



The Brookings Institution – University of Bern
Project on Internal Displacement



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DISPLACEMENT, PROTECTION OF CIVILIANS AND THE LAW OF ARMED CONFLICT IN THE CURRENT MIDDLE EAST CRISIS

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INTRODUCTION

Roberta Cohen, Co-Director of the Brookings-Bern Project, opened the seminar with the observation that in many humanitarian crises, the number of persons killed, injured and forcibly uprooted far exceeds the number of persons affected in the current armed conflict in the Middle East. In Darfur, Sudan, estimates of those killed by violence, famine and disease have climbed as high as 450,000 people while the more than 2 million people displaced were in life threatening conditions. In the Democratic Republic of Congo, the total of fatalities and displaced were even greater. In Sri Lanka, a conflict is developing which could plunge the country back into civil war in which tens of thousands have already died. Yet it is the Middle East crisis that captures more attention and arouses more emotion than any other situation. “While the loss of life and the uprooting of people in the current crisis are deeply disturbing and to be profoundly regretted, one still has to wonder whether the value given to human life in some parts of the world is greater than in other parts.”

Cohen noted that the purpose of the meeting was to look at the human dimension of the crisis and help clarify the humanitarian, human rights, legal and ethical aspects of the conflict. Sometimes there has been a dearth of information, sometimes, one-sided analysis, sometimes, knee jerk reactions, sometimes, misinformation. She expressed the hope that the meeting would provide a framework for better understanding the impact of the conflict on civilians on both sides of the border and get people thinking about what needs to be done and what policies to adopt.

Two panels were convened to examine these issues: the first on Displacement and Civilian Protection; and the second on the Conduct of the War: Displacement, Proportionality, and the Law on the Conduct of Armed Conflict. Participants came from humanitarian and human rights NGOs, research and academic institutions, and legal and military institutions. Also in attendance were representatives of the U.S. government (see attached List of Participants).

In the spirit of fostering an open dialogue, the seminar would hear many different points of view. She called on all speakers, whether on the panels or in the audience, to think “outside their own boxes” and predilections.

She reported that the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kalin, who co-directs the Brookings-Bern Project, has been invited by the government of Lebanon to visit and has also asked the government of Israel for an invitation to see the impact of conflict and displacement on that country as well.

PANEL ONE: DISPLACEMENT AND CIVILIAN PROTECTION

Moderator: Daisy Francis, Protection Policy Adviser, Catholic Relief Services

Khalid Koser, Deputy Director, Brookings-Bern Project on Internal Displacement

Bill Frelick, Director of Refugee Policy, Human Rights Watch

Mark Steinbeck, Health Adviser, International Committee of the Red Cross (ICRC)

Following introductory remarks by **Daisy Francis**, **Khalid Koser** provided an overview of displacement in Israel and Lebanon, highlighting the dynamics of displacement and the challenges facing the displaced in both countries.

While little attention has been paid to displacement in Israel, more than 300,000 have been displaced and up to one million more were hiding in bomb shelters and their homes or moving between the two. There were three reasons for the lack of attention. International organizations have not been present in the north and the burden of providing relief has fallen on the government, local charitable organizations, and the Diaspora. The lack of presence of international organizations has curtailed the number of reports published and disseminated on conditions in Israel. The government’s desire to maintain a strong external identity was posited as having led the government to downplay the severity of displacement in Israel. Finally, as Human Rights Watch had noted, there appeared to be a degree of bias on the part of certain international bodies and parts of the media that led them to underestimate the culpability of Hezbollah and the impact that their attacks were having on Israeli civilians.

As a result of the Katyusha rocket attacks, life in the north of Israel had come to a standstill with businesses, schools, and public transportation shut down and more than 6,000 homes damaged. Many of those remaining in the north were the poor, very young, very old, new immigrants or Israeli Arabs who were unable or unwilling to leave their homes. Some of the displaced were being housed with family and friends, while others were being placed in temporary shelters such as schools and kibbutzim. These solutions were not sustainable in the long-term; should the cease-fire fail to hold, the Israeli government would need to find longer-term arrangements. Current challenges included rebuilding destroyed homes and infrastructure, and providing assistance to the displaced and those who may have lost their income and livelihoods as a result of the conflict.

In introducing internal displacement in Lebanon, Koser emphasized that Lebanon is a poor country reliant on food aid and still in the process of rebuilding following the civil war (GDP per capita is USD 6,200). In addition, current displacement overlay previous displacement, as some of those displaced by the civil war remained displaced and may have been uprooted once again by the current conflict.

The exact number of displaced persons was hard to determine as many were staying with friends and family. The rough estimate is between three-quarters of a million and one million people, of whom 50% are children. The United Nations Interim Force in Lebanon (UNIFIL) reports that only 18% of those living in southern Lebanon remain. The high number of displaced persons places Lebanon in the top ten countries worldwide in terms of IDP numbers.

The socio-economic impact was stark as it is estimated that some 7,000 homes,¹ 900 commercial buildings, 630 roads and 73 bridges have been bombed. The destruction of the infrastructure has made it difficult for those remaining in the south to flee north as has financial barriers such as the high cost of taxi travel – the trip between Tyre and Beirut during the conflict costs \$800. Of the displaced, 70% have sought refuge in Beirut where all 154 public schools were converted into makeshift shelters, as were parks, shopping malls and underground parking garages. Conditions were crowded and substandard.

As in Israel, there were waves of displacement. The first to leave were foreign nationals and those with foreign residency papers from western states – those from less developed countries such as Sri Lanka and the Philippines were not as fortunate and often found themselves stranded in Lebanon. This first wave was followed by wealthy Lebanese who fled to Syria and elsewhere overseas. Approximately 180,000 Lebanese sought refuge in Syria, staying with family, friends or in camps and schools.

For those who remained in the south, conditions were dire as they experienced food, medicine and fuel shortages and were in some cases living in makeshift shelters. They were also at times caught in the middle of the fighting, in part because of a Hezbollah deliberate strategy of launching attacks from civilian areas. They also found it difficult to flee north within 24-hour deadlines issued by the Israeli Defense Force (IDF), especially when bridges and roads were destroyed. Providing humanitarian relief was difficult as many of the IDPs and those remaining behind were inaccessible thus contributing to an overall deterioration in living conditions.

In concluding, he identified three broader issues for discussion. First, the conflict revealed a wide range of displacement – mostly within the two countries but also displacement across borders. Each type of displacement presented challenges, requiring different responses. Second, those most in need of assistance were often those who stayed behind as they lacked resources, were often unable to flee, and were out of the reach of humanitarian relief. Finally were the long-term challenges of reintegrating the displaced. In southern Lebanon, there is the widespread destruction of vital infrastructure and the problem of unexploded munitions. It will take time to provide shelter, food, clean water and sanitation. On both sides, the displaced face personal challenges such as dealing with the trauma of the loss of family members, homes, and jobs. “Displacement,” Koser concluded, “is not simply a process that reverses when a conflict ends.”

¹ The number of homes or shops destroyed by August 26 rose to 30,000.

Bill Frelick began his presentation by reflecting on Cohen's request that participants move beyond their institutional allegiances and noted that for him the challenge was not to step outside of his institutional framework, but to stay inside it. He had been asked to tackle the question of whether it is really possible to protect civilians during conflict and, if so, how? In responding, he noted that in order to protect civilians Human Rights Watch had to be disciplined in how it operates. The organization's ability to assist rests on its impartiality, independence, and neutrality. This applied both to its actions but also to how it interpreted the rules of war as they apply to conflict situations.

To preserve the organization's impartiality regarding its monitoring of parties to a conflict with respect to their compliance with *jus in bello*, the rules of war, Human Rights Watch refrains from making determinations regarding *jus ad bellum*, the justification for one side or the other to go to war. It bases its work on determining whether each side complies with international humanitarian law (IHL) standards rather than attempt to draw moral equivalences between the parties to the conflict or to judge the rightness of their respective causes. Maintaining that balance has generated criticism from supporters of both parties to the conflict in Israel/Lebanon.

The organization's first report about this conflict pertained to Hezbollah's attacks on northern Israel and its use of indiscriminate anti-personnel weapons that contained ball bearings meant to inflict civilian casualties. Pro-Arab groups and media criticized Human Rights Watch for not having published at the same time a report on Israel's actions in Lebanon, and some of this criticism particularly targeted the director of Human Rights Watch for his supposed bias towards Israel by emphasizing that he is a Jewish American. Following the subsequent release of "Fatal Strikes," HRW's report on Israeli air strikes that killed civilians in Lebanon, pro-Israel groups and media launched attacks on Human Rights Watch for its supposed lack of objectivity, including highly personalized attacks on the director, and as in the attacks by pro-Arab groups, focused on him as a Jewish American, but this time for his supposed anti-Semitism.

Its methodology in doing reports is strict and involves talking directly with witnesses and visiting locations as soon as possible after they have been attacked to see first hand whether there were indications of rocket launchers, spent shells, trenches, or dead and wounded combatants that would provide direct evidence of combatants using civilians as human shields. Human Rights Watch's "Fatal Strikes" report examined one third of the Israeli air attacks that killed civilians in Lebanon, and in those attacks was unable to detect the presence of Hezbollah at the time of the attack or immediately preceding it. Furthermore, 27 of the 153 civilian deaths that it investigated were those of people fleeing in response to IDF warnings. Its report also noted that the attacks on civilians were not targeted but rather were indiscriminate.

Frelick cautioned against relying too heavily on media coverage when assessing whether a human rights organization's reports are biased, as the apparent bias might be that of the media outlet itself. He mentioned that the *Washington Times* and the *Financial Times* coverage of "Fatal Strikes" was so different that it was hard to believe they were reporting on the same document. One paper highlighted only that Human Rights Watch had contradicted a previous Lebanese government report of the number of people killed at Qana, indicating that the Lebanese government figure was inflated; the other, that Human Rights Watch said Israel had committed

war crimes. Based solely on these respective newspaper accounts, Human Rights Watch could look biased toward one side or the other. Frelick stressed research that is carefully factual and empirically based, as well as holding all parties to a conflict to the same legal standards, as a central tenet of the work of Human Rights Watch in conflict situations.

In concluding, Frelick assessed the United Nations' attempts at maintaining balance. He noted that the UN's humanitarian coordinator, Jan Egeland, had tried to show balance in criticizing both the IDF and Hezbollah for interfering with the provision of humanitarian relief. Yet his criticism of the "disgrace" of both sides in preventing humanitarian aid did not cite specific facts to show interference by both sides but rather appeared to be a political balancing act meant to placate those ready to charge the UN with bias. Meanwhile, the UN's Human Rights Council showed itself to ignore facts on the ground and not to hold both sides to the same standard when it condemned Israel for its actions in Lebanon but failed even to refer to Hezbollah by name and its IHL violations. Its credibility came under serious question as a result.

Mark Steinbeck addressed the challenges of providing humanitarian aid to civilians when access to civilians is compromised by conflict. To begin with, he noted that while gaining access to civilians is difficult and time consuming, the general principles behind providing access are not complicated. Organizations first need to ask themselves how they define access. The ICRC seeks to establish realistic goals by asking what are the needs of civilians and what can the ICRC reasonably accomplish.

He noted that during the Middle East conflict the only time the ICRC was denied entry to provide aid was when there was fighting and the security of the ICRC would have been compromised. The organization did not consider that it had been specifically blocked from gaining access to victims of the conflict. To provide aid, the ICRC must act in a neutral, impartial and transparent manner. It forges relationships with all parties involved and negotiates with each side. Establishing trust requires time and patience. In the current conflict, the ICRC talked to both the IDF and Hezbollah. It didn't take sides but sought to respond to needs.

For its work to succeed, it is imperative that the ICRC maintain its reputation of neutrality and carry out "neutral independent humanitarian action." This is essential in today's humanitarian aid environment where militaries are increasingly providing humanitarian relief. While there are certain benefits to this as militaries have superior logistical capabilities that assist in providing aid, there is a fundamental problem when those providing aid are military personnel dressed in civilian clothes yet carry weapons. The presence of these individuals and traditional white aid vehicles that have weapons rather than the symbols indicating no weapons, can lead to confusion over who is an aid worker and compromises aid workers' ability to carry out their work. As a result, it is essential that the ICRC adhere to its mandate and retain its non-military and neutral status.

In reflecting on the differences between this and other conflicts, he noted that in this conflict detailed maps and Global Positioning System co-ordinates made ICRC's work easier, especially since all of the parties had access to similar technology. This helped ICRC and other aid agencies logistically. With better access to current maps and technology, they were better able to understand the environment in which were operating.

He praised the Magen David Adom in Israel and the Red Cross and Red Crescent Societies in Lebanon and Syria respectively for their efforts and accomplishments in responding to the conflict and the impact of the conflict. The ICRC provided support to its affiliates. In the case of the Magen David Adom, the ICRC assisted by providing funding and helped to mobilize volunteers, although Israel did not request additional assistance.

In concluding, he agreed with Khalid Koser that in this conflict, the people who stayed at home, who had the least resources and could not move, were the most vulnerable.

Moderator **Daisy Francis** raised the issue of the protection of humanitarian aid workers and the insecurity so many of them faced in the current Middle East conflict.

Discussion: Questions were raised about the ability of human rights and humanitarian organizations to protect civilians in time of war, the means they used to do so, and the value of international humanitarian law.

It was pointed out that the nature of warfare had changed. Whereas early humanitarian relief efforts in war zones had addressed primarily military casualties, today it was civilians who were victimized in conflicts. This presented many challenges. One way human rights and humanitarian organizations could protect civilians was by reminding parties involved in a conflict that there are rules of war with which they must comply. Promoting adherence to international humanitarian law was essential to protecting civilians. Impartiality was also critical.

For organizations that do go public, some participants questioned the issues and countries to which they draw attention. For example, did organizations publish most of their reports on democracies rather than rogue states because they know that democracies are more responsive to criticism? Was Israel constantly cited as a human rights violator while the violations of other states were ignored, thereby benefiting many violators? It was pointed out in response that while externally it might appear as though there was an imbalance in reporting, other issues came into play, for example, limited researchers and people on the ground and denial of access, making the writing of reports more difficult. Access to countries like Iran, Syria, and Sudan was limited; alternative sources of facts therefore had to be found to publish a report on conditions in these countries. Human Rights Watch had published more reports on other countries in the Middle East than on Israel — although the reports on Israel attracted considerable media and public attention. What was important was that uniform standards be applied, not the number of pages written about each state. One member of the audience asked why the Human Rights Watch report on Israel was the only one made available at the meeting; the representative of the organization responded that it also had published a report on Hezbollah and had spoken about it; the report on Israel was the latest one and there was so much that could be carried to the meeting; both were up on the organization's website.

Questions were posed about the limits of international humanitarian law, in particular its application and enforcement. While it was generally agreed that enforcement was a difficult challenge, it was noted that international humanitarian law had been strengthened in recent years by the creation of the International Criminal Court. The establishment of the court provided the

human rights movement with a new role and means for protecting the rights of civilians. It is the human rights organizations that often provide the research on violations and call for legal action to be taken. Thus, the human rights movement now has the power to promote steps to bring violators to justice and can use this power to urge potential violators to respect the law.

The methodology employed by organizations to prove that violations occurred was questioned and discussed. It was pointed out that in order to find evidence, researchers needed to visit the location of an attack. In conflicts that include ground fighting and air strikes, and pose multiple security threats, gaining access to sites could be difficult or near impossible. Not only was research often limited by security concerns but also by dealing with armed groups – it was “difficult objectively to find the truth.” Furthermore, determining culpability was challenging in the case of air strikes as issues of chain of command became more problematic. The intense media attention focused on the conflict in the Middle East exerted pressure on organizations to raise concerns and give immediate responses. Yet there were constantly changing conditions, which led to questions about the trustworthiness of the information provided as well as to confusion over the needs and conditions of civilians. Furthermore, the highly politicized nature of the conflict and the heightened emotions of the public led to allegations of bias on the part of organizations and even to personal attacks on those working for them.

Another problem raised was that international humanitarian law discourse was being increasingly used by a growing number of human rights and other organizations. There was a proliferation of allegations premised on humanitarian law. The panelists were asked to reflect on whether or not this had the potential to cause disagreement among the different organizations over whether or not a violation had occurred. In short, was the field being crowded by too many organizations pronouncing on war crimes and could this undermine the efforts of the main protector of international humanitarian law, the ICRC? More fundamentally, did the multiple and at times conflicting pronouncements on violations undermine the legitimacy of international humanitarian law and compromise its future usefulness? In response it was observed that the organizations complemented each other in their pronouncements and actions. Nonetheless, differences did exist but pertained more to the manner of advocacy employed. The ICRC, for example, believes that it can achieve more by not going public while other organizations think that public criticism is the best and fastest way to stop IHL abuses during a conflict.

The issue of prevention was raised. While international humanitarian law served to empower the human rights movement and allow it to respond to violations during and after conflicts, organizations should also use the law to prevent and discourage conflict. Organizations should be reminding the parties of their international humanitarian law obligations prior to conflicts. Greater links also should be established between the humanitarian and human rights communities to enable them to take preventive and concerted measures to discourage conflict and if need be, to prepare early responses to impending conflicts.

In regard to the conflict in the Middle East, concern was expressed over the large numbers of people that would be moving back to southern Lebanon. With the tenuous cease-fire the potential existed for these civilians to be caught again in the middle of conflict. In a situation as precarious as this one, it was emphasized that recalling the obligations of international humanitarian law

was essential. In the words of one panelist, relief agencies following the ceasefire are “breathing easier but holding their breath harder.”

PANEL TWO: CONDUCT OF THE WAR: DISPLACEMENT, PROPORTIONALITY, AND THE LAW ON THE CONDUCT OF ARMED CONFLICT

Moderator: Elisa Massimino, Washington Director, Human Rights First

Robert Kogod Goldman, Professor of Law, American University, former UN Rapporteur on Human Rights Protection in Countering Terrorism, 2004-2005

Col. W. Hays Parks (Ret.), Office of General Counsel, Pentagon

Commentator: Albert C. Pierce, Professor of Ethics and National Security, National Defense University

Following introductions by **Elisa Massimino**, **Robert Goldman** commented on the nature of the conflict and the international law that was applicable to it. In his view, the armed conflict in the Middle East was an international one -- between Israel and Lebanon. Hezbollah was part of Lebanon’s government and exercised effective governmental control over southern Lebanon. It was not a rogue non-state actor. By commission or omission, the Lebanese government effectively condoned Hezbollah’s actions. The fact that its army did not engage Israel was not a decisive factor. As a militia belonging to Lebanon, Hezbollah was obliged to observe the laws and customs of war, which it failed to do; it also did not wear a fixed sign as required by the Third Geneva Convention.

There were many misconceptions about the proportionality issue. To Israel, the incursions and kidnappings carried out by Hezbollah were considered hostile acts to which it responded. Under the laws of war, Israel was not limited to an “in kind response.” During World War II, when Japan attacked and destroyed part of the US Pacific fleet, the US was not limited to destroying a comparable number of Japanese combatants and war materiel. Once war begins, all the adversaries, combatants, war materiel and other military objectives, wherever located, are lawful targets of attack. Thus Israel’s naval blockade, destruction of roads, bridges and airport runways to prevent the re-supply of armaments to Hezbollah were legitimate targets. While some argue that particular locations were not military sites, under the laws of war facilities that may not externally appear to be “military”, such as a post office or a communication network, can play a strategic role in a conflict and as a result can be considered legitimate military targets.

There were misconceptions about collateral damage as well. Under the laws of war, the party launching the attack does not have sole responsibility to prevent collateral damage. The party with control over the population has at least a coequal duty to protect its civilians and not allow them to become shields or targets. If this obligation is violated, the party with control is hardly in a position to complain when inevitable civilian casualties result. Hezbollah’s strategy of deliberately placing its combatants and Katyusha rocket launchers in civilian areas made it likely

that collateral damage would occur; its firing the rockets could be expected to lead to an IDF attack.

On the issue of proportionality, Article 51 of Protocol 1, which arguably reflects customary law, prohibits an attack which may be expected to cause civilian loss of life that is disproportionate in relation to the concrete and direct military advantage anticipated. Frequently because of intelligence failures or circumstances unknown to the attacker, the actual military advantage or collateral damage may be different from what was foreseeable at the time of the attack. Because the military advantage turns out to be less significant does not necessarily make the act illegal. Clinical precision is impossible especially in situations where one party is trying to conceal itself in civilian populations. The standard for judging the action of those who launch an attack must be based on the military's reasonable reaction to the facts and circumstances known at the time of the action and not on the basis of hindsight.

The standard for declaring something a war crime is set very high. In order for an attack to be considered indiscriminate, it must be intentionally launched with the knowledge that it will cause disproportionate collateral damage. In the current conflict the clearest example of such an act would be the firing of Katyusha rockets with ball bearings indiscriminately into civilian areas in Israel. The use of these weapons to terrorize the civilian population amounts to war crimes, while Hezbollah's use of silkworm missiles against an Israeli warship was a lawful attack. At the same time, there are attacks by Israel that should be investigated seriously, in particular, the attack on UNIFIL monitors and on Qana that caused large numbers of civilian casualties. However, based on the information thus far available, Goldman was not prepared to conclude that these attacks were intentionally undertaken in the knowledge that they would target civilians or cause disproportionate civilian casualties.

In concluding, Goldman noted that there were two battlefields in this conflict. One was the glare of public scrutiny and the other was the military battlefield. He urged those attending the seminar to keep in mind that the photos of dead children and women, while emotionally moving, do not reveal the purpose behind an attack. There is nothing more serious than to allege a war crime; one must be extremely careful about doing so.

Moderator **Elisa Massimino** commented that the laws of war had limitations about which participants should be aware.

Col. W. Hays Parks (Ret.) said he would focus on the laws of war generally but not specifically discuss the conflict between Lebanon and Israel. States were entitled to protect their sovereignty and act in self-defense. They should, however, employ restraint in their use of force against another state's territorial integrity or political independence. In the same vein, states that claim neutrality in a conflict must not permit military operations to occur on their territory. He pointed to the US Neutrality Act, which forbade people in the US from launching military attacks against other states. When military operations are undertaken from a state's soil, the state loses the legal benefits associated with neutrality.

He then went on to explain that the US Department of Defense does not use the term “international humanitarian law,” rather it uses the term “laws of war.” He stressed that his experience had taught him that parties to a conflict never profit from violating the laws of war.

Parks addressed the “principle of distinction” whereby the military is not to attack civilians and civilians are to stay out of the conflict. Military forces are not to use indiscriminate weapons; for example the use of German missiles on London that could not be directed at a specific target was a violation of the laws of war. In every conflict there are three parties who have obligations: the defender, the civilian population and the attacker. The aim of the parties should be to avoid civilian casualties. This does not mean that fighting in populated areas like cities is forbidden. For example, a formerly civilian entity, such as an apartment building, could become a legitimate military target if taken over by an armed force and used to launch attacks. Civilians must also not be used as human shields as has occurred in previous conflicts, including the earlier civil war in Lebanon. If a civilian volunteers to be a human shield, he or she then forfeits the protection afforded to civilians under the law.

Measures should also be taken to encourage civilians to leave conflict zones. In Lebanon, precautions by the current government to encourage civilians to flee or seek shelter appear to have been lacking. On the issue of advance warning of an attack, Parks stressed that the issuance of warnings does not give the attacker “a blank check” to do whatever it wants. Not all people can move from conflict zones. The attacker must take into account both humanitarian concerns and military objectives.

On the issue of collateral damage and the “friction of war,” Parks observed that collateral damage is an inevitable aspect of military operations. Target intelligence, planning times, weather changes and other factors may lead inadvertently to collateral damage. Headlines that refer to civilian deaths as a result of military endeavors often fail to reveal the complete story. For example, a headline may read “military plane kills 14 civilians,” yet what the article fails to reveal is that the plane crashed into a civilian area after being hit by enemy fire. Collateral damage and civilian casualties are not indicative of violations of the laws of war and in many cases may not be violations. Accidents are not violations of the laws of war.

Parks next addressed the problem that arises when one party goes out of its way to avoid civilian casualties while the other side chooses to exploit that. This was the case in 1991 in Iraq where the US military announced that it would not target mosques and hospitals. Saddam Hussein’s response was to use them to store weapons. The same thing occurred in Afghanistan. This appears to be an issue in Lebanon as well. The tendency to try to construe all military actions as violations can lead to disproportionate caution being taken on one side while the other side escapes without condemnation.

On this issue Parks posited that there will be erosion in the credibility of the laws of war. He suggested that there is a problem when the delicate balance of responsibility among the three parties is not maintained and when instead there is an imbalance towards one side. This situation places an unfair strain on one of the parties and allows the others to escape responsibility. Furthermore he noted that the entire responsibility for civilian well being cannot be placed solely on democracies. All three parties to a conflict are responsible for protecting civilians.

In concluding, he reflected on the need for greater and ongoing dialogue between the military and NGOs. While the ICRC and militaries have a strong relationship, this needs to be extended to include the rest of the non-governmental community as a means of protecting the interests of civilians during conflicts.

Albert C. Pierce, who served as commentator, said he would address the conduct and laws of war through an “ethical lens.” The root of the laws of war rested on an older notion of what is right or wrong – *jus ad bello* and *jus ad bellum* – rules governing the behavior of the conduct of war. He noted that just wars can be waged both justly and unjustly. Both parties have obligations as to their conduct. If one side violates them that does not mean that the other party is absolved of its responsibility to respect them. Furthermore he stressed that just because an act is not considered illegal does not make it acceptable. Ethics must be considered when assessing military action and the consideration of strategy and ethics should be regarded as mutually reinforcing rather than as in fundamental opposition to each other.

On the issue of the classifications of parties to the conflict, Pierce suggested that a distinction be made between combatants and non-combatants, not between the military and civilians. A member of the military who has dropped his/her weapons can become a non-combatant while a civilian who has delivered ammunition may be deemed a combatant.

He addressed the phenomenon whereby one party is dragged down by the worst elements of its enemy, which he called the “forces of moral gravity.” This was used in conflicts such as in Algeria by the weak in order to provoke the stronger party into engaging in activities in which it would not normally partake. In this type scenario the function of law along with strong leadership is needed to help resist this moral descent. What arises from such struggle is the question of competing values. How does one go about defeating enemies with different values from one’s own without losing one’s own values? What does one do when one side believes in the distinction between combatants and non-combatants while the other fails to respect or acknowledge the same distinction?

Pierce concluded his presentation by reflecting on the notion of values and whether the value given to life in some parts of the world was different from the value given to life in other parts of the world. Although often it was said that in the West, human life was valued more highly, he recalled his visit to Verdun where 900,000 men lost their lives during the First World War.

Discussion: Some questions and comments focused on the challenges of making military strategy compatible with the laws of war. It was pointed out that there are tools available to prevent collateral damage and aid militaries in their efforts to ensure that they are acting in accordance with the laws of war. A comprehensive intelligence strategy and the use of unmanned reconnaissance aircraft can assist militaries in determining where civilians are and in confirming that a location is a legitimate military target. The resources available, however, will vary amongst militaries. In formulating a military strategy that adheres to the laws of war, militaries must ask themselves what needs to be hit, whether they have the means to target the site and whether there are civilians present. This process can take 24 hours or longer with every measure being taken to ensure that civilians will not be disproportionately harmed. At the same

time, absolute precision is impossible as one cannot always look inside a building to guarantee that civilians are not there. Military combat is complicated; even when all measures have been taken to ensure that civilians are not hit, they may still be harmed. Mistakes happen, for example, the bombing of the Chinese embassy in Belgrade by NATO forces. Outdated maps led to this mistake although many especially in China continue to believe it was a deliberate strike.

It was pointed out that humanitarian aid agencies have been requesting more legal rights to ensure that they are able to provide relief to civilians, although governments have been reluctant to grant such rights. Even though governments may want to facilitate access for NGOs because of the valuable services they provide, they fear that aid agencies could end up in harm's way, especially since militaries may not know what is happening in enemy territory and are unable to control the actions of their opponents. Concern was also expressed about how to co-ordinate the providing of maps showing mine placements and how to ensure that those maps were not given to the other side of the conflict. It was emphasized that humanitarian aid agencies should maintain their neutrality as that is the only way that all parties to the conflict will respect them.

In a related discussion, the issue of warnings to civilians and the targeting of convoys was addressed. It was noted that civilians behind enemy lines could only be considered targets when their actions were directly related to the conflict and they had lost their "civilian" status. Because military attacks need to be premised on a military objective, "free-fire zones" were problematic; the Geneva Conventions did not provide a legal basis for such zones. As a result, it was questionable whether the Israeli military's warning that it would fire upon any vehicle moving south of the Litani River was lawful. More clarification was also needed of the status of warnings, especially when the time frame was unreasonable and when the roads and bridges leading out of the area had been damaged. Some felt that the leaflets and other warnings issued by the Israelis fell into a legal grey area in this conflict. The need to take due precautions to minimize collateral damage was stressed. The Litani warning, it was pointed out, had the effect of stripping civilians traveling in the south of their immunity and turning them into military targets. Just because a civilian stayed in a conflict zone did not necessarily mean that he or she was a combatant; rather it might point to his or her inability to flee. It was therefore important to take account of the context of the conflict. On the other hand, the question was raised as to how one could be sure that a civilian convoy was composed only of civilians. The current conflict was being fought under the glare of public scrutiny, which made it highly unlikely that a military force such as the Israelis would deliberately target civilians.

Finally the question of what motivates militaries to adhere to the laws of war was addressed. A combination of moral, ethical and legal aspects led militaries to act in accordance with the laws of war as did the knowledge that while the laws are imperfect, it was still in one's self-interest to obey the laws of war – even if the other party failed to observe them. History demonstrated the value of abiding by the laws of war, which influenced militaries to abide by prior precedents.

CONCLUSION AND SUMMARY

Susan Martin, Director, Institute for the Study of International Migration, Georgetown University

Susan Martin highlighted some of the main themes that emerged from the seminar. To begin with, she noted the importance of the political context of the conflict and the higher visibility and greater attention given to this particular one internationally. This presented challenges to all of the actors involved, including those seeking to provide humanitarian relief. Although some participants commented that the Security Council had been slow to act, compared with other conflicts, it could be argued that the Council acted more quickly in achieving a ceasefire.

A second theme she noted was the difference between what is required under the laws of war and what is needed to protect civilians in time of conflict. This led her to reflect on the nature of the conflict and the military strategy used. The air war produced a greater impact on civilian populations and in a shorter period of time. She also raised the issue that was expressed by many at the meeting as to what action the party with precision weapons and the expertise to minimize civilian casualties should take when the other side is mixing civilians and combatants and not taking measures to minimize civilian casualties. What is the impact on civilians of asymmetrical warfare?

The lack of adequate data or clear information about the conditions on the ground was another problem that complicated the relief effort. Displacement in this conflict was often hidden. Moreover, within Lebanon prior displacement increased the vulnerability of some IDPs. Understanding why people stayed behind and did not flee was an area that required more attention. The conflict revealed that certain populations were more vulnerable when fighting took place – in particular the marginalized and the poor. In northern Israel, for example, Arabs and new immigrants were especially affected while in southern Lebanon it was primarily the Shiite population. Serious problems arose in both countries on how to deal with those who stayed behind.

Access to humanitarian assistance was another key theme at the meeting. The extent to which military considerations could be legitimate barriers to gaining access to civilian populations was explored. Again a distinction had to be made between what was lawful and what had to be done to gain access. Martin noted the complication of the military/civilian relationship in a context where civilian and combatant activities were not always separated. For example, Hezbollah is both a social movement providing social assistance and a military force, complicating the relief effort.

In concluding, Martin reflected on the long-term challenges posed by displacement emanating from conflict and ended the seminar by asking the participants to focus their attention on the following questions: return and reintegration; benchmarks for determining when displacement ends; how to maintain the ceasefire; and how the international community can be responsive to the diverse needs of the displaced and others affected by the conflict. All of these factors would determine when there is a durable solution for the people involved.

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