

San Francisco Chronicle

OPEN FORUM

**Conflict in Lebanon
When international law makes a bad situation worse**

By Christian Eric Ford

Thursday, August 3, 2006

The U.N. High Commissioner for Human Rights waited only a week after Israel began its bombardment of Hezbollah in southern Lebanon before stating publicly that, "The bombardment of sites with alleged military significance, but resulting invariably in the killing of innocent civilians, is unjustifiable." And, she added, those responsible for launching the attacks may be held criminally liable. Unfortunately, her statements may have created unjustified political costs for Israel and provided Hezbollah with an incentive to continue operating near civilians.

Human-rights attorneys often invoke international humanitarian law when an armed conflict breaks out. Presumably, they want to minimize the suffering of innocent people by putting warring parties on notice that they will be accountable for their conduct. The added deterrent effect, however, from putting charges of war crimes on the table too hastily when such charges are based solely on reports of civilian casualties, can engender long-term consequences that outweigh any short-term sparing of innocent life.

No amount of smart bombs or infantry training can eliminate the risk to civilians. Suggesting prematurely that the killing of innocent civilians is unjustified -- before the circumstances surrounding targeting decisions are known -- can convert a lawful military operation into a politically unsustainable one.

Worse, a premature charge of war crimes can set up a counterproductive incentive that undercuts one of the main purposes of war crimes jurisprudence, namely, the minimization of death and destruction during war. This is especially true when a democratic state is fighting a militarily weaker adversary, such as a guerrilla or terrorist organization. A democratic state is more vulnerable to the political and legitimacy costs that result when the lawfulness of its tactics during a war are questioned. Well organized terrorist and guerrilla groups know this. They are also quite familiar with international humanitarian law. And they recognize that the cost of violating these laws will be felt asymmetrically. Consequently, these groups employ tactics such as using civilians as shields.

Similar scenarios have played out in other recent wars. During NATO's air war over Kosovo in 1999, civilian casualties attributed to NATO prompted the U.N. High Commissioner for Human Rights to publicly question the legality of NATO's targeting.

Serbian officials jumped at the political opportunity created and accused NATO of committing war crimes, after a NATO air strike killed nearly 100 civilians in the village of Korisa. A Human Rights Watch report published in 2001, "Under Orders: War Crimes in Kosovo," concluded that the Serbian military was indeed using civilians as shields during NATO's bombing campaign. While accusations of war crimes during the conflict failed to derail NATO's military operation, they nonetheless may have contributed to greater civilian casualties. U.S. forces in Iraq faced a similar challenge when human-rights groups, based on reports of civilian casualties, accused U.S. forces of committing war crimes during the battle for Fallujah in 2004. It was no coincidence that the guerrillas were reportedly using civilians as shields during that same operation.

This is not to argue that war crimes should not be charged when the evidence warrants. Monsters responsible for ethnic cleansing and genocide have been brought to justice because of the efforts of international criminal prosecutors. Nor is it to argue that democracies should get a free pass to commit war crimes.

In the Israel-Hezbollah conflict, it appears that war crimes accusations were leveled against Israel based on little, if any, evidence beyond casualty reports. Additional Protocol I to the Geneva Conventions stipulates that civilian casualties resulting from an attack are to be weighed against the "direct military advantage anticipated" at the time an attack is launched. It is difficult to see how human-rights officials could have already made such an assessment. Israel's military commanders are basing their decisions on classified intelligence that is rarely available to human-rights officials while a war is ongoing. Nevertheless, Israel is suffering what may be unjustified political costs as a result of the accusations. The accusations may have also given Hezbollah additional incentive to use civilians as shields.

What's the alternative? Only level charges of war crimes after a thorough investigation has been conducted, and only when it is clear that doing so will not hand a warring party an additional incentive to endanger more civilians.

Christian Eric Ford is a research associate at UC Berkeley's Institute of International Studies, New Era Foreign Policy Center, and a former U.S. Navy S.E.A.L.

Page B – 7

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/08/03/EDGOBIQ0921.DTL>