



Statement of the International Association of Jewish Lawyers and Jurists (IAJLJ)

In response to the letter of 22 September 2006 addressed to the IAJLJ on behalf of the Commission of Inquiry on Lebanon inviting communication of information and material relevant to its mandate, pursuant to paragraph 7 of resolution S-2/1 of the Human Rights Council adopted on 11 August 2006

1. Firstly it is pertinent to note that the meeting of the Human Rights Council convened in its second special session, at the conclusion of which resolution S-2/1 was adopted on 11 August last, took place on precisely the same date as the Security Council was in session seized of the Lebanese question, at which it adopted its resolution 1701. This is a clear violation of Article 12 (1) of the UN Charter, which provides:

“While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.”

This applies *a fortiori* to the HRC as a subsidiary organ of the General Assembly.

2. In the second place the IAJLJ observes that resolution S-2/1 adopted by the Human Rights Council (HRC) under which the Commission of Inquiry on Lebanon (CIL) purports to act, was submitted to a vote with undue precipitation, as is borne out by the fact that no genuine discussion took place under the form of open-ended consultations on the draft resolution, as was regretted by the Representative of Finland on behalf of the European Union. The vote of 27 in favour, 11 against and 8 abstentions is indicative of the contested nature of this highly questionable resolution of a patently politically motivated character devoid of any merit, proposed by member states of the Organisation of the Islamic Conference including the Arab League members of the HRC at the second special session of the HRC.

3. The obsessive bias and hostility towards Israel thereby demonstrated at the HRC at each and every one of its sessions at the instigation of the OIC, thereby excluding dealing with the incomparably more severe human rights situation in the Darfur region of Sudan, once again threatens to undermine the Council's credibility and reputation following the same pattern of politically motivated selectivity reminiscent of its discredited predecessor, the Commission on Human Rights as was emphasised by the UN Secretary General in his seminal report of 21 March 2005 “In Larger Freedom” (document A/59/2005) .

4. The IAJLJ refers specifically in this context to the mandate of the CIL as defined in Paragraph 7 of HRC resolution S-2/1 requesting the Commission :

- (a) To investigate the systematic targeting and killings of civilians by Israel in Lebanon;
- (b) To examine the types of weapons used by Israel and their conformity with international law;
- (c) To assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment;



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5. The flagrantly invalid, false and egregiously perverse terms of the mandate of the CIL are inherent in their very wording. They express the absurdly unilateral character of the inquiry, which purports to confine the investigation solely to the highly regrettable and tragic loss of civilian loss of life in Lebanon, deliberately and outrageously ignoring the no less regrettable and tragic loss of life in Israel, both of which occurrences are directly attributable precisely to the deliberate and unprovoked act of aggression initiated by the Hezbollah terrorist organisation.

6. Equally objectionable is the use of patently mendacious terminology stating as conclusions the very propositions that the CIL is charged with investigating, a notoriously well established technique employed in the wording of the mandates of successive resolutions of the Commission on Human Rights on the disputed territories of the Gaza strip and the West Bank areas which over the years destroyed the Commission's credibility.

7. The CIL has thereby forfeited at the very outset any pretence of legality, independence and impartiality.

8. The report of the four human rights Special Rapporteurs of 2 October 2006 of their visit to Lebanon and Israel (A/HRC/2/7) and that of Amnesty International of 14 September 2006 on its mission to Lebanon (MDE 02/025/20056 as distinct from the separate report of the latter's mission to Israel of August 2006) although featuring important omissions of fact and containing questionable statements in their analysis and conclusions, do however contain certain relevant data on the origins and conduct of the hostilities initiated by the Hezbollah elements. Both reports (paragraphs 7 through 9 at page 5 of the former referenced UN report, as well as the first three paragraphs of the latter cited Amnesty International report), notably confirmed by the explicit reference to the Hezbollah attack on Israel across the international border line established by the UN on 12 July last, (recorded in the second preambular paragraph of the UN Security Council resolution 1701 of 14 August 2006) establish beyond a scintilla of doubt Hezbollah's act of premeditated aggression that triggered off the resultant conflict.

9. These events constitute an act of aggression in violation of Article 2 (4) of the UN Charter for which Lebanon is fully responsible under international law by virtue of its consistent and continuing failure to curb the military capability of the Hezbollah terrorist militia to which the Lebanese government continued to surrender the effective exercise of its sovereignty in southern Lebanon. This became abundantly clear since the May 2005 Parliamentary elections, in which Hezbollah acquired 23 seats in the 128-member Parliament and formed part of the Government in which it was represented by two Ministers.

10. Any doubts on this score must be removed by the contents of Security Council resolutions 1559, 1680 and 1701. It should be recalled that resolution 1559 of 2 September 2004 called for all remaining foreign forces to withdraw from Lebanon i.e. those of Syria which had been continuing its intervention into Lebanese affairs. Further it called for the disbanding and disarmament of all Lebanese and non-Lebanese militias and for support the extension of the control of the Government of Lebanon over all Lebanese territory. The message was intended as a clear warning to Hezbollah and its Syrian supporters. This notwithstanding, the Secretary General was compelled to report on 17 May that the key provisions of resolution 1559 had not yet been adequately implemented, namely the disbanding and disarming of Lebanese and non-Lebanese militias and the extension of Lebanese sovereignty throughout all its territory. The clear delineation of the borders between Lebanon and Syria was also a central concern to the

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Security Council, together with the movement of arms into Lebanese territory. The Secretary General did not hesitate to make clear that following the assassination of the former Prime Minister Rafik Hariri and other victims of terror in subsequent terror killings in Beirut, Hezbollah as an integral part of the Lebanese Government had to participate in complying with the full implementation of this resolution together with other militia groups.

11. In these circumstances the Government of Lebanon must be regarded as an accessory both before and after the fact of the aggression perpetrated by the Hezbollah terrorist militia against Israel, which the Lebanese Government had failed to disarm right up to its commission by Hizbollah terrorist elements on 12 July 2006, in disregard of the repeated requests of the Security Council.. The Lebanese Government's responsibility for all the subsequent consequences of the conflict, flows directly from its complicity with Hezbollah in this act of aggression in violation of the UN Charter cardinal principle of Article 2 (4) requiring Lebanon to refrain from the use of force against Israel's territorial integrity or political independence, six years after Israel completed its withdrawal from Lebanese territory in full compliance with Security Council Resolution 425 (1978) as confirmed by the UN Secretary-General on 16 June 2006

12. Accordingly the assertion of any equivalence with Israel in the legitimate exercise of its inherent right of self defence under Article 51 of the UN Charter and in fulfilling its duty to protect its population against the consequences of this unprovoked act of aggression by Hizbollah, acting with the Lebanese Government's complicity, is unacceptable.

13. The lack of equivalence between the aggressor and the victim of the aggression has a direct bearing on the question of the proportionality between Israel's military actions of self defence, in response to the Hezbollah attacks of missiles launched both from prepared fortifications and from population centres in southern Beirut, as well as from other civilian locations elsewhere in Lebanon indiscriminately directed against northern Israel's population concentrations. Such acts constitute a fundamental violation of humanitarian law and the commission of a war crime.

14. In the report of the four UN Special Rapporteurs (*op. cit. paragraphs 9, 35 and 36 and in paragraph 46 first two sentence*) there is admission of the severe damage suffered by Israeli population centres in consequence of the indiscriminate launching of over 4,200 missiles by the Hezbollah terrorist formations on northern Israel towns, villages and settlements including areas of Arab Israeli residence, both in terms of civilian casualties and damage to residential property, installations and infrastructure. Also there is some grudging recognition of the self imposed restrictions on Israeli ground and air operations against Hezbollah missile and other military objectives, both sheltered in or adjacent to civilian apartment buildings, having regard to considerations of observing humanitarian law requirements.

15. This UN report filed by the four Special Rapporteurs contains many imprecise and vague allegations of alleged serious human rights and humanitarian law violations by Israel and assertions of failure to "distinguish between military and civilian objectives; to fully apply the principle of proportionality, and to take all feasible precautions to minimise injury to civilians and damage to civilian objects" (*para 99*).

16. The UN report is less tentative in its strictures on the violations attributed to the Hezbollah elements. In paragraph 100 the UN report affirms "In many instances, Hezbollah violated the applicable principles of humanitarian law, in some cases by targeting the civilian population in

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northern Israel and in others by disregarding the principle of distinction (between civilians and non-combatants).” This statement is clearly open to question since in all instances of firing rockets and missiles of different types other than in direct military engagements, these lethal projectiles were completely indiscriminate in nature, given the fact that they are devoid of any guidance system and contained ball bearings calculated to cause maximum injury to their victims.

17. At paragraph 103 (b) of its report, the four Special Rapporteurs do concede that “The mission accepts that the Government (of Israel) has devoted considerable professional resources to vetting targets for compliance with international humanitarian law.” It then goes on to make a series of requests of more detailed and extensive nature with respect to “all attacks on prima facie civilian targets” requesting detailed particulars in order to prove the validity of the claim and to show the alleged nature of the target. Clearly such a request is unreasonable and impossible to satisfy for self evident security and other considerations.

18. Curiously this UN report makes recommendations directly to Hezbollah in paragraph 105 that it confirm publicly that it is bound by international humanitarian law and renounces the targeting of civilians in all circumstances. It makes other somewhat grotesque requests directly of Hezbollah which on the level of implicit recognition of its equivalence with the other parties, is precluded by virtue of Hezbollah’s continuing and unabated extremist terrorist stance. Clearly this is at variance with Security Council resolution 1701 requiring that there be no weapons, personnel or authority in Lebanon other than that of the Lebanese State, as is specified by the reaffirmation of the previous resolutions 1559 and 1680 that call for the disarming and dismantlement of Hezbollah.

19. Significantly however, the UN report makes further recommendations to the HRC in its paragraph 106 (a) that indicate the concern that resolution S-2/1 having dealt with the alleged conduct of Israel, should also provide for a thorough investigation of Hezbollah’s attacks their serious consequences for the population of northern Israel.

20. Also the report finds (paragraph 106 (b)) that Hezbollah’s extensive use of Katyusha rockets loaded with lethal anti-personnel ball bearings fired towards heavily populated civilian areas, constitutes a clear violation of humanitarian law. There is a prima facie case that this also may have constituted a war crime which warrants further investigation.

21. However the Amnesty report referred to above (at the foot of page 4) is more affirmative in this regard:

“The scale of rocket attacks on cities, towns and villages in northern Israel, the indiscriminate nature of the weapons used, together with the official statements, specifically those of the Hezbollah’s leader, show that Hezbollah has committed serious violations of international humanitarian law. These include deliberately attacking civilians and civilian objects, and indiscriminate attacks, both of which are war crimes, as well as attacking the civilian population as reprisal.

22. The 4 Special Rapporteurs further find in their report that it was clear that Hezbollah made some use of houses and other civilian locations to hide or conceal military activities. There could well be a need for further inquiries undertaken by the HRC to consider whether such

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practices violated rules of humanitarian law and if there were any instances constituting the use of human shields (at paragraph 106 /c).

23. The 4 UN Special Rapporteurs further recommend to the HRC that it should investigate within the scope of resolution S-2/1 a cross-section of Israeli attacks to determine if they were aimed at legitimate military objectives and respected the principle of proportionality. Similarly the reported attacks against fleeing civilians, including ambulances, large scale displacement and the destruction of housing and property should be investigated for their authenticity to determine if any of these alleged acts amounted to war crimes (Paragraph 107 (a))

24. While conceding that the use of cluster bombs does not violate international law, the manner in which they were used by Israel was allegedly inconsistent with the distinction between civilians and combatants and the principle of proportionality. It was claimed that the majority of cluster bombs were dropped during the last three days of the campaign when a cease fire was imminently expected, with the aim of discouraging and inhibiting the return of civilians and evident disregard for the occurrence of the predictable civilian casualties. (para 107 b)).

25. Having regard to the extensive inquiries already made by the 4 Special Rapporteurs and the investigations made by the Amnesty International team of inquiry in both Israel and Lebanon, it is legitimate to question the purpose and utility of the manifestly one-sided politically inspired mandate of the three man investigation proposed at the present juncture to visit Lebanon only. According to the proposed scheduling of this visit, it should have already taken place between 23 September and 7 October with the report of the findings expected within the following two months.

26. With all due respect to the *bona fide* nature of the inquiries conducted by the distinguished members of the CIL team, there appears little likelihood of any further useful information emerging from this investigation which will of necessity be confined to the situation in Lebanon on the basis of the paragraph 7 mandate of HRC resolution S – 2/1, in complete disregard of the 34 days of the indiscriminate missile bombardment of northern Israel by the Hezbollah terrorist organisation. Its leader and spokesman may be relied upon not to cooperate with this enquiry if it nonetheless succeeds in maintaining an objective and impartial character, despite its distorted mandate. In this context the IAJLJ wishes to reiterate its revulsion at the one-sided and perverse nature of the wording of the mandate as expressed in paragraph 7 of this objectionable formulation. Care should therefore be exercised to prevent any further abuse or attempt to give credence to any misleadingly propagandistic version of the campaign of aggression against the territory of northern Israel, facilitated by the unrestricted freedom granted to Hezbollah by the Lebanese State authorities for this purpose.