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ISRAEL / LEBANON Attacks on Lebanese civilians in south Lebanon by Israeli forces

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SUMMARY

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On 22 and 23 May 2000 during the withdrawal of the Israel Defence Forces (IDF) from south Lebanon and the collapse of Israel's proxy militia, the South Lebanon Army (SLA), a number of Lebanese nationals were killed by Israeli or SLA fire. Information gathered by Amnesty International, including during a fact-finding visit to south Lebanon, suggests that in at least four incidents on these two days Israeli forces directed tank fire from the Israeli side of the border at Lebanese civilians, killing four people.

On 22 May a man and a 16-year-old boy were killed on a road facing the Israeli village of Manara. Hundreds of civilians and some armed people had been driving or walking on the road celebrating Israel's withdrawal when the attacks took place. According to witnesses, 'Abd al-Karim 'Assaf, aged 22 from Mays al-Jabal, was killed when a shell fired without warning from an Israeli tank slammed into the Mercedes car he was driving in. Five others were injured. Shortly after another shell exploded near a pick-up truck approaching the burning Mercedes, killing Ibrahim Maruni, aged 16, from Shaqrah.

Later on 22 May Salman Rammal was killed in the village of 'Adaysah by tank fire apparently coming from the Israeli border near the Israeli village of Misgav Am. According to witnesses, he was operating a bulldozer to remove an SLA roadblock after the SLA had left. Here too dozens of people were celebrating when he was killed.

On 23 May 'Abd al-Rahman ('Abed) Taqqush was killed on the same stretch of road facing Manara where the two other fatal attacks had taken place the day before. According to witnesses, including BBC correspondent Jeremy Bowen and other journalists watching from Manara, an Israeli tank fired at the stationary car in which 'Abed Taqqush

was making a phone call. This attack was followed by bursts of machine-gun fire apparently aimed at Jeremy Bowen who was sheltering with others in a nearby building.

The laws of war included in the 1949 Geneva Conventions and its two 1977 Additional Protocols categorically prohibit any direct attack against civilians or civilian objects. They also prohibit attacks which do not attempt to distinguish between military targets and civilians as well as attacks which, although aimed at a legitimate military target, have a disproportionate impact on civilians or civilian objects. Article 85 of Protocol I defines certain breaches of international humanitarian law as "grave breaches". These are war crimes and include -- when they are committed wilfully and cause death or serious injury -- "making the civilian population or individual civilians the object of attack" and "launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects."

These killings appear to have happened in a context in which the IDF and SLA had already withdrawn from the area and, especially on 22 May, many Lebanese civilians were on the move celebrating the withdrawal and return to their villages. Amnesty International is not aware of any reports of firing or other hostile military action directed at the Israeli border on either day in these areas at the time of the attacks. The people killed appear all to have been targeted, without warning, even though they were not engaged in hostilities.

Amnesty International believes that serious violations of international humanitarian law, possibly war crimes, have taken place. It recommends that the Israeli government immediately carry out a thorough investigation into the attacks described in this report and bring to justice anyone against whom there is admissible evidence of responsibility for serious violations of the laws of war.

Amnesty International also recommends that other states investigate available evidence of grave breaches of international humanitarian law and, if there is sufficient evidence and the suspect is within their jurisdiction, prosecute the suspect or extradite him or her to another country willing and able to hold fair trials.

KEYWORDS: INDISCRIMINATE KILLINGS1 / ARMED CONFLICT1 / ISRAEL AND THE OCCUPIED TERRITORIES / LEBANON / GENEVA CONVENTION / WAR CRIMES / UNIVERSAL JURISDICTION / JOURNALISTS / JUVENILES

This report summarizes a 13 page document: ISRAEL/LEBANON: Attacks on Lebanese civilians in south Lebanon by Israeli forces (AI Index: MDE 02/06/00) issued by Amnesty International in June 2000. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: <http://www.amnesty.org/news/emailnws.htm>

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Attacks on Lebanese civilians in south Lebanon by Israeli forces



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ISRAEL / LEBANON

Attacks on Lebanese civilians in south Lebanon by Israeli forces

On 22 and 23 May 2000, during the withdrawal of the Israel Defence Force (IDF) from south Lebanon and the collapse of the South Lebanon Army (SLA), Israel's proxy militia, a number of Lebanese were killed by Israeli or SLA fire. Information gathered by Amnesty International, including during a fact-finding visit to south Lebanon, suggests that in at least four incidents over the two days Israeli forces directed tank fire from the Israeli side of the border at Lebanese civilians, killing four people.

This paper provides details of the four incidents and calls for a full investigation into them, as the killings appear to have resulted from direct attacks on civilians. If committed wilfully, such attacks would constitute a grave breach of international humanitarian law and therefore a war crime.

1. Background: the Israeli withdrawal and the demise of the SLA

In the days immediately preceding the attacks referred to in this report, the IDF was withdrawing from the area of south Lebanon it called its "security zone". Israel had militarily occupied this area since 1985 with the assistance of the SLA -- and effectively controlled much of it since 1978 -- arguing that it was meant to constitute a buffer protecting its northern borders against attacks. In recent years Lebanese fighters belonging to what has been referred to as the "Resistance", particularly those belonging to the armed Shi'a political group *Hizbullah*, had increased their attacks against IDF and SLA personnel in the "security zone". Both sides had also engaged in reprisal attacks against civilians and civilian objects. Over the years, Amnesty International has repeatedly called on all parties to this conflict to respect their obligations under international humanitarian law to protect civilians.

The Israeli government of Prime Minister Ehud Barak elected in 1999 promised to withdraw the IDF from Lebanon with or without an overall peace agreement with Lebanon and Syria, which maintains a sizeable military presence in Lebanon. After inconclusive negotiations with Syria over the Golan Heights occupied by Israel in 1967 and continued casualties among IDF troops caused by *Hizbullah* fighters, the Israeli government decided to withdraw unilaterally and set 7 July as the date by which it would complete the withdrawal. The IDF began to hand over its positions to the SLA in mid-May.

However, events moved rapidly. By the end of Monday 22 May the "security zone" had been cut into two sections by returning civilians and *Hizbullah* members, without serious fighting taking place. By the morning of Tuesday 23 May the western sector of the "security zone" collapsed, with more Lebanese civilians and armed fighters streaming in from the north. The IDF accelerated its pull-back, blowing up or shelling abandoned IDF or SLA positions and materiel, while SLA fighters were giving themselves up or heading for Israel. The IDF withdrawal was completed on the night between Tuesday 23 May and Wednesday 24 May, with thousands of SLA fighters and their families, among other Lebanese, crossing the border to seek refuge in Israel.

2. The general circumstances of the attacks

On Monday 22 May hundreds of Lebanese started returning to the villages of Hulah and Markaba. Among them were armed Lebanese fighters. These movements of civilians and fighters were effectively cutting the "security zone" in two in its central area, without meaningful resistance by the IDF or the SLA.

According to Nicholas Blanford of the Lebanese newspaper *Daily Star* and British newspaper *The Times* who was in the area that day, around midday three to five Israeli helicopters flying on the Israeli side of the border were firing on the road between Markaba and 'Adaysah. Two Israeli tanks positioned on the border near the Israeli village of Misgav Am also started firing on the road, while further Israeli fire was destroying positions and materiel abandoned by the IDF and the SLA.

Nicholas Blanford told Amnesty International that on the morning of 22 May an SLA tank was hit by IDF fire after it had broken down and was abandoned near the road some 1,500 metres north of the bend where three of the attacks detailed in this report took place (one cannot see the bend from where the tank was). He was near this burning tank, in the early afternoon, with a group of about 50 civilians and some armed men who were stopping people from going further down the road:

"We were standing some 100 to 150 metres from the smouldering tank. I was there with Stephen Wallace and an unarmed man with a *Hizbullah* flag who told us he wanted to plant the flag on the tank. At that point a tank shell slammed into the dirt just below the asphalt of the road a few metres away from where we were, kicking stones and dust into the air but without causing injuries. The shell could only have come from the trees around Manara in Israel. A few seconds later we heard machine-gun fire and bullets cracking past us. With the rest of the crowd we took cover around the corner, out of sight of Manara. About two or three minutes later we heard the shriek of a missile and saw it explode some 40 or 50 metres away."

Three attacks took place on 22 and 23 May between the villages of Hulah and Mays al-Jabal on a stretch of road facing the Israeli village of Manara which is located close to the border fence with Lebanon. For those coming from Hulah the road at this point slopes down and turns sharply, with the bend in full view of Manara. The only construction alongside the road facing Manara is a building containing a gas station. There are no trees or other vegetation obstructing the view from Manara and from a section of the Israeli road along the fence, which are placed on higher ground than the road in Lebanon.

On either 22 or 23 May, Amnesty International is not aware of any reports of Israeli or SLA personnel being present on Lebanese territory between the border fence and the road in Lebanon in the specific area where the three attacks took place. While a number of Lebanese armed people carrying weapons such as AK 47s were mixed with large numbers of Lebanese civilians moving on the roads, the general atmosphere was celebratory, especially on 22 May. Similar circumstances seemed to be prevailing in the village of 'Adaysah further north, where a fourth attack took place, on 22 May, apparently launched from near the Israeli village of Misgav Am.

Amnesty International has no report of any firing or other military hostile action directed at the Israeli border on either day in these areas at the time of the attacks. These attacks appear to have taken place, without warning, after the IDF and SLA had already pulled back from the areas. It actually appears that no fire was directed at Israel from within Lebanon throughout the period of the IDF withdrawal. Also, *Hizbullah* did not launch retaliatory attacks against Israel in response to the killing of these and other people, contrary to past practice.

A fifth attack on a car which may have resulted in civilian casualties was witnessed by Alan Philips of the British *Daily Telegraph*. He was near Misgav Am in Israel on 23 May and recalls that the attack took place about half an hour before the attack on 'Abd al-Rahman Taqqush (see below), which he also witnessed. Alan Philips told Amnesty International that he saw a car moving on a dirt road towards the border fence being hit by what he presumed was a tank shell. It was too far for him to be able to tell whether flags or weapons were in the car. Amnesty International does not have further details on this attack.

3. Killing of 'Abd al-Karim 'Assaf (22 May 2000)

'Abd al-Karim 'Assaf, from Mays al-Jabal, was in a Mercedes automobile with five friends, driving down the sloping road below Manara around 1pm. According to his family, the six had left earlier in the morning to meet up in Hulah with the people who were returning to the village, and were now on the way back to the village of Mays al-Jabal. 'Abd al-Karim

'Assaf had with him a Lebanese flag while another friend was waving a flag of the *Amal* movement (a Shi'a-based political group with its own armed militia).

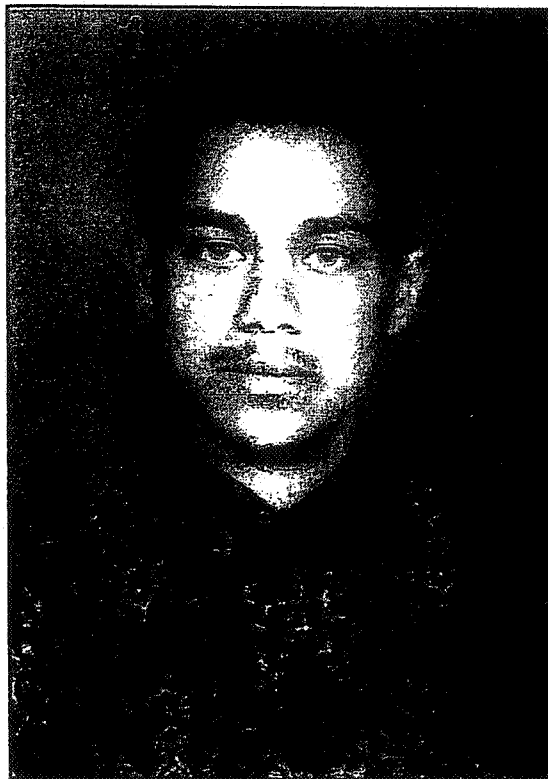
Fatmah 'Assaf, 'Abd al-Karim's sister, was walking in front of the Mercedes together with her son Muhammad and daughter Zaynab. There were many other civilians around. Fatmah 'Assaf told Amnesty International:

“'Abd al-Karim was so happy on that day. He had left taking with him a Lebanese flag, flowers and some rice [throwing rice is a traditional welcoming custom]. There were many other people, perhaps 50 or 60, and other cars, slowly moving down the road, families, women, kids, in a festive mood.”

According to her account, all of a sudden the Mercedes exploded after being hit by a shell, and she and the others ran for cover into the building with the gas station that was only a few metres away. She saw 'Abd al-Karim lying on the road near the car. She said she did not recognize him at first as the man she saw on the ground was not wearing the black shirt that 'Abd al-Karim was wearing when he left home -- apparently he had given it to one of his friends in the car to wave.

The car was on fire. One of 'Abd al-Karim's brothers who was also in the group moved to reach him, but as he got close to him another shell landed nearby and he threw himself to the ground. According to Fatmah 'Assaf and other relatives, two more shells exploded nearby. Eventually the brother managed to bring 'Abd al-Karim to the building where the others were seeking shelter. He seemed to be already dead, with a massive injury to the back of his head.

'Abd al-Karim 'Assaf was 22 years' old. Between 1998 and 1999 he had performed his military service in Beirut. He had then returned to the village of Mays al-Jabal and was unemployed. His body was taken to the hospital in Tibnin and was then returned to his village by an ambulance of the Lebanese Red Cross.



'Abd al-Karim 'Assaf ©Private

The five other people who were in the car and were injured are Husayn Hamadeh, who was driving; his two sons 'Ali Husayn Hamadeh and Sa'id Husayn Hamadeh; and their cousins Tariq Fawzi Hamadeh and Hasan Mahmud Hamadeh. Amnesty International understands that they sustained various injuries but does not have details of them.

Amnesty International saw the wreck of the burned-out Mercedes on the side of the road on 29 and 31 May. It appeared to have been hit from its left, with the shell impacting on the asphalt under the car, the interior of which was torn from below.

4. Killing of Ibrahim Maruni (22 May 2000)

Ibrahim Maruni, from Shaqrah, was with 22 other young men in a pick-up truck coming down from Hulah towards Mays al-Jabal, 20 in the open back of the truck and one sitting next to the driver. Muhammad Ibrahim, from Hula, drove the truck. He told Amnesty International that between 1pm and 2pm on 22 May they were driving down the road with others walking around them, perhaps 50 or 60 people, with no armed people among them. Those on the back of his truck carried flags of *Amal* and *Hizbullah*.

Muhammad Ibrahim said that they approached the point on the road where the Mercedes, in which 'Abd al-Karim 'Assaf died, had been hit and was burning. They could see his body on the tarmac. Muhammad Ibrahim almost stopped and was about to turn to pass the burning car when a shell was fired from a tank from the same position from where the Mercedes was hit. The shell exploded in the dirt just off the road a few metres away from the truck, which was not damaged. Muhammad Ibrahim then drove into the gas station nearby and it became clear that the only one hit was Ibrahim Maruni. According to Muhammad Ibrahim:

"Ibrahim Maruni was the only one crouching and holding on to the back of the driver's cabin, while the others were standing. Shrapnel had torn into his side and he seems to have died instantly."



Ibrahim Maruni © Private

According to his relatives, just before the explosion Ibrahim Maruni had told his friends "Look at the tank!". After a while, the body of Ibrahim Maruni was taken away to the hospital in Tibnin. An ambulance of the Lebanese Red Cross then took him back to his village.

Ibrahim Maruni was a 16-year-old student. He was born in Kuwait but had returned to his family village when he was one year old. He was the only boy and had 11 sisters. One of them, Amal, was killed aged 12. Her family told Amnesty International that she was killed by one of four shells fired from the Israeli / SLA side on 30 June 1995, as she was leaving home for the religious ceremonies of the 'Ashura.



The burned-out Mercedes in which 'Abd al-Karim 'Assaf died. Behind it is the pick-up truck parked where it was when Ibrahim Maruni was hit. In the background are the trees and houses of the Israeli village of Manara. © Ina Tin / AI

5. Killing of Salman 'Abd al-Rasul Rammal (22 May 2000)

In the late afternoon of 22 May Salman Rammal was operating his bulldozer to remove a roadblock in the village of 'Adaysah, which is at the foot of hills on which the border fence with Israel runs near the Israeli village of Misgav Am. According to his family, because he had a bulldozer Salman Rammal had been forced by the SLA to put up this roadblock of earth and rubble at around 1pm, some 200 metres from his house. Now that the SLA had pulled back from the area Salman Rammal was removing it.

His family told Amnesty International that there were dozens of people on the road around his bulldozer celebrating, men, women and children, including people waving Lebanese and *Hizbullah* flags. At around 6pm what appeared to be a tank shell exploded, without warning, where Salman Rammal was, fatally wounding him in the back of the head. No one else was injured. The shell appeared to have been fired by a tank overlooking 'Adaysah. The tank was visible from the village and fired two more shells.

Salman Rammal was a farmer aged 35. He was married to Taghrid, aged 28, and had four children, two boys, Bilal and Muhammad aged 12 and eight, and two girls Diana and Mariana aged 10 and four.

6. Killing of 'Abd al-Rahman Taqqush (23 May 2000)

'Abd al-Rahman (known as 'Abed) Taqqush was killed in his stationary Mercedes car on 23 May at around 12pm. He had driven BBC journalist Jeremy Bowen and cameraman Malik Kan'an from Mays al-Jabal towards Hulah. They passed the burned out wreck of the Mercedes hit the day before and decided to film it, together with the village of Manara. According to Jeremy Bowen:

"'Abed stopped the car on the bend. Malik and I got out, unloaded the camera gear from the boot and walked back round the bend. 'Abed stayed in the car, making a phone call [his family said later that he was speaking with his son Muhammad]. I saw what looked like some sort of observation position in the Manara settlement in front of us. Assuming they would be looking at us, I waved my arms to show I was not carrying a weapon or anything else suspicious. We were not wearing flack jackets or helmets. Malik set up the tripod and camera in the middle of the road, and started filming. We wanted to film Manara and the Mercedes together. About three or four minutes had passed since 'Abed parked the car."

The tripod was placed some ten metres away from the wreck of the Mercedes and Jeremy Bowen had his back to 'Abed Taqqush's car. He continues:

"I heard a very loud explosion. A few small pieces of debris flew over my head. I turned around and saw a ball of flames. For a split second I thought the grass was on fire and then I realized it was 'Abed's car. The fire in the car took hold immediately and after 10 or 20 seconds it was blazing."

Jeremy Bowen says that a white car had just passed by 'Abed Taqqush's car when the shell hit. As evident from the wreck, the shell had hit directly the back of the car. Jeremy Bowen, Malik Kan'an and two other Lebanese journalists who were also there

sought shelter in the gas station building. After about 10 minutes Jeremy Bowen decided to move slightly into the road to see if it was safe enough to walk up to 'Abed Taqqush's car, which was burning furiously.

"At that point there was a burst of heavy machine-gun fire. I heard bullets whiz over my head. I took cover again and gave up any thought of moving out into the open towards the car."

Jeremy Bowen says that Malik Kan'an managed to call for assistance. Rescue cars arrived but did not move up to the burning car for fear of being shot at. Eventually Jeremy Bowen and Malik Kan'an hitched a ride to Mays al-Jabal and made further phone calls. An ambulance of the Lebanese Red Cross received a call at about 2.30pm and moved to recover the body, but desisted before getting there when warned that the situation was still unsafe because of firing from the Israeli side. Three or four hours after the attack 'Abed Taqqush's body was finally recovered by a civil defence team.

In the course of the telephone exchanges from Mays al-Jabal, Jeremy Bowen had two conversations, some 15 minutes apart, with the IDF Spokesperson Col. Sharon Grinker:

"In the first phone call he said the attack was carried out by the SLA. In the second he asked me if I wanted him to try to arrange a ceasefire; the problem, he said, was that he didn't know who was firing in the area."



'Abed al-Rahman Taqqush © private

On the Israeli side of the border, on a platform near Manara overlooking the road in Lebanon, Johnny Irvine from the British television company *ITN* was watching events with other journalists, camera crews and other onlookers. He saw cars driving down the road and an Israeli tank some 300 to 400 yards from where he was standing. He told Amnesty International:

"The tank fired, I could tell also by the dust coming from where it was located, and hit one of the cars. Then two Israeli spotters arrived with binoculars and radio. After they arrived, I heard two bursts of machine-gun fire, one some five minutes after the tank had fired, another one 10 minutes after the first burst. I could not tell who was firing."

Alan Philps of the *Daily Telegraph* arrived at the observation point in Manara just as the tank fired and hit 'Abed Taqqush's car. He told Amnesty international:

"The car was burning. Word went around that two people had survived the attack on the car. There was a burst of heavy machine-gun fire apparently as the Israelis tried to target the survivors, although I could not tell if it came from the tank below us or from somewhere else. I noticed three Israeli soldiers that had arrived in a Humvee. One was carrying a back-pack radio with a five or six foot antenna, another had field binoculars."

Sam Kiley, correspondent for the British newspaper *The Times*, told Amnesty International that he saw the explosion of the car and noticed the dust coming from where the tank had just fired. He also saw the Israeli spotters on the platform, and his driver told him that he overheard them saying that "two had escaped". Those remarks were followed shortly afterwards by bursts of machine-gun fire.

'Abed Taqqush was 53 years' old. He was married to Hana and had three sons, Muhammad aged 21; Marwan aged 19; and Tariq aged 14. He had been working for the BBC as a driver for 25 years.

7. The rules: international humanitarian law

The laws of war included in the 1949 Geneva Conventions and its two 1977 Additional Protocols categorically prohibit any direct attack against civilians or civilian objects, including in reprisal. They also prohibit attacks which do not attempt to distinguish between military targets and civilians or civilian objects and attacks which, although aimed at a legitimate military target, have a disproportionate impact on civilians or civilian objects. Finally, international humanitarian law requires that specific precautions be taken to protect civilians when carrying out an attack.

The fullest statement of the rules governing the conduct of hostilities in international armed conflict is in Protocol I Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I). This Protocol has been ratified by 156 states, including Lebanon, but not by Israel. However, the fundamental provisions of this Protocol, including the rules referred to above, are considered part of customary international law and are therefore binding on all states.

Distinguishing between civilians and combatants

Article 48 of Protocol I sets out the “basic rule” regarding the protection of civilians (often referred to as the principle of distinction):

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

Article 44(3) obliges combatants “to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.” However, Article 50(3) specifies that “[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

Regarding objects, Article 52(2) defines military objectives as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Under Article 52(3), where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used.”

The prohibition of direct attacks against civilians and of indiscriminate attacks

Article 51(2) of Protocol I spells out categorically that “the civilian population as such, as well as individual civilians, shall not be the object of attack.” When committed wilfully and causing death or serious injury such an attack constitutes a “grave breach” of international humanitarian law and is therefore a war crime.

In addition to prohibiting direct attacks against civilians, international law also prohibits indiscriminate attacks. In the language of Article 51(4), indiscriminate attacks are those “of a nature to strike military objectives and civilians or civilian objects without distinction.” Article 51(5)(b) includes, among those to be considered indiscriminate, a type of attack which violates the principle of proportionality, specifically:

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

The duty to take precautionary measures

International humanitarian law requires that armed forces make all feasible efforts to avoid inflicting civilian casualties. Under Article 57, "[I]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects."

Article 57(2)(a) specifies precautionary measures that should be taken by those launching an attack. They include, among others, doing "everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection" and taking "all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects".

Article 57(2)(c) requires that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

Article 58 obliges parties to a conflict to take all necessary precautions to protect civilians under their control against the dangers resulting from military operations, including by removing civilians from the vicinity of military objectives and avoiding locating military objectives within or near densely populated areas.

Violations of the laws of war: state responsibility

Article 85 of Protocol I defines certain "grave breaches" of the Protocol. These are war crimes and include -- when they are committed wilfully and cause death or serious injury -- "making the civilian population or individual civilians the object of attack" and "launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects" which would be excessive in relation to the concrete and direct military advantage anticipated.

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

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

Individual responsibility

Individuals, whether civilians or military, regardless of rank, can be held criminally responsible for serious violations of international humanitarian law. Commanders can be held responsible for the acts of their subordinates. In the words of Article 86(2):

“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.”

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

Jurisdiction over serious violations of international humanitarian law

In line with the common provisions of the 1949 Geneva Conventions, which are recalled in their Protocols, each state party undertakes “to enact legislation necessary to provide effective penal sanctions” for persons involved in grave breaches. In addition, the principle of universal jurisdiction would apply to such crimes. Therefore, each state party:

“shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”

The Geneva Conventions allow a party, if it prefers, to hand such persons over for trial to another state party, and require that, “in all circumstances, the accused persons shall benefit by safeguards of proper trial and defence”.

In addition to being obliged to exercise universal jurisdiction for grave breaches, states are permitted to exercise universal jurisdiction for other war crimes. If, following an investigation, there is sufficient admissible evidence and the suspect is within their jurisdiction, states should prosecute, in a fair trial, or extradite the suspect to another state willing and able to hold a fair trial.

8. Conclusions and recommendations

The information available to Amnesty International suggests that in the four incidents detailed above Israeli forces directed tank fire from the Israeli side of the border at Lebanese civilians, killing four people. These killings appear to have happened in a context in which the IDF and SLA had already withdrawn from the area and, especially on 22 May, many Lebanese civilians were on the move celebrating the withdrawal and their return to their villages. Whatever armed presence was there, it did not appear to either have had the intention or the capability to launch attacks on the border. The people killed appear all to have been targeted, without warning, even though they were not engaged in hostilities.

On the basis of the evidence gathered, Amnesty International believes that serious violations of international humanitarian law, possibly war crimes, have taken place. It therefore recommends the following:

1. The Israeli authorities must immediately carry out a thorough investigation into these attacks. The methods and findings of this investigation should be made public.
2. In pursuing this investigation Israel should consider asking the assistance of the International Fact-Finding Commission established under Article 90 of Protocol I, an independent commission of experts which would be able to operate on both sides with the agreement of both Israel and Lebanon.
3. Should there be enough admissible evidence of serious violations of the laws of war, Israel must bring to justice those responsible.
4. Other states should investigate available evidence of grave breaches of international humanitarian law and, if there is sufficient evidence and the suspect is within their jurisdiction, such states should prosecute or extradite the suspect to another country willing and able to hold fair trials and without the possibility of death penalty.
5. Israel must also review and publish to the maximum extent possible its rules of engagement with regard to incidents at the Israeli-Lebanese border and ensure that they reflect the highest standards of international humanitarian law.
6. Israel should also ensure that victims of serious violations of international humanitarian law receive full redress, including compensation.
7. Israel should accede without delay or reservations to the Additional Protocols to the Geneva Conventions.

