Court of Justice, 1945).

There is, however, an exception to this rule under 51 of the UN charter which allows the use of force in case a State is attacked. But this will continue unless the UN provides a solution after which both sides will be required to abide by it. In the case under deliberation here, UN resolution 1701 was released to resolve and end the second Lebanon war of 2006 (Charter of the United Nations and Statute of the International Court of Justice, 1945).

The use of force in international law is, nevertheless, subject to the conditions of principles of proportionality and necessity. A State must use force as a last resort because the *raison d'etre* of the UN charter is "save succeeding generations from the scourge of war." (Kattan, 2006).

The right of States to use force for implementation of international law has been forbidden by the UN charter. In the *Corfu Channel case*, the ICJ declared that British mine-sweeping operations in Albanian territorial waters without the latter's consent amounted to:

“The manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law.” (Corfu Channel Case, 1947).

Difference between Use of Force and Armed Attack:

It is widely accepted that the use of force is a part of armed attack. The use of force does not always mean armed attack, but armed attack always means the use of force. According to *Brownlie*, the use of force must reach an escalated level of certain gravity to be termed as an armed attack. Furthermore, when we closely examine state practices, we find that many states accept that the most concerning use of force can be construed as an armed attack.

To prove that there is indeed a gap between the use of force and armed attack, ICJ ruled out the difference between 'most grave forms of use of force' and 'other less grave forms'. In other words, "minor violations of the prohibition of the use of force falling below the threshold of the notion of armed attack do not justify a corresponding minor use of force as self-defense." (Öyküİrmakkesen, 2014).



In simple words, although Hezbollah crossed Blue Line and killed 8 Israeli soldiers on 12th July 2006, it was Israel's responsibility to prove this border skirmish as an armed attack leading to war and act per principles of proportionality and necessity during the war which it miserable failed to do.

Analysis of Israel's Right of Self-Defense against the Acts Conducted by Hezbollah

After all, what has been written in the pages above, it will be easy to understand whether Israel acted in its self-defense against Hezbollah or not?

What is aggression?

Since aggression will be mentioned frequently in the following pages, therefore it seems important to give its definition according to article 1 of UN resolution 3314 which stipulates that:

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.”
(United Nations General Assembly Resolution 3314 (XXIX), 1974).

The subsequent part of this article makes it clear that it does not matter whether a State is a member of the UN or not.

Hezbollah's Acts under International law:

A question can be raised here since Lebanon's army did not participate at all in this war, how can Hezbollah's acts be seen under international law?

The ICJ has reiterated in its immaculate and well-devised jurisprudence that an element of any state's involvement is required for a non-State actor to be considered to have orchestrated, and subsequently committed an “armed attack” like Hezbollah in this case (Jean, 2019). Hezbollah has always been a part of Lebanon's society and politics and thus its link with the government of Lebanon is visible for everybody.

Scrutinizing Israel's right of Self-defense under the principle of proportionality:

Many scholars believe that for an action to be self-defense, it should be necessary and proportionate. Mere border skirmishes like the one conducted by Hezbollah on 12th July 2006 cannot be seen as anything but a small-scale intrusion into Israeli territory. Both parties had done it many times before during the years before the conflict. Moreover, this rule was also agreed by ICJ in *Nicaragua v. United States of America*, and its subsequent advisory opinion on the use of nuclear weapons in 1996 (Zimmermann, 2007). The exact words in *Nicaragua v. United States of America* were:



“Self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it.” (The Republic of Nicaragua v. The United States of America, 1986)

This statement by the ICJ has been construed by legal scholars according to international law. It elaborates that the purpose and goal of any act in pursuance of self-defense should be directed towards countering the armed attack. For this purpose, much depends upon the command-and-control structure of the State acting in self-defense.

For example, if a command-and-control center of an attacking State is located in a remote country location, it can be attacked and destroyed proportionally because it is necessary under international humanitarian law that only military targets are hit in the counterattack. Such counterattack should be conducted in a precise and professional manner so that collateral damage and loss of innocent lives can be avoided.

If the armed attacks are still happening from the aggressor state, the country which is acting in self-defense can keep targeting targets of the military value of attacking State like it's roads or oil refineries. But the most imperative motive of such attacks should be circumventing the aggressor from attacking the country which is acting in its self-defense (Zimmermann, 2007).

During its war with Lebanon in 2006, Israel's Chief of Defense Staff arrogantly said that “we will wind back Lebanon's clock by 20 years” (McGreal, 2006). A similar kind of provocative statement was given by Israel's prime minister and a bunch of other official representatives and was clearly against principles of proportionality during the war.

Interpretation of right of Self-defense under article 51 of UN charter and Israel's misuse of this interpretation under the pretext of self-defense:

Highly dangerous bombs were dropped by Israeli airplanes on innocent citizens of Lebanon's capital Beirut and many important buildings and centers of communication were mercilessly destroyed there, including the capital city's main international airport. This is a clear violation of the precedent which was given by ICJ in 2005 in the case *the Democratic Republic of the Congo v. Uganda*. It was averred in this judgment that taking of airports and towns which are hundreds of kilometers inside Uganda (like the airport in Beirut) does not fall within the ambit of article 51 of the UN charter (McGreal, 2006).

The worst thing done by Israel was its throwing of thousands of cluster bombs on the civilian population in Lebanon through its fighter jets during the end days of the war. This was considered a highly contentious and serious war crime by many human rights watchdogs. It was because the UN resolution for cessation of hostilities was almost completed at that time and parties to the conflict had almost completed their negotiations to end the war. These cluster bombs proved to be highly catastrophic for Lebanese people (especially children) and their dreadful effects can be witnessed to



this day.

Therefore, it can be surely said that Israel had the right to defend itself only in a proportional and precise manner in cases of armed attacks by Hezbollah. But in reality, Israel showed brutal aggression through its air and naval bombings consequently almost 1300 people died in Lebanon. Only a few of these people were active Hezbollah armed fighters while others were all innocent civilians belonging to different parts of Lebanon which were far away from the border area where actual skirmishes occurred. All of these incidents point out that Israel became an aggressive and brutal State and conducted activities that were way out of its initial motive to strike Hezbollah for the killing of eight soldiers belonging to IDF which is clearly in violation of humanitarian international law as agreed by many scholars.

Conclusion:

It can be averred that Hezbollah could have avoided raids across Blue Line on 12th July 2006 from Lebanese territory to save thousands of innocent lives in Lebanon. This assertion has been accepted to a great degree by Hezbollah leadership as well (McCarthy, 2006). Nevertheless, it is also crystal clear that how Israel acted during the war can be clearly called brutal and non-proportional mismanagement and way more than what laws of proportionality permit in an armed conflict. Judgments by ICJ in cases related to the interpretation of article 51 of the UN charter mentioned above clearly forbid the killing of innocent people and achieving ulterior motives which exceed the objective of reciprocation of armed attacks by country observing self-defense. Hezbollah was capable of shooting missiles up to the city of Haifa in Israel but showed much more restraint when it came to killing innocent people as compared to IDF. Consequently, 43 Israeli civilians were killed during the war by Hezbollah bombings whereas more than a thousand innocent civilians died by Israeli bombings from both sea and air (Human Rights Watch, 2007). Under the aforementioned averments, it is imperative to understand and evaluate the relevant international laws regarding legality of wars so that such events can be circumvented in the future.



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