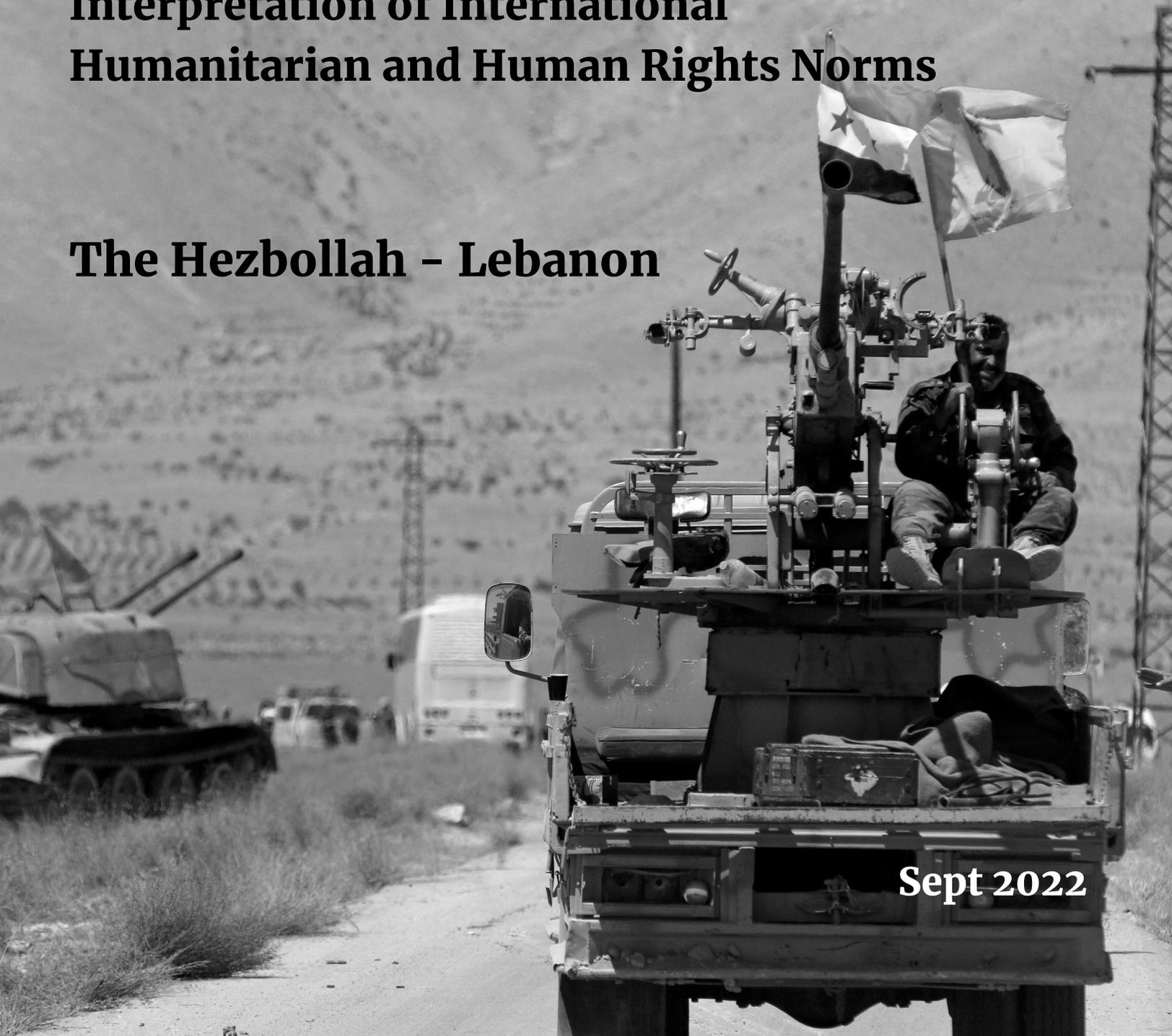


From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms

The Hezbollah - Lebanon



Sept 2022



UK Research
and Innovation

PARTNERS AND STAKEHOLDERS



Launched in April 2018, UK Research and Innovation (ukri.org) brings together seven disciplinary research councils, notably the Art and Humanity Research Council and is responsible for supporting research and knowledge exchange at higher education institutions in England. UKRI is the main funder of the project.



The CCDP is the Graduate Institute's focal point for research in the areas of conflict analysis, peacebuilding and the complex relationships between security and development (<https://www.graduateinstitute.ch/ccdp>). It hosts the principal investigator of the project, Dr Annyssa Bellal as well as the project's Co-investigator, Pascal Bongard.



Founded in 1919, AUC (aucegypt.edu) is a leading English-language, American-accredited institution of higher education and center of intellectual, social and cultural life of the Arab world. It is the main academic partner of the project in charge of the research on Al Qaeda and the Islamic State.



Established in 2007 by the Faculty of Law of the University of Geneva and the Graduate Institute, the Geneva Academy of IHL and Human Rights (geneva-academy.ch) is a research and teaching center which focuses on clarifying IHL, strengthening human rights protection, and developing the areas of complementarity between IHL and international human rights law. It hosted the principal investigator until December 2021.



Geneva Call is an NGO partner of the project. Geneva Call has a leading position in the field of humanitarian engagement with armed non-state actors (ANSAs). A neutral, impartial and independent humanitarian organization dedicated at promoting respect for IHL, Geneva Call has engaged more than 150 ANSAs worldwide since its establishment in 2000. It hosts the Co-investigator Dr Ezequiel Heffes.



The Norwegian Refugee Council (nrc.org) is an independent humanitarian organization working to protect the rights of displaced and vulnerable people during crises. It is widely recognised as a leading field-based displacement agency within the international humanitarian community and it also plays a leading role in protection coordination. Since 2018, NRC is committed to working in hard-to-reach contexts, a strategic ambition which in part requires engagement with ANSAs. NRC is an NGO partner of the project.

TABLE OF CONTENTS

Acknowledgements	4
List of acronyms and abbreviations	5
Executive Summary	6
Introduction	8
Methodology	11
The evolution of Hezbollah.....	14
Hezbollah’s IHL Policy.....	21
IHL profile	21
Hezbollah Policy and Practice with Regard to Selected IHL Norms	29
1. PROTECTION OF CIVILIANS FROM ATTACKS	29
A. Principle of Distinction.....	29
B. Principles of Proportionality and Precautions.....	36
2. THE PROHIBITION OF SEXUAL VIOLENCE AND GENDER DISCRIMINATION	40
3. THE PROHIBITION OF USING AND RECRUITING CHILDREN IN HOSTILITIES	44
4. PROTECTION OF EDUCATION	48
5. HUMANITARIAN ACCESS	50
6. PROTECTION OF HEALTH CARE.....	54
7. THE PROHIBITION OF FORCED DISPLACEMENT	59
8. USE OF LANDMINES AND OTHER EXPLOSIVE DEVICES	62
9. DETENTION AND ADMINISTRATION OF JUSTICE.....	67
A. Detention	67
B. Fair trials and administration of justice	72
10. THE SPECIAL PROTECTION OF CERTAIN OBJECTS, SUCH AS CULTURAL PROPERTY	75
Conclusions	79
Annexes	80
Selected references.....	81

ACKNOWLEDGEMENTS

This report was researched and co-authored by Hiba Mikhail and Hassan Baalbaky with the support of Dr Annyssa Bellal, Pascal Bongard and Dr Ezequiel Heffes. The authors would like to thank them for their insightful comments on the earlier versions of the study and are grateful to Munizha Ahmad-Cooke for her editing work.

The authors would also like to acknowledge the contributions of all those who participated in the research, with special thanks to Dr Hassan Jouni for his valuable input. This study was made possible with the generous support of UK Research and Innovation and the UK Foreign, Commonwealth and Development Office. The views expressed in this study are the authors' own and do not necessarily reflect those of the project's supporters or of anyone who provided input to, or commented on, earlier drafts.

LIST OF ACRONYMS AND ABBREVIATIONS

AA	Ansar Allah Movement
ANSA	Armed Non-State Actor
AoR	Axis of Resistance
APII	1977 Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, 8 June 1977
CCSD	The Consultative Centre for Studies and Documentation
EUU	Explosives Engineering Unit
HRW	Human Rights Watch
IHC	Islamic Health Commission
IRL	Islamic Resistance in Lebanon
IAC	International Armed Conflict
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRGC	Islamic Revolutionary Guard Corps
MMU	Military Media Unit
NIAC	Non-International Armed Conflict
PMF	Popular Mobilization Forces
RSS	The Resistance's Security Service
SLA	South Lebanon Army

EXECUTIVE SUMMARY

This case study has been conducted as part of the research project as part of the research project 'From Words to Deeds: A research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms', which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection.

From a legal perspective, while ANSAs are bound by IHL, how they actually perceive, understand and act upon their obligations has remained insufficiently explored. Through a comparative analysis of selected norms, the research project aims to advance understanding of ANSAs' perspectives and behaviour, enhance strategies to promote their compliance with IHL as well as inform future international law-making processes.

While making reference to other Shiite armed actors active in the Middle East, the present study focuses on Hezbollah, an armed resistance movement founded in 1982 in response to the invasion of Lebanon by Israel. Hezbollah has been engaged in armed conflicts with Israel and has been fighting in Syria alongside the Syrian Government. Reports by the United Nations, the International Commission of Inquiry for the Syrian Arab Republic as well as human rights organizations have documented IHL violations allegedly committed by Hezbollah. These reports were considered in the development of this study, which is based on desk research, including a thorough analysis of public addresses by Hezbollah's secretary-general and leadership, as well as semi-structured interviews with members of Hezbollah conducted face to face. Selected experts and aligned academics were also interviewed to contextualize the findings.

Key findings include:

- Hezbollah's conduct in times of war is rooted in Shiite Islamic law and the adherence to the guidance of the Guardian Islamic Jurist or Wali al-Faqih. This said, Hezbollah has spelled out its standards of behaviour and intention to respect the laws of armed conflict and human rights from an Islamic perspective. In addition to the Islamic customs of war that Hezbollah respects, the Islamic jurisprudence and the fatwas it follows reflect key rules of the law of armed conflict, especially in terms of the protection of civilians and civilian objects as well as the humane treatment of detainees.
- Moreover, agreements concluded by Hezbollah with enemy forces include a number of references to IHL issues (such as protection of civilians, humanitarian access and medical aid, knowing the fate of missing people and releasing prisoners and handing over corpses). These agreements were adopted by Hezbollah and Israel in 1991, 1996, 1998, 2004 and 2008, and between Hezbollah and the Syrian opposition armed groups during the Syrian war.
- Despite the broad intersection between the principles of IHL and Islamic law of war, the two frameworks may provide different levels of protection in specific areas, namely the recruitment and protection of children in hostilities, as well as the protection of the wounded and the sick and the prohibition of certain types of weapons or the lack thereof. to illustrate

some nuances, IHL allows for the detention of the wounded and sick whereas Islamic Sharia law requires that they be set free. On the flipside, the principle of reciprocity in Islam may lead to the identification of IHL violations which are not considered violations under Islamic law of war. In this sense, Hezbollah's policy may go beyond IHL requirements, for example with regards to the prohibition of the use of nuclear weapons and the guarantees conceded to fighters in non-international armed conflicts (NIAC). In other instances, however, Hezbollah's position on or interpretation of some rules is problematic. This is specifically the case with the use of reciprocity and the threat to target civilians as a means to deter enemy attacks as well as sieging enemy areas to allow humanitarian access to friendly areas besieged by the enemy. Interestingly, there are also instances where Hezbollah's policy goes beyond what Islamic Sharia requires, such as the minimum age of child recruitment.

- Hezbollah's strong focus on the religious and military training of its fighters is instrumental in the establishment of a strict chain of command which enables the leadership's control over fighters' conduct on the battlefield. Moreover, orders are often derived from religious rulings, strengthening compliance among believers.
- Several reports by the UN, the International Commission of Inquiry for the Syrian Arab Republic and other human rights organizations have documented IHL violations committed by Hezbollah. These are mainly linked to disregarding the principle of distinction in the conflicts opposing Israel and the resort to sieging in the Syrian war. In some of these cases, Hezbollah officials have acknowledged the violations and explained the movement's position while, in other cases, they have remained silent or come forward to deny allegations.
- Finally, the unclear assignment of violations in certain reports which regroup several governmental and non-governmental actors under one title (for example 'government forces'¹ or 'pro-government militia'²) has rendered the accurate attribution of misconduct more difficult.

1 The term 'government forces', unless specified otherwise, includes the Syrian Armed Forces, intelligence forces and associated foreign and local militias, including Hezbollah, the Shabbiha, popular committees and National Defence Forces. See Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/28/69, 5 February 2015.

2 Children and Armed Conflict: Report of the Secretary-General on in the Syrian Arab Republic, UN doc A/73/907-S/2019/509, 20 June 2019.

INTRODUCTION

This case study has been conducted as part of the research project ‘From Words to Deeds: A research Study of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms’,³ which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection. During the life of the project, funds were received from UK Research and Innovation, the UK Foreign, Commonwealth and Development Office, the Swiss Department of Foreign Affairs and the Humanitarian Aid Department of the European Commission.⁴

The research builds on three interrelated trends. First, as most armed conflicts today are non-international,⁵ ANSAs tend to play prominent roles, exerting a growing influence over the lives of individuals worldwide. Because of the humanitarian consequences their actions entail, especially for the civilian population, the international community has called for a more sustained engagement with ANSAs toward IHL compliance.⁶ Second, from a legal perspective, though it is undisputed that ANSAs are bound by IHL, how they view, interpret or implement

3 The issue of human rights obligations of armed non-state actors (ANSAs) under international law remains controversial both at the theoretical and policy levels. Therefore, the present research project focuses on collecting and analysing ANSAs’ practice and interpretation of international humanitarian law (IHL) rules. Nevertheless, norms related to human rights, such as gender equality or the 18-year age limit for recruitment and participation of children in hostilities have been included in the interviews. Indeed, even if the issue of human rights obligations of ANSAs is controversial, ANSAs themselves often refer to human rights in their policies and regulations. This is a good indication of what some ANSAs feel bound by and thus deserves to be considered in the analysis, notably because it can be indicative of what could be included in future law-making processes.

4 For further information on the project, see A. Bellal, P. Bongard and E. Heffes, *From Words to Deeds: A Research of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms*, Research Brief, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), December 2019, <https://www.geneva-academy.ch/joomlatools-files/docman-files/From%20Words%20to%20Deeds%20A%20Research%20of%20Armed%20Non-State%20Actors%E2%80%99%20Practice%20and%20Inter.pdf> (last accessed 9 August 2022).

5 Despite widespread recognition that the majority of armed conflicts today are non-international in nature, there are divergent views on the precise number. See A. Bellal (ed), *The War Report: Armed Conflicts in 2018*, Geneva Academy, 2019, p 19, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf> (last accessed 9 August 2022), p 19; International Committee of the Red Cross (ICRC), *The Roots of Restraint in War*, 2018, pp 13–14.

6 United Nations Security Council, *Protection of Civilians in Armed Conflict: Report of the Secretary General*, UN doc S/2019/373, 7 May 2019, §66 (affirming that ‘enhancing respect for the law requires changing the behaviour and improving the practices of non-State armed groups. Key to this is principled and sustained engagement by humanitarian and other relevant actors that is, moreover, strategic and based on a thorough analysis of the group(s) concerned’).

their international obligations has remained insufficiently explored.⁷ While a number of studies have analysed states' practice, notably the 2005 study by the International Committee of the Red Cross (ICRC) on customary IHL,⁸ A comprehensive analysis of existing humanitarian norms from the perspective of ANSAs has yet to be made. Only then will one 'know how the existing rules and possible future development of IHL ... would change if they were taking the perspective of non-State armed groups into account'.⁹ Finally, the state-centric approach to ANSAs' international obligations may explain to some extent the lack of ownership of, and compliance with, international law by these actors. Indeed, there is an increasing sense that ANSAs' compliance with international law is likely to improve if they are consulted about the development and implementation of the rules that are binding upon them.¹⁰

7 Several authors have referred to this knowledge gap. See, among others, M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, 2019; H. Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics*, Cambridge University Press, 2015; D. Petrasek, *Ends & Means: Human Rights Approaches to Armed Groups*, International Council on Human Rights Policy, 2000, <https://reliefweb.int/attachments/2d260b8d-64fa-32ce-97ad-3d639c95f777/3DCC2D9C95FC0BCFC1256C14004E55A1-EndsandMeans.pdf> (last accessed 9 August 2022).

8 J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Cambridge University Press, 2005. See also the ICRC Customary IHL Database (ICRC CIHL Database), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (last accessed 9 August 2022). It should be noted that the 2005 ICRC study on customary IHL does not focus entirely on issues of compliance with IHL, but on the identification of customary norms within this realm. Of course, an argument can be made that the practice and *opinio juris* needed for the latter serves as an indicator to measure the level of acceptance of, and respect for, the applicable legal framework. A study on the correlation between both is beyond the scope of this case study.

9 M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', 1 *Journal of International Humanitarian Legal Studies* 1 (2010) 19.

10 Ibid; S. Sivakumaran, 'Implementing Humanitarian Norms Through Non-State Armed Groups', in H. Krieger (ed), *Inducing Compliance with International Humanitarian Law: Lessons From the African Great Lakes Region*, Cambridge University Press, 2015; S. Sivakumaran, *The Law of Non International Armed Conflict*, Oxford University Press, 2012.

This research project aims to increase our knowledge of ANSAs' practice and interpretation of selected international norms, notably in IHL.¹¹ It focuses on the following main questions:

- Are ANSAs familiar with these norms and how do they understand them?
- Do they agree with their content?
- What factors influence their policy and practice?
- Are there new issues that ANSAs would be willing to regulate in the future?

By compiling and analysing ANSAs' views and interpretation on a comparative basis, the research provides a better sense of how ANSAs perceive IHL, which norms are more accepted or disputed and why.¹² It also sheds light on the causes of violations or, *a contrario*, the actors that are conducive to compliance or restraint. Altogether, the results of the research advance our understanding of ANSAs' behaviours during armed conflicts and inform strategies to promote their compliance with IHL as well as future international law-making processes.

The study at hand focuses on the case of Hezbollah and, in particular, its military wing. Hezbollah is an armed resistance movement which, since its emergence in the early 1980s, has been engaged in several armed conflicts. The study is organized as follows: Section 2 provides an overview of the research methodology. This is followed in section 3 by background information about Hezbollah, notably concerning its emergence and evolution, as well as its ideology. Section 4 looks at Hezbollah's position vis à vis IHL obligations and, in section 5, its policies and practices are analysed with a specific focus on selected IHL norms. Finally, conclusions are drawn in the last section 6 in a bid to summarize key points and offer recommendations.

This study does not aim to provide a full account of Hezbollah's practice or its humanitarian consequences. Rather, it seeks to provide an analysis of its policy and interpretation of certain IHL rules from a legal and religious perspective. Given that little substantive research has been conducted on this subject and this specific armed actor, the authors hope this case study will

¹¹ The research examines ANSAs' perspectives on the following core norms: i) protection of civilians from attacks; ii) the prohibition of sexual violence and gender discrimination; iii) the prohibition of using and recruiting children in hostilities; iv) the protection of education; v) humanitarian access; vi) protection of health care; vii) the prohibition of forced displacement; viii) use of landmines and other explosive devices; ix) detention, fair trial and administration of justice; x) the special protection of certain objects, such as cultural property and the environment. The choice of these norms has been dictated by three factors: First, the violation of these norms represents a current challenge identified by various humanitarian actors when dealing with ANSAs. The second factor is related to ANSAs' perceptions of these norms, as some of them represent the most contentious and challenging humanitarian provisions from their perspective. Finally, some of the selected norms may be part of future legal developments.

¹² The sources include unilateral declarations, public statements, codes of conduct, command orders, penal codes, 'legislations', decrees, memoranda of understanding, special agreements, as well as peace and ceasefire agreements. For more information, see the website of the project: words2deeds.org.

make a valuable contribution to improving understanding of Hezbollah's perception and interpretation of IHL and IHRL.

METHODOLOGY

Two complementary steps were adopted for the development of this case study. The first entailed desk research to gather, study and analyse various resources reflecting Hezbollah's internal policy on armed conflicts and the Islamic norms it considers itself bound by. These resources include televised speeches by Hezbollah's secretary-general, public interviews and official political statements in addition to publications and documentaries produced by affiliated institutions such as the Military Media Unit (MMU) – Hezbollah's official television channel – and the Consultative Centre for Studies and Documentation (CCSD). The authors also had access to guidebooks used by Hezbollah for the religious and military education of its members, from which pertinent information was extracted. Furthermore, an extensive review of relevant reports issued by various UN bodies as well as other human rights organizations were considered in this analysis. These include reports by the commissions of inquiry on Lebanon and the Syrian Arab Republic pursuant to the Human Rights Council resolutions of 2006 and 2011, respectively, in addition to UN Secretary-General's reports on children and armed conflict as well as conflict-related sexual violence. Lastly, reports by local and international organizations such as those issued by Human Rights Watch (HRW) following the 2006 war were also examined.

Secondly, the case study was informed by semi-structured interviews following a standardized questionnaire. These included interviews with two Hezbollah officers conducted separately in Beirut and South Lebanon between December 2021 and January 2022. These officials occupy medical and military functions: a medical officer in Hezbollah's military medical aid unit, and a former military officer in Hezbollah's Explosives Engineering Unit (EEU). To complete and strengthen the information gathered from the desk research, a semi-structured interview was conducted in May 2022 with Dr. Hassan Jouni an international law professor at the Lebanese University and an expert in IHL. Dr. Jouni was the rapporteur on Lebanon for the 2006 ICRC study on Customary IHL. He is a member of the consultative committee of the CCSD, and has extensive knowledge of Hezbollah's policy and practice. All interviewees were informed of the purpose of the interview and the ways in which the information would be used.

The review of primary and secondary sources and key informant interviews aimed to establish a general overview of the norms Hezbollah is committed to respecting – including their sources and the motives for compliance or non-compliance – and was guided by the following questions:

- Which specific humanitarian norms does Hezbollah endeavour to respect and what references (legal, political, cultural, religious) has the movement used to justify its policy?
- How does Hezbollah refer to international treaties or specific rules or principles of international law in times of armed conflict or violence?
- Are there any humanitarian commitments made by Hezbollah that go beyond applicable laws?

It is important to consider that conducting research of this nature is inherently difficult, and there are a number of factors which may have limited or influenced the findings. For instance, strict security measures adopted by Hezbollah led to the suspension of the interview with Sheikh Abdulkarim Obeid, the Associate Chairman of the Executive Council of Hezbollah, due to the sensitivity of the topic. The permission subsequently requested for the continuation of the discussion at this level of leadership could not be acquired due to the lengthy process. Furthermore, when approaching the CCSD for interviews, the authors were redirected towards specific publications¹³ and videos which could help answer some of the questions. Lastly, challenges were encountered with regards to ensuring a gendered approach, especially given the lack of female interlocutors – a situation the authors attempted to mitigate through the inclusion of interviews held with female Hezbollah officials in the desk research.

To conclude, the elements compiled through the two abovementioned approaches set a significant benchmark when it comes to Hezbollah’s policies; one against which the movement’s conduct can be measured and analysed.

BOX 1: UNDERSTANDING SHIISM

The main differences between the Sunni and Shiite doctrinal schools can be boiled down to the Sharia sources and their interpretation, and the extent to which contemporary jurisprudence can become a religious source in of itself.

In terms of sources, the distinction lies in the interpretation and utilization of the four ‘agreed-upon’ sources. These are, in order of authority: 1) the Quran; 2) the Sunnah – Prophet Muhammad’s sayings, deeds and tacit approvals to which the Shiite school adds the teachings of the 12 Imams or successors of Prophet Muhammad; 3) Ijma’ (or the consensus of legal opinions) and 4) Qiyas, legal analogical or deductive reasoning. Moreover, the different sects or madhhabs may consider various additional sources.

Looking at contemporary jurisprudence or ijthihad, it is important to clarify that the Sunni tradition closed the gate of ijthihad or the elaboration of new religious rules with the end of the four founding Imams’ era,¹⁴ whereas the Shiite school still maintains the possibility to expand and develop its doctrine through decisions or fatwas issued by the competent religious

13 These include publications by Dr Mohammed Tayy, the Head of the Legal Studies Department at the Consultative Centre for Studies and Documentation (CCSD) and a member of its consultative committee. He is the author and scientific reviewer of several publications analysing the relationship between Islamic law and international law (IHL/IHRL) from a Shiite perspective. Key publications referenced by the authors of this case study include: *The Islamic New and Old Law of War*, Centre of Civilization for the Development of Islamic Thought, 2017, (in Arabic) as well as *Islam and International Humanitarian Law: Comparative Studies*, Center of Civilization for the Development of Islamic Thought, 2017, (in Arabic).

14 J. N. D. Anderson, *Law Reform in the Muslim World*, Athlone Press, 1976. p 7; J. H. Thompson and R. D. Reischauer (eds), *Modernization of the Arab World*, Van Nostrand, 1966, p 41.

authorities. In this context, the main difference between Sunni and Shiite fatwas is linked to the process which is used to elaborate religious rulings.

Derived from the phrase *Ashyaa Ali* – Arabic for Ali’s followers – being Shiite means believing in Imam Ali bin Abi Talib as the first Caliph following Prophet Muhammad. In contrast, Sunnis consider Imam Ali to be the fourth Caliph after the Prophet. Differing opinions regarding the succession of caliphs after Imam Ali have led to the creation of different branches of Shiism: the Twelver, Ismaili and Zaydi among others. The latter, for instance, takes its name from Zayd bin Ali who is believed to be the rightful successor to the imamate according to Zaydi doctrine.

A comparison of the different sects under the Shiite umbrella is important to clarify nuances between the different elements of the Axis of Resistance (AoR).¹⁵ More concretely, the Zaydi doctrine, which is predominantly followed by the Yemeni Ansar Allah Movement (AA), acknowledges the three Rashidun Caliphs as being, in addition to Imam Ali, the first successors of Prophet Muhammad. The Twelver line of Shiism, to which Hezbollah and most of the Popular Mobilization Forces (PMF) belong, takes its name from the distinct belief in a clear sequence of twelve caliphs, which facilitates the passage of the Imamate after one’s mandate has come to an end. That is why the Twelver Shiites only accept rulings issued by the Prophet, Imam Ali or the specific lineage of imams that followed him, considering that the caliphate does not only embody a religious or ideological perspective but also includes a political and legal dimension.

In light of the above, it is important to highlight that the Twelver branch adopts a specific process to issue fatwas or religious legal rulings based on questions sent to the relevant religious authorities or *Marja’iya* qualified to interpret Islamic law. This said, the response to these questions may greatly vary from one Shiite grand ayatollah (a high-ranking title for Shiite religious scholars) to another depending on the adopted source, interpretation and school of thought. A fundamental distinction is hence to be made between those who follow the so-called *Wilayat al-Faqih* – Guardianship of the Islamic Jurist – and those who adopt the theory of the ‘constitutional government’. The former, also called the absolute guardianship or Islamic government, was embodied by Imam Ruhollah Khomeini when founding the Islamic Republic of Iran after the Islamic Revolution. This political ideology is also followed by Imam Ali Khamenei, the Supreme Leader and current Guardian Islamic Jurist or *Wali al-Faqih* of the Islamic Republic of Iran to which Hezbollah along with some PMF factions have pledged allegiance. On the other side stands the theory adopted by many of the Najafi religious authorities and most prominently by Sayyid al-Sistani, who are considered the religious authority by the majority of armed factions operating under the PMF. According to the theory of constitutional government, the Islamic Jurist holds an oversight role over the constitutional institutions and intervenes only to preserve order within society.

Considering the links among the AoR elements, a nuance must be highlighted with regards to the interconnection between Hezbollah and the Islamic Republic of Iran. As stated by Hezbollah’s Secretary-General, Hassan Nasrallah, the political system of the Islamic Republic including its

¹⁵ More information on the Axis of Resistance (AoR) can be found in section 4A below.

institutions, albeit respected by Hezbollah, has no say over the movement's actions as it is 'not the guardian of Hezbollah'. On the other hand, Hezbollah believes it 'must return in [its] essential matters, especially in their religious dimension' to the Wali al-Faqih. Despite Hezbollah's loyalty to the supreme leader of Iran, the religious directives issued by the latter do not necessarily have to translate into concrete political or military actions. According to Nasrallah, 'this does not mean that the leader is giving orders. There are never orders. There are broad lines that we believe in as Lebanese Leadership. As such, going to Iran 'to put pressure on Hezbollah cannot succeed'.¹⁶

THE EVOLUTION OF HEZBOLLAH

Hezbollah, Arabic for Party of God – also called the Islamic Resistance in Lebanon (IRL) – is an armed opposition movement born in response to the Israeli invasion of Lebanon in 1982. Since its inception, the influence of the movement, initially comprising only a military wing, has not ceased to grow. In terms of political activity, the movement launched its political agenda in 1985 and first participated in parliamentary elections in 1992. In 2005, the withdrawal of Syrian forces – who had been in Lebanon since 1976, in the context of the Lebanese civil war – prompted Hezbollah to participate in government, thus deepening its involvement in Lebanese politics with the movement and its allies securing the majority of seats in the 2018 parliamentary elections.¹⁷ In addition to its political and military activity, Hezbollah has continuously expanded its network of social services through the establishment of parallel institutions, providing medical, educational, social and financial support within, and at times beyond, its supporter base. So much so that it is commonly referred to as a 'State within a State'.¹⁸

1982–1985: During this period, Hezbollah consisted of undercover local groups operating through decentralized military actions, with fighters covertly trained in Islamic Revolutionary Guard Corps (IRGC) camps in the Beqaa Valley under the supervision of IRGC commanders who had arrived from Iran in mid-1982.

Although the Israeli invasion constituted the main spark for the creation of the IRL, the ground had been laid since 1979 with the success of the Islamic Revolution in Iran led by Imam Ruhollah

16 Z. Wehbi, 'Stay at Home Programme: A Special Meeting with Sayed Nasrallah', Part 2/2 (in Arabic), Ali Hasan YouTube channel, 13 September 2005,

<https://www.youtube.com/watch?v=hbKHX7niRFQ&feature=youtu.be> (last accessed 9 August 2022).

17 M. Chulov, 'Hezbollah Makes Strong Showing in Lebanon Elections', The Guardian, 7 May 2018 <https://www.theguardian.com/world/2018/may/07/hezbollah-makes-strong-showing-lebanon-elections>; 'The Parliamentary Election Results: Hezbollah, the Most Popular in the Country' (in Arabic), Al Mayadeen, 7 May 2018, <https://www.almayadeen.net/news/politics/90328>.

18 S. T. Williams, 'Is Hezbollah Overplaying its Hand Inside Lebanon?', Brookings, 19 November 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/11/19/is-hezbollah-overplaying-its-hand-inside-lebanon/> (last accessed 9 August 2022).

Khomeini. With Lebanon then suffering from a vicious sectarian civil war, the rise of the Shiite ideology impacted national dynamics. This became apparent through the establishment of a network of intellectual committees and Islamic organizations, which sympathized with the Islamic Revolution and its leader in particular. With the onset of the Israeli invasion and the appearance of internal divisions within the Shiite front, entities and groups who had ‘a serious reservation’ about participating in the National Salvation Front¹⁹ ‘went on to create a new movement, gradually becoming Hezbollah’.²⁰

In 1985, Hezbollah issued its first Open Message to the Vulnerable Around the World,²¹ a public address constituting a turning point in the movement’s development. Prior to that, Hezbollah had for the most part relied on decentralized undercover military operations and, as such, it did not publicly communicate with its supporters.²² In 2009, Hezbollah’s second political document emphasized the enmity with western imperialism — particularly American imperialism — as well as with Israel, which ‘embodies an eternal threat to Lebanon – the State and the entity’.²³

1985–2000: Until 1993, Hezbollah was made up of flexible armed cells wearing uniforms and operating under a hierarchically structured military command. In the years that followed, the movement’s growing combat capabilities led to the establishment of a new dynamic vis à vis the occupation. In parallel, the movement increased its political activity, hence strengthening its position internally.

In a televised interview in 1995, Hassan Nasrallah referred to the movement as ‘an Islamic Ideological movement’ and ‘a jihadi movement in its practice’, clarifying that while the movement was originally a resistance movement, it had become ‘a popular political movement that bears the responsibility for its people ... on the political, economic and livelihood levels’.²⁴

19 On 14 June 1982, following the Israeli invasion of Lebanon, a decision was issued by the president of the republic at the time and the prime minister to form a National Salvation Committee (NSC). The composition of the committee was tailored to accommodate a sectarian balance and sought to take consolidated action to counter the Israeli invasion. The Shiite community, having been mostly led by the Amal Movement, has seen divisions over the latter’s decision to join the NSC.

20 Z. Wehbi, ‘Stay at Home Programme’, supra fn 16.

21 The Open Message to the Vulnerable Around the World, 1985, cited in A. R. Norton, *Amal and the Shi’a: Struggle for the Soul of Lebanon*, University of Texas Press, 1987, p 167.

22 Since then, Hezbollah has employed (televised) speeches to communicate with its audience and supporters, relying on charismatic commanders, often religious leaders, to stir up religious and patriotic rhetoric to the party’s advantage.

23 The New Hezbollah Manifesto, November 2009,

<http://www.lebanonrenaissance.org/assets/Uploads/15-The-New-Hezbollah-Manifesto-Nov09.pdf> (last accessed 9 August 2022).

24 G. Tueni, ‘Presidencies: An Interview with Al-Sayed Hassan Nasrallah’, Part 1 (in Arabic).

<https://www.lbcgroup.tv/watch/37505/ar> (last accessed 9 August 2022).

In the last two decades, Hezbollah has grown to become one of the most influential political parties in Lebanon. This is especially the case in South Lebanon and Beqaa, both areas characterized by a Shiite majority and representing, to a large extent, Hezbollah's popular supporter base. It is in these areas that the IRL established its military training centres and facilities – including weapons factories and arms depots. However, despite Hezbollah's military activity and presence, these areas remain under the authority of the Lebanese Government, which has officially recognized Hezbollah as a resistance movement in its successive ministerial statements.²⁵

2000–today: During this period, Hezbollah has accumulated know-how as a hybrid force utilizing the capabilities of regular armies in guerrilla warfare. This has turned it into a transnational force with significant military and coordination capabilities as well as experience in defensive and offensive war tactics on various terrains.²⁶

Since 1982, the IRL has achieved significant military progress, growing from a decentralized underground guerrilla movement, with fighters trained by the IRGC in the Beqaa Valley, to an organized transnational force operating under a hierarchically structured military command. In parallel to the evolution of the movement's structure and military capabilities, Hezbollah has also broadened its area of operation and control. This will to expand beyond the Lebanese context should be understood as an integral part of IRL ideology, one that was emphasized in the abovementioned Open Message of 1985: '[Hezbollah] in Lebanon [is] not a closed organization ... we are a nation that is connected to all the Muslims around the world through an ideological and political link: Islam'.²⁷ This is why it has not prevented its fighters from joining military

25 'Lebanese Government Approves Policy Statement in Support of Resistance', Al Mayadeen, 17 September 2021, <https://english.almayadeen.net/policy-statement-in-support-of>; N. Nassif, 'From 2005 to 2019, Hezbollah's weapons on ministerial statement paper, the 2016 settlement enshrines a new golden rule' (in Arabic), Beirut Insights, 12 May 2019, <https://beirutinsights.com/84/>. The Ministerial Statement of Prime Minister Najib Mikati's Cabinet, 30 June 2011, stated: 'The government adheres to the right of Lebanon through its people, army and Resistance to liberate and retrieve the Shebaa Farms, Kfar Shouba Hills and the Lebanese part of the Ghajar Village, as well as to defend Lebanon in confronting any aggression through all legitimate and accessible means', <http://www.najib-mikati.net/EN/LatestNews/3958/> (last accessed 9 August 2022).

26 Hezbollah utilizes different uniforms depending on the camouflage needed to blend in with the environment – urban, mountainous and desert areas – they operate in. See 'New "Ninja" Uniforms of Hezbollah's Elite Forces Unveiled', Al Arabiya News, 7 November 2014, <https://english.alarabiya.net/variety/2014/11/07/New-ninja-uniforms-of-Hezbollah-s-elite-forces-unveiled->; 'The Mighty Hezbollah in Snow: Video', Al Manar TV, 20 February 2022, <https://english.almanar.com.lb/1537450>, last accessed 9 August 2022; picture showing Hezbollah fighters sitting in all-terrain-vehicles wearing desert camouflage uniforms, Getty Images, 29 July 2017, <https://www.gettyimages.ae/detail/news-photo/picture-taken-on-july-29-2017-during-a-tour-guided>, last accessed 10 May 2022.

27 The Open Message to the Vulnerable Around the World, supra fn 21.

operations and wars beyond the Lebanese borders.²⁸ For instance, Hezbollah fighters participated in the Bosnian conflict²⁹ in 1992,³⁰ as well as in the Iraq war against the American occupation, for instance in the Battle of Najaf in the summer of 2004.³¹



In May 2013, Hezbollah officially announced its participation in the Syrian war alongside the Assad regime, having already been involved in the fighting for several months.³² This move constituted a turning point, both nationally, with the IRL and its military operations no longer confined to defending Lebanese territory, and regionally, with the emergence of the AoR in West

28 Khomeini: 'The defence of the oppressed is a religious duty, and the defense of Islam and Islamic countries at danger is one of the religious, divine and patriotic duties.' Khomeini, 'America in the Thought of Imam Khomeini', Dar Al Mahajja Al Baydaa (In Arabic) p 244, (2003).

29 'Hezbollah on the Bosnian Battlefield 1992-95', Beautiful Bosnia YouTube channel, 8 Jan 2016, <https://www.youtube.com/watch?v=w6WyXyBkvro>, last accessed 9 August 2022.

30 S. L. Burg and P. S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention*, M. E. Sharpe, 1999, p 307.

31 A. Yehya, 'Interview - Akram al-Kaabi: The Americans and ISIS are Two Sides of the Same Coin' (in Arabic), Al Akhbar, 30 September 2015, <https://al-akhbar.com/Arab/11719>.

32 'Sayyed Nasrallah Delivers Speech on Resistance and Liberation Day', Al Ahed News, 25 May 2013, <https://english.alahednews.com.lb/25839/454>.

Asia.³³ In the context of Hezbollah's participation in the Syrian war, it is important to highlight that the movement has operated in various formations with varying levels of command responsibility.³⁴

More broadly, Hezbollah is deemed to have played a prominent role in transferring expertise and building the combat capabilities of other armed factions of the AoR. In contexts where troops have been needed on the ground – for instance, Syria – Hezbollah has sent fighters and commanders to the front. During the establishment of the PMF in Iraq,³⁵ and given the large number of Iraqi fighters already deployed on the ground, Hezbollah provided support by dispatching military commanders to the field. With its restricted access to the Occupied Palestinian Territories, the movement has turned to the transfer of weapons and expertise as a means to support the resistance factions in the Gaza Strip.³⁶ In Yemen, rumours around Hezbollah's provision of military assistance to the AA have come to the forefront. Although

33 The AoR consists of Iran, Syria, Hezbollah, Yemeni Ansar Allah Movement (AA), some factions of the Iraqi Popular Mobilization Forces (PMF), Palestinian armed factions including the Islamic Resistance Movement (Hamas) and the Palestinian Islamic Jihad, in addition to the Afghani and Pakistani Shiite armed groups, the Fatemiyoun Brigade and Zainabiyoun Brigade.

34 These formations can be categorized as: 1) operating as part of a group of military factions under the command of a joint operations room of AoR allies as, for example, in the Battle of Aleppo; 2) operating in support of another AoR faction under the command of the latter, such as when Hezbollah forces provided support to the Iraqi forces and Islamic Revolutionary Guard Corps (IRGC) during the Abu-Kamal offensive on the Syrian-Iraqi border; 3) operating under its own command with the support of other factions and/or Syrian Arab Army units. During the 2015 Southern Syria offensive, Hezbollah officers led the operation room with the support of Syrian army groups in the field, on the edge of the occupied Golan Heights. See M. Alami, Hezbollah's Military Involvement in Syria and its Wider Regional Role, Dirasat no 21, King Faisal Center for Research and Islamic Studies, March 2017, p 21, <http://www.kfcris.com/pdf/6f23c5a8743562eb0cb96e29d71c39575a1687c05d986.pdf> (last accessed 9 August 2022). In addition, Hezbollah unofficially established the Ridha Forces, a unit comprised of Syrian Shiite fighters, to operate within its ranks in areas such as Aleppo and Homs. See P. Smyth, 'Lebanese Hezbollah's Islamic Resistance in Syria', The Washington Institute for Near East Policy, 26 April 2018, <https://www.washingtoninstitute.org/policy-analysis/lebanese-hezbollahs-islamic-resistance-syria> (last accessed 9 August 2022).

35 Hezbollah's Secretary-General confirmed that Qassem Soleimani – former commander of the Quds Force in the IRGC who was assassinated by a US strike in 2020 – had asked him to send 120 Hezbollah commanders as operational leaders in order to expedite the defeat of ISIS in Iraq. '#Sayyed_Nasrallah Reveals Exciting Details That Eliminated ISIS in Iraq' (in Arabic), Al Markazia, 22 September 2019, <https://central-media.org/34783/599>.

36 'The Pilgrim of Palestine: The First to Bring Weapons into Gaza', Al Mayadeen YouTube Channel, 13 February 2018, <https://www.youtube.com/watch?v=fMAGoJlKDYS> (last accessed 9 August 2022).

Hezbollah denies having fighters on the ground,³⁷ the extent to which military expertise may have been provided – beyond political support – remains unknown.



Amir Ali Hajizadah, commander of the IRGC Aerospace Forces, reviewing the operation carried out under the name of Martyr Soleimani, with the flags of AoR members, including Hezbollah, in the background.³⁸

In light of the above, understanding the nature of the alliance under the AoR – and the central role of Iran both in terms of financial and military support to the other members of the axis – becomes key to analysing the role of Hezbollah in the regional setting. There are many indications that the ties binding the members of the AoR, especially when it comes to Hezbollah,³⁹ are not limited to proxy dynamics, but are rather built on common interests under a flexible umbrella of broad ideological lines.

37 ‘Sayyed Nasrallah’s Speech on the Latest Lebanese, Regional Developments’, Al Ahed News, 29 June 2018, <https://english.alahednews.com.lb/43886/594>; ‘Nasrallah Denies the Killing of Eight Members of the Lebanese Hezbollah in Yemen’, France 24, 29 June 2018, <https://www.france24.com/ar/2018062>.

38 Al Alam TV, owned by the state-owned media corporation, Islamic Republic of Iran Broadcasting, 9 January 2020. Flags from left to right: Islamic State of Iran, IRGC Air Force, IRGC Aerospace Force, Hezbollah, AA, PMF, Hamas, Fatemiyoun Brigade and Zainabiyoun Brigade.

39 Soleimani, talking about Hezbollah's ‘great military general’, Imad Mughniyeh, who was assassinated in Damascus in February 2008: ‘I do not know what name I should give to the commander of those special operations ... But the truth is that the martyr Imad Mughniyeh was a general in the true sense of the word’. Al Mayadeen, 1 October 2019, <https://www.almayadeen.net/episodes/1347369> (last accessed 9 August 2022).

Hossein Hamedani, the director of IRGC operations in Syria until his assassination in 2015, mentioned in his memoir that he was asked by Imam Ali Khamenei ‘to consult with Nasrallah, who – according to the book – was “in charge of all the policies of the resistance axis in Syria”’. A. Hashem, ‘In Syria, Iran Sees Necessary War’, Al-Monitor, 16 March 2017, <https://www.al-monitor.com/originals/2017/03/iran-intervention-hamedani-quds-force-memoir.html>; ‘Abdollahian to Al-Manar: Iran Refers to Sayyed Nasrallah’s Viewpoints While Approaching Regional Causes’, Al Manar, 10 October 2021, <https://english.almanar.com.lb/1448108>.

BOX 2: APPLICABLE LAW

Throughout its existence, Hezbollah has become a party to various armed conflicts in the region and beyond. Since its creation, it has operated as a resistance movement⁴⁰ in the context of the international armed conflict (IAC) between Lebanon and Israel. Some argue this conflict dates back to 1948, but it was during the Six-Day War of 1967 that the Shebaa Farms – a contested territory then under Lebanese control – were effectively occupied by Israel.⁴¹ In 1982, during the Lebanese Civil War (1975–1990), Israel launched incursions into Lebanon’s territory, occupying the South from which it withdrew in 2000 in compliance with Security Council Resolutions 425 (1978) and 426 (1978).

For the purposes of this case study, the analysis will focus on two conflicts in which Hezbollah was engaged: 1) the July 2006 war against Israel and 2) the conflict in Syria.

With regards to the 33-day 2006 conflict, there have been varying opinions in terms of conflict qualification. The report of the Commission of Inquiry on Lebanon highlights the ‘sui generis nature’ of the conflict, given the fact that ‘active hostilities took place only between Israel and Hezbollah fighters’,⁴² concluding that ‘[t]he hostilities that took place from 12 July to 14 August constitute an international armed conflict to which conventional and customary international humanitarian law and international human rights law are applicable.’ The report also adds that ‘the Government of Israel addressed Lebanon as assuming responsibility’⁴³ with the Israeli Defence Forces viewing its operations in Lebanon as an international armed conflict.

While the Israeli occupation of Lebanon and the 2006 conflict clearly constituted an IAC for both state parties involved, HRW’s report assessing civilian casualties during the 2006 war emphasizes the ‘controversy over the humanitarian law applicable to Hezbollah’, concluding that ‘there is a basis for finding that hostilities between Israel and Hezbollah are covered by the

40 ‘In its military expression and in the light of international humanitarian law, Hezbollah constitutes an armed group, a militia, whose conduct and operations enter into the field of application of article 4, paragraph 2 (b), of the Third Geneva Convention of 12 August 1949. Seen from inside Lebanon and in the absence of the regular Lebanese Armed Forces in South Lebanon, Hezbollah constituted and is an expression of the resistance (‘muqawamah’) for the defence of the territory partly occupied.’ Report of the Commission of Inquiry on Lebanon Pursuant to Human Rights Council resolution S-2/1*, UN doc A/HRC/3/2, 23 November 2006, §57.

41 ‘Military Occupation of Lebanon by Israel’, RULAC, Geneva Academy, <https://www.rulac.org/browse/conflicts/military-occupation-of-lebanon-by-israel#collapse3accord> (last accessed 9 August 2022).

42 ‘It is the view of the Commission that hostilities were in fact and in the main only between the IDF and Hezbollah. The fact that the Lebanese Armed Forces did not take an active part in them neither denies the character of the conflict as a legally cognizable international armed conflict, nor does it negate that Israel, Lebanon and Hezbollah were parties to it.’ Report of the Commission of Inquiry on Lebanon Pursuant to Human Rights Council Resolution S-2/1*, supra fn 40, §9.

43 Ibid, §8.

humanitarian law rules for a non-international (that is non-governmental) armed conflict'. As such, the applicable international law for Lebanon/Israel would consist of the 1949 Geneva Conventions and, unless Hezbollah forces were 'considered to be a part of the Lebanese armed forces, or demonstrated allegiance to such forces, or were under the direction or effective control of the government of Lebanon' the applicable treaty law comes down to Common Article 3 to the 1949 Geneva Conventions, also called a 'treaty within a treaty'.⁴⁴ In any event, all parties to the conflict are bound by customary IHL which is nowadays largely the same – in terms of principles governing the conduct of hostilities – whether applied to an IAC or NIAC.

Since May 2013, Hezbollah has been militarily active in Syria alongside the Syrian Government and involved in fighting against a multitude of rebel groups in what is considered a case of 'multiple and overlapping non-international armed conflicts (NIACs)'.⁴⁵ In this setting, all parties to the conflict are bound by Common Article 3 to the 1949 Geneva Conventions. All parties to the conflict – whether states or organised ANSAs – are bound by treaty and customary rules of IHL. The latter apply at all times to all parties, irrespective of their ratification of IHL treaties.⁴⁶

For more information on the applicable law, see www.rulac.org.

HEZBOLLAH'S IHL POLICY

IHL PROFILE

Islamic Sharia law⁴⁷ is considered by Hezbollah to be the main normative framework. And, although there are notable differences between IHL and the ethics of war⁴⁸ in Islamic Sharia, both converge in their objective to organize the war effort in order to protect persons not participating in armed conflict. Hence, principles similar to those in IHL can also be found in Islamic law.

44 Human Rights Watch (HRW), *Why They Died: Civilian Casualties in Lebanon During the 2006 War*, 5 September 2007, pp 31–32. <https://www.hrw.org/sites/default/files/reports/lebanon0907.pdf> (last accessed 9 August 2022).

45 'Non-International Armed Conflicts in Syria', RULAC, <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria> (last accessed 9 August 2022).

46 ICRC, 'Who is Bound by IHL?', 13 August 2017, <https://blogs.icrc.org/ilot/2017/08/13/who-is-bound-by-ihl/> (Last accessed 8 August 2022)

47 Despite overarching agreement on the broad lines, opinions may vary between the Sunni and Shiite doctrinal schools (see Box 1 for more information). Unless explicitly stated otherwise, references made to Islamic law or Islamic Sharia in this case study are to be understood as the Islamic Sharia which complies with the Shiite interpretation and literature.

48 This terminology refers to relevant rules issued by Prophet Muhammad as well as imams and commanders to determine the limits to the conduct of war. Given that most of these rules revolve around the protection of civilians and vulnerable categories, the protection of persons hors de combat, in addition to the protection of civilian objects and the environment, they became known as the ethics of war.

Despite indications of Hezbollah's knowledge of IHL/IHRL, there is no concrete evidence in its public statements, documentaries or guidebooks to suggest that the movement feels bound by IHL in its entirety as the applicable 'law of armed conflicts'. This does not mean, however, that Hezbollah does not recognize IHL as a generally binding legal framework. This can be concluded from the fact that 'Hezbollah has condemned Israel for not complying with international laws and norms'.⁴⁹ Another indicator of Hezbollah's recognition of IHL lies in Iran's influence on the movement. Iran's advanced understanding of IHL has had a reverberating effect on Hezbollah.⁵⁰ To further illustrate Hezbollah's position vis à vis international law, it is important to consider the CCSD⁵¹ founded in 1988 with the objective of providing Hezbollah with strategic studies and advisory opinions.⁵² With the set-up of the Special Tribunal for Lebanon in 2006, following the assassination of Prime Minister Rafik al-Hariri, a special legal department was created within the centre to enhance understanding of international law including IHL/IHRL. The CCSD, which brings together university professors, researchers and legal advisors, including International-law and Islamic-law experts, many of whom were trained by the ICRC,⁵³ has since organized several conferences and events around IHL and Islamic law, confirming Hezbollah's position regarding international law. It is also important to highlight that 'the director of the CCSD is usually appointed by Hezbollah, while its members including the members of the consultative committee do not necessarily have to be from the movement and can represent different sects' as long as they align with the 'resistance's ideology'.⁵⁴

This goes to show that while the movement does not refer to IHL/IHRL as a source of obligation for its fighters, it is well aware of the lines drawn by these international legal frameworks. This is further evidenced by its interaction with relevant humanitarian actors, namely the ICRC and Geneva Call,⁵⁵ on specific topics such as the relationship between IHL and Sharia law and the

49 Interview with Dr Hassan Jouni, IHL expert and member of the consultative committee of the CCSD, 11 May 2022.

50 Ibid.

51 See the official website of the CCSD (in Arabic), http://www.dirasat.net/nachatat.php?id_cat=2 (last accessed 9 August 2022).

52 The CCSD states its mission as: 'A specialized scholarly institution, concerned with research, strategic and development studies and information ... The Centre pays particular attention to American policies, changes in the global system, as well as relations between the Arab and Islamic worlds and the West and international social movements, with a focus on issues related to Palestine and the Resistance',

http://www.dirasat.net/aboutus.php?id_cat=2 (last accessed 9 August 2022).

53 Interview with Dr Hassan Jouni, 11 May 2022.

54 Ibid.

55 Geneva Call, 'Engaging Armed Non-State Actors and Local Authorities to Improve Access to Health Care and Strengthen Preventative Measures Against the Spread of COVID-19 Among Vulnerable Communities in Lebanon, 27 May 2021, <https://www.genevacall.org/in-lebanon/> (last accessed 9 August 2022).

protection of health care in armed conflict, in addition to the IHL training session delivered to Hezbollah cadres.

In light of the above, one can conclude that Hezbollah does in fact collaborate with some humanitarian actors. On the one hand, its acceptance of such collaboration is rooted in the Islamic ideology that requires these actors to seek the ‘*maslahah*’⁵⁶ or public interest of Muslims and, by analogy, the community within which the movement operates. On the other hand, the acceptance of these humanitarian actors depends on their impartiality and neutrality as well as on the lack of coercion to enter into such collaboration: ‘These organizations and agencies can be accepted ... if we agree to join them freely and with insight, and if they are impartial. Otherwise, one cannot accept their interference in conflicts of which they are a part.’⁵⁷ Some examples worth noting here include the close cooperation between Hezbollah and the ICRC as a neutral mediator to facilitate exchanges of detainees and remains between Hezbollah and the Israeli forces,⁵⁸ as well as coordination with the Lebanese Red Cross throughout the fight against Syrian militants on the Syrian-Lebanese border in 2017.⁵⁹ Moreover, Hezbollah reportedly collaborated with the Syrian Red Crescent to bring aid into besieged areas during the war in Syria.⁶⁰

On another note, Hezbollah has often relied on the conclusion of agreements with opposing parties to the conflict or to abide by certain IHL/IHRL norms. For instance, a ceasefire – known as the April Understanding⁶¹ – was concluded with Israel in 1996. In essence, the agreement aimed to ensure that civilians would ‘under no circumstances ... be the target of attack’ by either party and that ‘civilian populated areas and industrial and electrical installations will not be used

56 ‘Islamic law ... is also unique in its objectives and enforcement. The objectives are to fulfil the requirements of the divine ordinances, *shari‘ah*, and to ensure the *maslahah* (public interest) of the Islamic state’. A. Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, 2011, p 107.

57 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 294.

58 ICRC, ‘Israel-Lebanon: ‘The ICRC Has the Trust of Both Sides’, 15 July 2008, <https://www.icrc.org/en/doc/resources/documents/interview/israel-lebanon-interview-150708.htm> (last accessed 9 August 2022).

59 ICRC, ‘Lebanon: The ICRC Did Not Play a Role in the Transfer of Fighters, Civilians from Aرسال to Syria’, 3 August 2017, <https://www.icrc.org/en/document/lebanon-icrc-did-not-play-role-transfer-fighters-civilians-arsal-syria> (last accessed 9 August 2022).

60 ‘Sending Vaccines to the Besieged Towns of Foua and Kefraya Through the Syrian Red Crescent’ (in Arabic), Military Media Unit (MMU) official Telegram channel (in Arabic), 27 April 2016, https://t.me/C_Military1/178 (last accessed 9 August 2022).

61 In the early 1990s, Hezbollah started targeting Israeli settlements with unguided rockets. This is what led the Israeli army to decide to eliminate this threat through a military campaign against Hezbollah. However, after the violations committed by the Israeli occupation forces, against civilians in particular, and their inability to stop Hezbollah's rockets, an oral understanding between the parties was reached under the patronage of Syria and the US.

as launching grounds for attacks'.⁶² Furthermore, it concluded that nothing within the agreement 'shall preclude any party from exercising the right of self-defence'.⁶³ In reality, this agreement meant that Hezbollah would not fire rockets towards Israel, especially since these could not be accurately directed towards military targets, while Israel would refrain from targeting civilians in Lebanon.⁶⁴ In this context, Nasrallah has also referred to the principle of distinction and, indirectly, to the concepts of proportionality and precautions to advocate for acceptance of Hezbollah's possession of accurate weapons.⁶⁵ It is important to highlight, however, that despite the April Understanding, Hezbollah has threatened to target Israeli 'settlements' should the Israeli forces target Lebanese civilians. This was seen as a means to deter Israeli attacks.⁶⁶

Furthermore, Hezbollah and the Syrian authorities have resorted to the conclusion of a wide range of agreements with opposing militant groups in Syria, for example to allow the passage of vaccines and medical aid into besieged areas,⁶⁷ or to allow militants to leave certain besieged towns – at times with their weapons⁶⁸ – to regain control of these territories.

62 'The April understanding authorized the Resistance fighting in the occupied Lebanese land and targeting the occupation soldiers and its agents, and forbade the enemy [Israel] to bomb our villages and towns'. 'Sayyed Nasrallah: The US Embassy and Political Forces Seek to Disrupt the Elections, and Without the Resistance, There Would be no Country', Al Manar, 11 April 2022, <https://almanar.com.lb/9447726>.

63 Israel-Lebanon Ceasefire Understanding, 26 April 1996, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/il_ceasefire_1996.pdf (last accessed 9 August 2022).

64 Ibid: '1. Armed groups in Lebanon will not carry out attacks by Katyusha rockets or by any kind of weapon into Israel. 2. Israel and those cooperating with it will not fire any kind of weapon at civilians or civilian targets in Lebanon.'

65 'I tell the "Israeli" people that it is in your interest to tell Netanyahu that it is better to let Hezbollah possess precision rockets ... If the day comes when we have to respond to Tel Aviv and I have precision missile, I can strike a military barracks. If I do not have them, I will strike the military barracks, but I will miss by 500 meters or 1000 meters. This means, the missiles will fall on the people.' 'Full Text of Sayyed Nasrallah's Interview with Al Mayadeen', Al Ahed News, 26 January 2019, <https://english.alahednews.com.lb/46559/595>.

66 'Even when the Israeli forces respond to the Resistance's attacks, they bomb the surroundings and not the villages, for they know well that bombing villages and civilians means that their settlements would be targeted. This way, bombs have protected civilians. If anyone has a better way to protect civilians, they are welcome to present it.' G. Tueni, 'Presidencies: Interview with Al-Sayed Hassan Nasrallah', Part 2, 24 September 1995, <https://www.lbcgroup.tv/watch/37504/ar> (last accessed 9 August 2022).

67 ICRC, 'Syria: Emergency Aid Reaches Thousands of People Trapped in Besieged Areas', 19 October 2015, <https://www.icrc.org/en/document/syria-war-aid-damascus-medical-supplies> (last accessed 9 August 2022).

68 R. Nordland, 'Lebanon Frees Hundreds of ISIS Fighters in Exchange for Soldiers' Bodies', The New York Times, 28 August 2017, <https://www.nytimes.com/2017/08/28/world/middleeast/lebanon-isis-syria.html>.

In terms of internal regulations, Hezbollah follows Islamic customs, whereby the commander in charge addresses his fighters before leading them to battle.⁶⁹ In this speech, the commander outlines the rules the fighters will have to obey without the necessity of referring to a written code of conduct. This approach reflects the way Prophet Mohammed and Imam Ali used to prepare their fighters for combat. In this context, the religious Marja'iyah⁷⁰ can issue direct guidance to the fighters and, even though this guidance might not have the same religious weight as a fatwa, fighters' respect for their Marja'iyah often leads to compliance with the set-out rules.⁷¹ Given that Hezbollah has pledged allegiance to Imam Ali Khamenei, his fatwas and advisory opinions⁷² are considered binding for the movement and constitute part of the education Hezbollah fighters have to complete in order to join its ranks.

When delving into IHRL considerations one must keep certain specificities in mind which have led to the creation of regional or Islamic⁷³ human rights treaties. As for Hezbollah's position vis à vis IHRL, 'Hezbollah officials' statements condemning Israel or terrorist movements in Syria and Lebanon for their IHRL and IHL violations reveal the extent of Hezbollah's knowledge of these laws'.⁷⁴ '[W]hen [Hezbollah] condemns human rights and IHL violations committed by Israel or terrorist movements in Syria and Lebanon, it is not talking about Islamic human rights, but about human rights that it considers universal.'⁷⁵ In this context, when Hezbollah condemns European countries for their lack of respect for human rights with regard to the prohibition of the headscarf, it does so referring to universally recognized human rights and not from an Islamic perspective. 'This means that it recognizes human rights other than those consecrated under the Islamic view, but applies the latter to itself.'⁷⁶ This is further evidenced by the lectures and training sessions provided by the CCSD and Hezbollah officials which speak to the importance of

69 Specific examples such as Nasrallah's speech before the al-Qusayr Operation are referenced in this case study.

70 In order for a religious leader to become a Marja'iyah, the Shiite school requires the publication of a compilation of religious rulings on key topics. This often includes a section on how jihad should be waged, meaning how fighters should conduct themselves during armed conflict. These fatwas are considered the most binding instruments for the followers of that religious authority.

71 Sayyid Al-Sistani issued a set of rules, 'Advice and Guidance to the Fighters on the Battlefields', in 2015, <https://www.sistani.org/english/archive/25036/> (last accessed 9 August 2022).

72 These religious rulings and guidance will be elaborated throughout the case study where relevant.

73 Catering to the specificities of Islam, the Organisation of Islamic Cooperation adopted the 1990 Cairo Declaration on Human Rights in Islam, which consecrated a set of rights rooted in Islamic values while disregarding those deemed incompatible with Sharia law.

74 Interview with Dr Hassan Jouni, 11 May 2022.

75 Ibid.

76 Ibid.

respecting the Universal Declaration of Human Rights as well as IHRL and IHL in general, proving that they do not find IHRL and IHL to contradict the general principles and foundations of Islam.⁷⁷



Although there is ongoing debate around the extent to which ANSAs are bearers of human rights obligations vis à vis populations living under their control, some ANSAs have displayed the willingness to take increasing responsibility. In Hezbollah's case, the 'social role' it plays – for instance through the provision of assistance and medical and educational⁷⁸ services in times of peace, and even in times of armed conflict in the areas where it operates – is derived from its being a political party. Historically, the state's incapacity to fulfil its duties towards the population has left a gap requiring Lebanese political parties to provide alternatives,⁷⁹ especially to their supporters. This experience gained by Hezbollah in Lebanon was eventually transferred to its operations in Syria.⁸⁰

77 Ibid.

78 'For instance through the Islamic Health Commission [c.f. section 5F on the protection of health care] and the Educational Mobilization, Hezbollah's educational institution which played an important role providing education during the civil war'. 'The Educational Mobilization's Role During the War: Distress Call to Hariri's Plane' (in Arabic), Bintjbeil, 2 December 2010, <https://marchive.bintjbeil.org/article/36325>.

79 Interview with Dr Hassan Jouni, 11 May 2022.

80 'The Islamic Health Authority Arrives in Israel' (in Arabic), Al Jadeed News YouTube channel, 30 March 2014, <https://www.youtube.com/watch?v=qzWNAoBMOwk>.

BOX 3: A COMPARATIVE ANALYSIS OF KEY PRINCIPLES OF SHARIA LAW AND IHL

To facilitate understanding of Hezbollah's policies and practices, it is crucial to outline some key principles of Islamic Law, where obligations tend to have a bilateral and reciprocal character, as compared to IHL, where they have a multilateral and often universal character.

Firstly, Islamic Sharia distinguishes in its ethics of war between two types of conflicts: 1) those between 'people of the Kiblah', meaning between Muslims, which generally refers to NIAC under international law and 2) those with non-Muslims, often interpreted as IAC when translated into IHL terms, with obligations differing from one scenario to the other.

Secondly, while reciprocity is prohibited under IHL, it is considered acceptable under Sharia law for all acts which are not clearly prohibited according to its provisions. In this context, the Quranic verses⁸¹ indicate that reciprocity is permissible rather than necessary, with due consideration to proportionality. Moreover, it is not advised to reciprocate should revenge be the motive.⁸²

Thirdly, Islam consecrates a principle known as al-ghunm bi al-ghurm meaning 'the gains cover the losses'.⁸³ According to this principle, the leadership can, if and when in the general interest of Muslims, increase its obligations towards the enemy in the battle, in return for the enemy's commitment to the same standard. Given the condition of mutual commitment, if the enemy violates its obligations, the leadership can absolve itself of its commitment.

Another principle of Sharia law is the necessity to respect Islamic war ethics even if these are to the disadvantage of the Muslim leadership and fighters: 'So if we refer to the Islamic precepts, we will find they conspire to reverence the rules of Sharia, even if this leads to reducing the ability of the Muslim leadership and to preventing it from seizing the opportunity to eradicate evil'.⁸⁴

In addition to the above, the principle of the primacy of the religious hierarchy is central to Hezbollah's ideology. The movement being closely linked with the Guardianship of the Islamic

81 'The prohibited month for the prohibited month and so for all things prohibited there is the law of equality. If then anyone transgresses the prohibition against you transgress ye likewise against him. But fear God and know that God is with those who restrain themselves.' The Holy Qur'an, trans. A. Yusuf Ali, Sura 2, Verse 194, <https://quranyusufali.com/2/> (last accessed 9 August 2022). 'And if ye do catch them out, Catch them out no worse Than they catch you out: But if ye show patience, That is indeed the best (course) For those who are patient.' Ibid, Sura 16, Verse 126, <https://quranyusufali.com/16/> (last accessed 9 August 2022).

82 M. Mir Mohammadi, 'Reciprocity in Armed Conflicts Between Islam and International Humanitarian Law', in *Islam and International Humanitarian Law*, supra fn 13, p 199.

83 Tayy, *The Islamic New and Old Law of War*, supra fn 13, pp 307–310.

84 Ibid, p 337.

Jurist – Wilayat al-Faqih – its members and leadership become bound by the fatwas⁸⁵ or advisory opinions issued by the religious authority called the Marja’iya. Hence, the duty to comply with orders surpasses that which governs the relationship between commanders and subordinates, becoming a religious obligation. In this context, and as stated by Khamenei in one of his fatwas, ‘[t]he Mujahideen must obey the Jihadi leaders and follow their orders – within the limits of their competencies – and it is not permissible to disobey them in any event’.⁸⁶ While IHL requires that fighters refuse to comply with their commanders’ unlawful orders, it is this ideology of strict compliance – emanating from a religious conviction – that has led Hezbollah fighters to become known for their discipline and organization on the battlefield.

In light of what has been presented, a comparative analysis of IHL and Sharia law reveals instances where the two frameworks provide different levels of protection. Some illustrative cases in which Islam grants greater guarantees than international law include the prohibition of the use of nuclear weapons,⁸⁷ the guarantees granted to fighters in NIACs⁸⁸ and the prohibition of detaining the wounded and the sick.⁸⁹

85 A fatwa is an advisory opinion issued by the religious authority, Marja’iya, as a response to specific questions it receives from its followers. These are answered after a thorough review and analysis process with either a prohibition or an approval of the issue at hand.

86 Jihadi Fatwas, prepared by Kazem Al-Jabri, Directorate of Religious Guidance in the Popular Mobilization Forces, p 21. The publication gathers the jihadi fatwas of al-Sistani and Khamenei from various sources. For the purposes of this case study, the authors relied on fatwas issued by Khamenei only.

87 ‘Islam cannot at all agree to the advisory opinion of the International Court of Justice that did not prohibit the use of nuclear weapons.’

Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 301.

88 In IHL, combatant status is only accorded to fighters in international armed conflicts, yet according to Islamic law, ‘the most merciful rules are applied to the rebel fighters from inside the State, without the need to be bound by agreements or reciprocity’. Ibid, p 328.

89 ‘[IHL] allows to capture the wounded and sick while the Islamic Sharia requires to leave them free’.

Ibid, p 328.

HEZBOLLAH POLICY AND PRACTICE WITH REGARD TO SELECTED IHL NORMS

1. PROTECTION OF CIVILIANS FROM ATTACKS

A. PRINCIPLE OF DISTINCTION

Under customary IHL,⁹⁰ the parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants; they must not be directed against civilians. Civilian objects are also protected against attacks.⁹¹ Indiscriminate attacks are prohibited.⁹² Article 13 of the 1977 Additional Protocol II to the Geneva Conventions (AP II), which contains similar rules, additionally provides that ‘acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited’. Civilians are persons who are not members of the armed forces;⁹³ they are protected against attack, unless and for such time as they take a direct part in hostilities.⁹⁴ Civilian objects are all objects that are not military objectives;⁹⁵ they are protected against attack, unless and for such time as they are military objectives.⁹⁶

It is important to highlight upfront that the humanitarian standards considered by Hezbollah in battle may change according to the nature of both the conflict (IAC, occupation or NIAC) and the enemy (Muslim or non-Muslim), and may also depend on the weapon arsenal available to Hezbollah, specifically when it comes to intelligent and accurate missiles. In this sense, the criteria adopted for civilians being deprived of their protected status may also vary.

90 See Rule 1, ICRC CIHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul (last accessed 9 August 2022).

91 Rule 7, *ibid.*

92 Rule 11, *ibid.*

93 Rule 5, *ibid.*

94 Rule 6, *ibid.*

95 Rule 9, *ibid.*

96 Rule 10, *ibid.* In so far as objects are concerned, ‘military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage’. Rule 8, *ibid.*

Hezbollah has been engaged in various armed conflicts throughout the years, fighting the Israeli occupation as well as the Syrian opposition forces, often referred to by the movement as Islamic ‘takfiri’⁹⁷ or extremist groups. For Hezbollah, the fight on these two fronts lies in the context of tackling ‘American hegemony and its tools in the region’.⁹⁸ While Hezbollah openly declares its enmity with the United States, Israel and the factions of the Syrian opposition, the movement cautiously distinguishes between military personnel and civilians. This was made clear in Nasrallah’s eulogy to General Qassem Soleimani, former commander of the IRGC Quds Force, killed in a US strike in 2020: ‘[T]here are American citizens, merchants, media professionals, journalists, companies, engineers and doctors. It is not intended to harm these people, and these people should not be harmed’.⁹⁹ In addition to distinguishing between military personnel and civilians, this message aims to discourage reprisals against civilians.

These lines drawn by Nasrallah, as a representative of the Wali al-Faqih and Secretary-General of Hezbollah, reflect a steadfast stance: ‘[C]ivilians are not to be attacked, nor are women, or children, or any other [civilian person]. It is prohibited to steal [civilian property] and hit, assault or harass [civilians]’.¹⁰⁰ This position is also taken up in the educational guidebooks¹⁰¹ used by Hezbollah for training purposes. On this specific topic, the Quranic verse is interpreted as a prohibition of ‘assault[ing] non-combatants’¹⁰² and especially women and children. The account

97 A term denoting radical Muslims who excommunicate their coreligionists or accuse them of apostasy.

98 The Open Message to the Vulnerable Around the World, *supra* fn 21.

99 ‘The just retribution, transparently and clearly, is the following: The American military presence in the region, the American military bases, the American military battleships, every American military officer and soldier in our region, in our countries and on our lands – the American army – are the ones who killed and they will pay for it. That’s the equation. When we bring this up, we don’t mean the American people at all. I hope this is crystal clear; we don’t mean the American people; we don’t mean the American citizens. Throughout our region, there are American citizens, merchants, journalists, media, companies, engineers, and doctors. They are not intended to be harmed, nor should they be harmed’. ‘Sayyid Nasrullah’s Speech at the Memorial Ceremony for the Two Martyrs, Qassem Soleimani and Hajj Abu Mahdi al-Muhandis’ (in Arabic), Al Ahed News, <https://www.alahednews.com.lb/uploaded/solimani/material/arabic49.html>.

100 Hajj Alaa, Islamic Resistance in Lebanon’s (IRL’s) field commander, giving orders regarding the protection of civilians during the hostility. Footage from Al Mayadeen TV’s documentary about the intervention of Hezbollah in Syria, ‘Behind the Hills’, Part 1 (in Arabic), filmed by the MMU, 17 July 2017, <https://www.almayadeen.net/episodes/749872> (last accessed 9 August 2022).

101 In the Midst of the Jihad’s Ayaat (في رحاب آيات الجهاد), Al Maaref Center for Authoring and Investigating, Al-Maaref Islamic Cultural Association, 2015.

102 ‘And fight in the cause of God those who fight you, and do not transgress, for God does not like aggressors’ (Al-Baqarah: 190). This verse commands Muslims to fight warriors only, and the prohibition is represented by ‘do not transgress’, meaning that you are not entitled to move from fighting the warriors, to fighting the non-combatants whom you were not commanded to fight. The prohibition also entails refraining from attacking or killing women, children and the elderly. The prohibition in the phrase ‘do not transgress’ indicates the obligation to adhere to all laws and decrees of jihad and to defend even the rights of the enemy in war. See *ibid*, pp 19–21.

of Imam Jafar al-Sadiq¹⁰³ becomes relevant in this context as he relates that ‘the Prophet forbade the killing of women and boys in [areas] of war unless they were involved in the fighting’, emphasizing that their targeting should be avoided even then, ‘unless they pose danger’.¹⁰⁴ This stance is reiterated by Shiite scholars who confirm that even if women and children are involved in the fighting as combatants ‘their killing should be avoided to the extent possible’.¹⁰⁵

The need to respect the principle of distinction was further confirmed by Nasrallah in 2013, during the meeting held with Hezbollah officers on the eve of the Al-Qusayr Operation, the movement’s first major military intervention in Syria:

[T]here are two points I want to highlight. First, I have, of course, spoken with the responsible brothers about the issue of bombing, [and the issue] of civilians, and what the controls are, but especially to the young men who are advancing towards the city and are bombing or monitoring – if they meet a civilian, they should pay attention. We are fighting armed groups, but [when it comes to] women, children and the elderly, killing them, hurting them, beating them, wounding them, is forbidden from a religious perspective. My second point is that it is permitted for us [to spill] the blood of these fighters, but people’s belongings are no right of ours.¹⁰⁶

Nasrallah’s guidance not only reveals fighters’ obligation to protect civilians but also to protect civilian property from damage or looting. An account of these orders was later given by a Hezbollah commander:

His Eminence [Nasrallah] had a recommendation to the [fighters], to pay attention during the military action to the presence of civilians in the city of al-Qusayr ... although we are aware that most of the city of al-Qusayr [consisted] of soldiers from all factions.¹⁰⁷

103 Jafar bin Mohammad, also known as Imam al-Sadiq (b. 83/702 – d. 148/765), was the sixth Imam of Imamiyya. Most of the hadiths of Ahl al-Bayt recorded in Twelver Shiite hadith collections are from Imam al-Sadiq. This is why Imamiyya is called the Ja’fari School.

104 Thiqatu al-Islam Muhammad al-Kulayni, *Al-Kafi* (Fru’ al-Kafi), vol 5, trans. M. Sarwar, The Islamic Seminary Inc., 2013, p 29.

105 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 314.

106 Nasrallah during the meeting held with generals on the eve of the Al-Qusayr Operation. Footage from Al Manar TV's documentary about the intervention of Hezbollah in Syria, ‘Secrets of the Second Liberation, Episode 5: Al-Qusair the Battle of Transformation, Part 1’ (in Arabic), filmed by the MMU, Al Manar, 2 October 2020, <https://program.almanar.com.lb/episode/135863> (last accessed 9 August 2022).

107 Ibid.

It is in this context that Hezbollah issued a statement to deny the German Ministry's accusations of the movement's killing of civilians in al-Qusayr,¹⁰⁸ a reaction which speaks to the importance accorded by the IRL to the protection of civilians.

This message is practically reinforced by the prohibition of attacking without the clear identification of a military target. According to a documentary issued by Hezbollah's MMU, the fact that 'residents of Ras al-Ain remained [in the city], constituted the biggest obstacle to [the resistance's] entry. Unless the resistance fighters saw an explicit target, they could not shoot'.¹⁰⁹ This confirms that Hezbollah does not automatically consider individuals living in enemy territory as military objectives. Against this backdrop, it is safe to conclude that Hezbollah considers civilians as protected persons who should not be subject to attacks. This remains the case even if these civilians are akin to the enemy or the 'opposition's fighters'¹¹⁰ and regardless of their religion, ethnicity or political opinion.¹¹¹ It is worth noting that this assessment might also apply to unarmed enemy fighters. In this context, Hezbollah members were reportedly ordered to refrain from attacking unarmed Lahd army members¹¹² undergoing training in Hezbollah fighters' plain sight despite the fact that they would have been easily targetable from Hezbollah's location and that considering that they did not, at the time, constitute a danger.¹¹³

108 'Hezbollah, while rejecting the German accusations of targeting civilians in al-Qusayr or subjecting them to any harm, affirms that these are false and null accusations that have no basis in truth. Hezbollah is keen to confirm that the fighters adhere to the highest ethical and humanitarian standards in dealing with the military with whom they are fighting during the war; how about dealing with the civilians then? Their behaviour is acknowledged by international humanitarian institutions that know definitively the policies Hezbollah implements in this field'. 'Hezbollah Denies the German Foreign Ministry's Accusations of Killing Civilians in Qusayr' (in Arabic), Al Ahed News, 15 June 2013, <https://archive.alahednews.com.lb/details.php?id=77996>.

109 The presence of the civilians was the biggest obstacle to military progress. Footage from 'Secrets of the Second Liberation, Episode 8: The Outskirts of Qalamoun – the War of the Mountains', filmed by the MMU, 23 October 2020, <https://program.almanar.com.lb/episode/140626> (last accessed 9 August 2022).

110 IRL fighters providing assistance to the families of the militants while leaving Aarsal. Footage from Al-Mayadeen TV's documentary about the intervention of Hezbollah in Syria, 'The Second Liberation: The End of Al-Nusra 2017, Part 2' (in Arabic), filmed by the MMU, Al Mayadeen Documentaries (YouTube channel), 4 August 2019, <https://youtu.be/NupQea4jmOM> (last accessed 9 April 2022).

111 'Concerning refugee camps, we will not allow them to become a target; no one will approach them, and we will not allow anyone to do so. Even if we disagree with them or not on politics, but in terms of humanity, morality, religion and legitimacy and on all scales, they must not be harmed for any reason and under any name, even if the latter is harsh battle conditions'. 'Sayyed Nasrallah's Speech on the Screen About the Course of the Battle of the Aarsal Outskirts' (in Arabic), Al Manar, 27 July 2017 <https://www.almanar.com.lb/2368221> (last accessed 9 August 2022).

112 The Lahad Army (جيش لحد), also known as the South Lebanon Army (SLA), was a militia based in South Lebanon that was supported by Israel and served as its primary ally in Lebanon during the Israeli occupation of South Lebanon and the direct conflict with Hezbollah from 1982 to 2000.

113 Interview with Dr Hassan Jouni, 11 May 2022.

According to Hassan Jouni, the abovementioned examples are rooted in the Twelver ideology, which builds upon the historic oppression of its founding imams. The epitome of Shiite suffering figures in the ruthless battle of Karbala where Imam Hussein bin Ali and his brother Abbas bin Ali were defeated along with 72 of their companions, and their relatives including Zaynab, Imam Hussein's sister, and Rukaya, his young daughter, were either killed or enslaved. To this day, Shiites ceremoniously mourn the Imams specially Imam Al-Hussein and his relatives on Ashura and when visiting their shrines. This goes to show that the feeling of compassion Shiite believers carry for the oppressed is enshrined in their collective consciousness and subconsciousness. From there flows the sanctity of women, children, civilians and even persons hors de combat. The killing of Al-Hussein, his family and companions has left a mark on Shiites, including Hezbollah members, particularly because many of them, including his brother Al-Abbas¹¹⁴ were unarmed.¹¹⁵

With the above in mind, a key distinction should be made in relation to Hezbollah's classification of Israeli civilians. When talking about Israel, Hezbollah has repeatedly highlighted the fact that 'there are no real [Israeli] civilians',¹¹⁶ but rather 'there are occupation settlers, occupation army, and occupation people'. This perception of Israeli civilians is rooted in Hezbollah's political and legal position, which argues that all Israelis – except for the indigenous arabs and jews¹¹⁷ – are settlers who come from abroad, are permanently armed, militarily trained and constitute a part of the military occupation apparatus.¹¹⁸ Consequently, all Israeli settlers, even if not directly participating in hostilities, are considered by Hezbollah to be legitimate targets. Although Hezbollah has not publicly divulged its definition of civilians as applicable in other contexts, its standpoint reflects to some extent the negative definition of civilians as per Sharia law and customary IHL,¹¹⁹ whereby civilians are 'persons who are not members of the armed forces', although some definitions would add 'active' or 'on duty' as additional criteria. Hezbollah

114 Abbas bin Ali (known as Abū'l-Faḥḥ, the Father of Excellence), is the son of Imam Ali. He is considered the epitome of dignity, bravery, generosity and obedience. He was the commander and standard-bearer of the caravan of Imam Hussein in the Battle of Ashura. He is also known among Shias as Saqqa (the water supplier); Abbas succeeded in bringing water for the family and companions of Imam Hussein on the 7th of Muharram. On the day of Ashura, once again, he attempted to bring water from the Euphrates; but on his return, they shot his leather water pouch, cut his hands and martyred him. Shia Islam speaks of his merits and mourns him, especially on the Day of Tasu'a (9th of Muharram).

115 Interview with Dr Hassan Jouni, 11 May 2022.

116 'Sayyed Nasrallah's Full Speech at the "Renewing Media Discourse and Managing Confrontation" Conference', Al Ahed News, 5 July 2021, <https://english.alahednews.com.lb/61144/602>.

117 'And in those rare instances when it hit civilians and then expressed regret for having done so, for example, when a rocket killed two Palestinian-Israeli boys in Nazareth on July 19, and when another rocket killed two elderly Palestinian-Israelis in Haifa on August 6 – Hezbollah did not specify the intended target of these rockets.' HRW, *Civilians Under Assault: Hezbollah's Rocket Attacks on Israel in the 2006 War*, 28 August 2007, p 11, <https://www.hrw.org/sites/default/files/reports/iopt0807.pdf> (last accessed 9 August 2022).

118 Interview with Dr Hassan Jouni, 11 May 2022.

119 Rule 5, ICRC CIHL Database, *supra* fn 90.

considers Israeli civilians as military personnel but has maintained a ‘humanitarian stance’, calling for those who consider themselves to be civilians to leave Israel.¹²⁰ Lastly, Nasrallah has explained on several occasions that his movement does not oppose Judaism as a religion, but rather Zionism as an ideology.¹²¹ This is further exemplified through the good relationship Hezbollah has entertained with "native Jews" in and outside Israel and especially the Naturi Carta organization¹²² which opposes the State of Israel and the occupation of Palestine and Lebanon.¹²³

In light of the above, one can gather that Hezbollah’s classification of persons as civilians or military personnel does not necessarily determine whether or not they can be targeted. On the flipside, the movement's war ethics may require fighters to avoid targeting certain categories of combatants, for instance, women or unarmed enemies. Moreover, the Quran commands: ‘Fight in the cause of God those who fight you but do not transgress limits; for God loveth not transgressors’.¹²⁴ This verse confirms that fighting should be directed toward those among the enemy participating in the field, and their backup, who fight Muslims, i.e. only the soldiers and the forces who stand ready to fight and their supporters. The verse does not include those who do not attack with their weapons, are not soldiers and do not take any action against Muslims.¹²⁵ This position is maintained by Hezbollah to outline the boundaries related to the protection of civilians from attack: as long as they are not participating, they remain protected.

120 Interview with Dr Hassan Jouni, 11 May 2022.

121 In an interview with Al Ikhbariya Syrian news channel, Nasrallah stated: ‘The conflict in the region is not a religious conflict, even with Israel. The Jews are followers of a heavenly religion. Our problem is with the Zionists who came and occupied Palestine, attacking the Palestinian people, Syria, Lebanon and the entire region, killing and committing massacres. Our war, our fight, or our battle is not a battle between Muslims and Jews’. Text of Sayyed Hassan Nasrallah's Interview with the Syrian News Channel Al Ikhbariya' (in Arabic), Al Manar, 6 April 2015, <https://archive.almanar.com.lb/article.php?id=1163413> (last accessed 9 August 2022).

122 One of the popular movements representing this stance is Neturei Karta, a religious group of Haredi Jews formally created in 1938 in Mandatory Palestine. They describe themselves as ‘true traditional jews’, opposing Zionism and call for a ‘peaceful dismantling’ of the State of Israel. They have a very strong relationship with Iran and Hezbollah. ‘Sheikh Qaouk Receives Neturei Karta Delegation from the Anti-Zionist Organization, Stresses on Palestinian Right to Liberty’, Al Ahed News, n.d., <https://english.alahednews.com.lb/18363/385>.

123 Interview with Dr Hassan Jouni, 11 May 2022.

124 The Holy Qur'an, supra fn 81, Sura 2, Verse 190.

125 M. Motahhari, ‘Jihad’, (in Persian) Islamic publication office, Qom, 1361 Ah. pp 28–27. Morteza Motahhari was a prominent Shia jurist, philosopher, theologian, thinker and writer of the twentieth century. He was a student of Khomeini and considered an influential person and an intellectual leader of the Islamic Revolution of Iran. Motahhari is considered to be one of the most influential contemporary Iranian clerics in expounding Islamic teachings, keeping pace with the needs of the time. It is worth mentioning that his publications are quoted several times in the guidebooks used by Hezbollah for religious and military education.



As is the case with civilian persons, there are indications that Hezbollah recognizes the imperative to protect civilian objects. From a religious perspective, Shiite Islamic jurisprudence forbids the targeting of populated and civilian areas and prohibits the use of weapons that could subject them to damage. Two exceptions remain in place, however; the first being ‘when the enemy settles in civilian areas taking them as a base from which to harm Muslims and if there is no other way to conquer the enemy than to attack those areas’.¹²⁶ The second ‘whereby the enemy uses civilians as human shields and causes harm to Muslims under three conditions: War must be at its most intense, civilians should not be targeted and the victory must depend on it’.¹²⁷

Going back to Hezbollah’s conduct, an example of protecting civilian objects was highlighted above with Nasrallah prohibiting looting during one of Hezbollah’s operations in Syria. Another instance to be noted consists of Hezbollah’s efforts to secure civilian objects during the 2006 war when it collected civilian items, including jewelry from gold traders in one of the souks of Beirut’s southern suburb – Hezbollah’s Strongholds – which had been shelled by Israel. It was affirmed that these items were secured by Hezbollah and given back to their owners at the end of the military operations.¹²⁸ Moreover, a video published by the MMU showing maps and coordinates of security and military targets inside residential areas and buildings¹²⁹ reflects Hezbollah’s

126 A. Ali Azim Shoushtary, ‘A General Study of the Humanitarian Principles in Islamic Fiqh’, in *War and its Ethical Constraints: Comparative Studies Between Islamic Fiqh and Humanitarian Law*, Center of Civilization for the Development of Islamic Thought, 2018, p 83.

127 Ibid, p 84.

128 Interview with Dr Hassan Jouni, 11 May 2022.

129 ‘Military Media Publishes Scenes Showing Israeli Military Sites Inside Cities’ (in Arabic), Al Mayadeen

capacity to accurately identify military objectives and distinguish them from civilian objects, even in cases of dual civilian and military use. It is worth noting in this context that Hezbollah's military capacities have grown with the movement's development, and reports documenting violations committed during the 2006 conflict with Israel have shown that Hezbollah lacked the capacity or willingness to uphold the principle of distinction in all of its attacks. In its reports, HRW found that '[Hezbollah] fighters indiscriminately fired thousands of rockets into Israel, killing 43 Israeli civilians (as well as 12 Israeli soldiers)'.¹³⁰ With the lack of a 'legitimate military target in the vicinity at the time of the attack' HRW found this to suggest 'it was a deliberate attack on civilians'.¹³¹

B. PRINCIPLES OF PROPORTIONALITY AND PRECAUTIONS

Under customary IHL, it is prohibited to carry out an attack that may be expected to cause excessive harm to civilians and civilian property compared to the anticipated military advantage (principle of proportionality).¹³² In addition, in the planning and conduct of military operations, the parties to the conflict must do everything feasible to avoid or minimize collateral damage (principle of precautions in attack). Constant care must be taken to spare civilians and civilian objects.¹³³

With respect to Hezbollah's field operations, it appears that fighters follow a series of procedures, starting with reconnaissance and ending with an overall evaluation of the military action. The reconnaissance is aimed at gathering indications as to the whereabouts of the enemy and whether or not civilians are present in the vicinity of military targets. This process was illustrated by one of the field officers in the IRL: 'After we advanced on the hills and explored the locations of civilians and the locations of the military, we were able to know the direction of the fire and which side we could not target with fire'.¹³⁴ This type of information is crucial to determine the weapons and tactics – means and methods – to be used in the battle. Two cases can be emphasized to illustrate the different approaches adopted by Hezbollah. In instances where no civilian presence was recorded, and according to one of the IRL officers, Hezbollah proceeded to 'us[e] very large

<https://www.almayadeen.net/politics/1459099/>.

¹³⁰ HRW, *Why They Died*, supra fn 44, p 40.

¹³¹ HRW, *Civilians Under Assault*, supra fn 117, p 4.

¹³² Rule 14, ICRC CIHL Database, supra fn 90.

¹³³ Rule 15, *ibid*.

¹³⁴ Hezbollah fighters perform a reconnaissance of the locations of civilians before the battle, to determine the direction of the battle. Footage from 'The Second Liberation: The End of ISIS 2017', filmed by the MMU, Al Mayadeen Documentaries (YouTube channel), 11 August 2019,

https://youtu.be/_6NAIZ4DiXU (last accessed 9 August 2022).

firepower [for example] on the town of Qadesh, which was devoid of civilians'.¹³⁵ On the contrary, the same officer pointed to another case, where a different type of weaponry was chosen: 'When the attack on ISIS began, we needed to use certain types of weapons only for fear that the fire would reach the refugee camps in Aarsal'.¹³⁶ This indicates that Hezbollah's rules of engagement¹³⁷ seem to include an assessment of civilian casualties and damage as a factor in the battle. This also applies during the course of the battle, where the operation room may take some measures to reduce casualties among civilians by issuing new directives to the fighters or by adopting different military tactics. According to one of the IRL officers, '[t]he one thing that restricted our fire and its effect on the enemy was the request of the His Eminence the Secretary-General'¹³⁸ to refrain from using 'a category of weapons that would affect the course of the battle'. According to the officer, these weapons were not used because they would potentially reach the Lebanese Army (considered a friendly force) and the refugee camps located in the area.¹³⁹

135 IRL's commander talking about targeting Qadesh (clear of civilians) through heavy bombing. Footage from 'Secrets of the Second Liberation, Episode 4: Control of the Villages Around the City of al-Qusayr' (in Arabic), filmed by the MMU, 25 September 2020, Al Manar,

<https://program.almanar.com.lb/episode/134983> (last accessed 9 August 2022).

136 IRL commander talking about choosing the types of weapons before attacking ISIS. Footage from 'Secrets of the Second Liberation, Episode 10, Al-Nusra and the Curse of the Green Bus' (Part Two). Al Manar, 20 November 2020.

<https://program.almanar.com.lb/episode/144157> (last accessed 9 August 2022).

137 Rules of engagement are the internal rules or directives of military forces that define the circumstances, conditions, degree and manner in which the use of force may be applied.

138 During his televised speech on 26 July 2017, Nasrallah talked about the developments of the battle of the outskirts of Aarsal: 'First, we talk about the battlefield. They are still making progress, but I insisted on the brethren to move and proceed in a fully-considered manner and not to make haste; or else, you know military men usually depend on seizing the available opportunities and on the element of zeal. You know that they have enough courage as you have seen the battlefield on TV. So theirs is not like my case – as I am far from the field. However, according to other considerations, I asserted to the brethren to move and advance in a fully-considered manner and to make no haste. The main reason for that is what I was talking about a while ago. The remaining Nusra leaders, figures, and militants are now surrounded in a very narrow area, and this area is very close to the refugee camps in Wadi Hmayyed and Al Malahi, and they are trying to take shelter in these camps. Consequently, action here should be very precise. The use some [sic] weapons we were using before is not allowed, or we may use them with extreme caution because we don't want any misdeed to be done towards the refugees and the civilians. This requires a high degree of responsibility in approaching the battle with much precision and sensitivity and full consideration.' 'Sayyed Nasrallah's Full Speech on Aarsal Outskirts Victory', Al Ahed News, 26 July 2017, <https://english.alahednews.com.lb/39463/593>.

139 IRL commander talking about the order of Nasrallah to not use any kind of weapons that can harm the civilians. Footage from 'Secrets of the Second Liberation, Episode 10, Al-Nusra and the Curse of the Green Bus' (Part Two). 20 November 2020. *supra* fn 136.

Furthermore, and as stated by the IRL officer, the military interventions would be evaluated 'after each round of clashes' and 'the forces ... redistributed and strengthened, to re-tackle the objectives'. During these sessions, information from all parties involved would be gathered to assess the situation on the ground,¹⁴⁰ draw lessons and conclusions and come up with new military procedures and tactics. While this exercise serves the development of Hezbollah's military capabilities, the question remains of the extent to which humanitarian principles are also discussed within this framework. In view of the correlation between the general principles of IHL and those consecrated by Sharia law, especially concerning the principles of military necessity and proportionality, it can be concluded that

the spirit of Islam – not to mention the sources of legislation – commands not to use that what causes suffering unnecessarily, and sometimes to not cause [suffering] even when necessary, in accordance with the principle of 'necessity and proportionality'.¹⁴¹

Precedents have shown that Hezbollah at times tried to refrain from carrying out attacks which bore significant military advantage in a bid to minimize collateral damage. The case of the attempted assassination of Aqel Hashem,¹⁴² described by Nasrallah, can be used as an illustrative example:

Do you remember the operation when an explosive device was planted for one of the leading criminal and corrupt [Israeli] collaborators [Aqel Hashem]? Well, the film still exists, and if they want we can re-publish it for them. Our men did not execute the operation ... because Hashem's wife and family were by his side. Our men believed in killing the traitor who fights alongside the enemy on the front. However, we have no business with his wife, his sons, his daughters, his mother and his father.¹⁴³

Against this backdrop, a distinction should be made between Hezbollah's conduct in the 2006 conflict opposing Israel and throughout its involvement in Syria, especially with regards to the principles of distinction, proportionality and precaution.

In this context, HRW analysed the conduct of Hezbollah in 2006 and reported the use of inaccurate or unguided rockets.¹⁴⁴ The reports also flag Hezbollah's limited capacity to comply with the principles of distinction, proportionality and precaution during the operations. It was

140 Situation assessment session, IRL's operating room. Footage from 'Secrets of the Second Liberation, Episode 11: 'Unveiled - the battle of ISIS', filmed by MMU, Al Manar, 27 November 2020, <https://program.almanar.com.lb/episode/145070> (last accessed 9 August 2022).

141 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 90.

142 Aqel Hashem was a colonel in the Israel-backed SLA and served under Antoine Lahad. He was killed in a remote-controlled bomb attack by Hezbollah on his farm in January 2000.

143 'Sayyed Nasrallah's Interview on Al Manar TV – Full Text' (in Arabic), Al Ahed News, 12 July 2019, <https://www.alahednews.com.lb/article.php?id=9380&cid=125> (last accessed 9 August 2022).

144 HRW, *Civilians Under Assault*, supra fn 117, p 4.

also found to have ‘failed to take all feasible precautions to minimise loss of civilian life’¹⁴⁵ as a result of the attack, for instance through an ‘effective advance warning’¹⁴⁶ to the civilian population. While Hezbollah claimed that the attacks were meant to stop Israeli attacks on Lebanese civilians that compelled it to ‘mount a ground offensive’,¹⁴⁷ HRW clearly states that both arguments could only stand if attacks were directed exclusively towards legitimate military objectives. Looking at whether the deployment of Hezbollah forces in Lebanon routinely or widely violated the laws of war, HRW found that ‘Hezbollah fired rockets from within populated areas, allowed its combatants to mix with the Lebanese civilian population, or stored weapons in populated civilian areas in ways that violated international humanitarian law’.¹⁴⁸ However, it also underlined that the movement

stored most of its rockets in bunkers and weapon storage facilities located in uninhabited fields and valleys, that in the vast majority of cases Hezbollah fighters left populated civilian areas as soon as the fighting started, and that Hezbollah fired the vast majority of its rockets from pre-prepared positions outside villages.¹⁴⁹

Furthermore, ‘a handful of instances’¹⁵⁰ of shielding¹⁵¹ could be determined but without suggesting widespread practice.

Additionally, the 2013 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic¹⁵² highlights that Hezbollah used ‘a highly explosive shoulder fired missile, likely to have been thermobaric in nature’, probably causing ‘a significant number of casualties among anti-Government fighters and civilians, as well as extensive destruction of buildings’. The report also points to the fact that Hezbollah and the government forces positioned military objectives inside civilian areas, thus ‘violating international legal obligations’.¹⁵³

145 Ibid, p 4.

146 Ibid, p 5.

147 Ibid, p 7.

148 HRW, Why They Died, supra fn 44, p 5.

149 Ibid.

150 Ibid, p 40.

151 This refers to the use of civilians as human shields, whether on a voluntary or coercive basis, in order to deter enemy attacks

152 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/24/46, 16 August 2013, Annex III, §16.

153 Ibid, Annex III, §34.

2. THE PROHIBITION OF SEXUAL VIOLENCE AND GENDER DISCRIMINATION

Under customary IHL,¹⁵⁴ rape and other forms of sexual violence are prohibited. While Common Article 3 to the 1949 Geneva Conventions does not explicitly refer to this terminology, it prohibits ‘outrages upon personal dignity, in particular humiliating and degrading treatment’. Article 4, Paragraph 1(c) of AP II specifically adds ‘rape’, ‘enforced prostitution’ and ‘any form of indecent assault’ to this list.

Considering that Hezbollah’s conduct is strongly rooted in its religious ideology, the prohibition of sexual violence should be examined primarily through a religious lens. When it comes to conduct on the battlefield, one of the commandments of Imam Ali to his fighters required them to

not inflict pain on women even though they may attack your honour with filthy words and insult your officers, because they are weak in force, soul and mind. We would have been ordered to leave them be, even if they were not believers. Even in the pre-Islamic (al-jahiliyyah) period, if a man struck a woman with a stone or a stick he would be rebuked along with his kin.¹⁵⁵

This exhibits Islamic Sharia’s condemnation of violence against women, including enemy women. With regards to the enslavement or capturing of women – including as it relates to sexual violence – it is important to highlight that Islamic Sharia prohibits the enslavement of women in battles between Muslims (often interpreted as NIACs¹⁵⁶). On the other hand, in battles against non-Muslims, the enslavement of women is acceptable unless refraining from it would benefit the protection of Muslim women. In that sense, the conclusion of agreements ensuring both sides would not resort to these practices was accepted as an application of the principle of reciprocity¹⁵⁷. Against this backdrop, one must clarify the specificity of Shiism as it relates to this issue, the decision to enslave women being tied to the Imam himself. This said, and given the absence of

154 Rule 93, ICRC CIHL Database, supra fn 90.

155 ‘Letter 14: To His Soldiers Before the Battle of Siffin’, Nahjul Balagha Part 2, Letters and Sayings, <https://www.shiavault.com/books/nahjul-balagha-part-2-letters-and-sayings/chapters/15-letter-14-to-his-soldiers-before-the-battle-of-siffin/> (last accessed 9 August 2022).

156 A. al-Dawoody, N. Begović, Z. Alispahi, M. Hasani, S. Šećman and A. Mahić, Islamic Law and International Humanitarian Law: Proceedings, Faculty of Islamic Studies, University of Sarajevo, 2020, p 9, https://www.icrc.org/en/download/file/147733/islamic_law_and_ihl-_en.pdf (last accessed 9 August 2022).

157 ‘In application of the al-ghunm bi al-ghurm principle, there is definite interest for Muslims to refrain from enslaving [non-Muslim] enemy women should this protect the Muslims’ honour and dignity and prevent the enslavement of their [own] women.’ Tayy, The Islamic New and Old Law of War, supra fn 13, p 314.

the imam in modern times, there is no authority which is considered competent to issue such orders. As such, enslavement is not found to be common practice among the followers of Shiism.

Considering the central role of Sayyida Zeinab¹⁵⁸ ‘The Shiite Twelver ideology, or Hezbollah's ideology, is very sensitive to the issue of women and the protection of their dignity’.¹⁵⁹ It is against this backdrop that Hezbollah has used the slogan ‘Zeinab will not be enslaved and captured twice’ to justify its engagement in the Syrian conflict. When clarifying this slogan, Nasrallah explained that

Zeinab represents more than a shrine. She symbolizes the women of this nation, its dignity and honour. If ISIS was left to establish its own State and control this group of countries, Zeinab would have been enslaved¹⁶⁰ not only twice but a thousand times.¹⁶¹

Furthermore, Nasrallah referred on several occasions to the conduct of ‘takfiri’ groups in Syria, highlighting that their actions, including sexual violence and enslavement of women,¹⁶² do not represent the Islamic ethics and values his movement believes in.¹⁶³ When speaking of the roadmap to ‘liberate’ the cities of al-Fouah and Kefraya, he stressed that

morally and ethically [for Hezbollah] there is no such thing as capturing or enslaving women. On the contrary, we have complete respect as per our Sharia for the issue of

158 Zeinab was the daughter of Imam Ali. She and her two sons accompanied Imam Hussein on the event of Ashura, where her two sons were martyred and she was taken as a captive to Kufa and then to Damascus. Her sermons in Kufa and Damascus (in front of Yazid) are very famous as she spread word about what had happened in the battle/massacre of Karbala, triggering several revolutions against the perpetrators. Due to her suffering, she was called Umm al-Masa'ib (Mother of Calamities). Therefore, Zeinab is considered the symbol of feminine strength and resilience in the Shiite ideology, as a sacrificing, faithful and brave woman.

159 Interview with Dr Hassan Jouni, 11 May 2022.

160 For excerpts from the ISIS pamphlet setting forth rules for having sex with captured and enslaved women and girls, See K. Roth, ‘Slavery: The ISIS Rules’, HRW, 5 September 2015, <https://www.hrw.org/news/2015/09/05/slavery-isis-rules> (last accessed 9 August 2022).

161 ‘Secrets of the Second Liberation, Episode 4’, supra fn 135.

162 ‘Those who work to be closer to God today, ISIS and the companions of ISIS, and to be closer to God by slaughtering, captivity, killing, indecent assaults and destroying the holy places of worship’. ‘Sayyid Hassan Nasrallah's Speech – The Night of the First of the Month of Muharram’ (in Arabic), Al Maaref, 2 October 2016, <https://www.almaaref.org/maarefdetails> (last accessed 9 August 2022).

163 ‘What is the relationship of the Messenger of Islam, Muhammad bin Abdullah, with these crimes? What is the relationship of his religion, Islam, and the Quran with these crimes? What is the relationship of a nation of two billion Muslims with these crimes? The people you embraced, protected, nurtured, and brought to your countries are the ones who are responsible. This is what you should reconsider because you are still pursuing these sorts of policies. I will repeat what I said and use the same tone that we used when we were stating our position: We cannot be in a front alongside those who behead, cut chests open, eat livers, and slaughter.’ ‘Sayyed Nasrallah’s Full Speech on Prophet Muhammad’s [PBUH] Birth Anniversary’, Al Ahed News, 30 October 2020, <https://english.alahednews.com.lb/56246/596>.

civilians, women and property. The problem is only with the militants [meaning ISIS] who carry weapons and fight in the framework of this project.¹⁶⁴

In light of the above, relevant reports to the UN, including the Secretary-General's reports on children and armed conflict¹⁶⁵ and on conflict-related sexual violence, have brought forward accusations of sexual violence against women and children including 'rape and and sexual humiliation by members of pro-Government forces during arrest and detention',¹⁶⁶ albeit without specific mention of Hezbollah.

In addition to understanding Hezbollah's perspective on the protection of women in war, it is important to elucidate the way in which it views gender justice and the distribution of gender roles more generally. Rather than subscribing to the universal ideal of gender equality, Hezbollah draws from the Islamic concept that 'equality does not mean similar rights'.¹⁶⁷ According to this interpretation, gender equality implies 'men's rights to fit men, and women's rights to fit women'.¹⁶⁸ In this sense, Islam requires a balance between the rights conferred on a person – male or female – and the duties they are entrusted with. Therefore, if one was to compare the rights and duties of women and those of men, the scale would shift in men's favour with more rights and more obligations. Nevertheless, an analysis of women's influence within Hezbollah remains of interest, especially since they are reported to make up 50 percent of its members, filling key positions in media as well as in the medical, cultural and educational fields.¹⁶⁹ In this vein, women's role within the movement comes forth as mainly twofold: social and political. This is illustrated by the appointment of Dr Rima Fakhry as a member of the political office alongside Afaf al-Hakim as head of the women's commissions. In an interview held with the former, the women of Hezbollah 'who work under the framework of women's organizations in all regions' were described as active beehive workers, with Fakhry adding that 'Hezbollah cannot ignore the weapon women represent because the movement follows al-Khomeini's approach, and women in the party contribute to the creation of these men [meaning Hezbollah's fighters].' Moreover,

164 'The Second Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al Manar TV – Friday 25 September 2015' (in Arabic), Al Ahed News, <https://archive.alahednews.com.lb/details.php?id=115870>.

165 Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, UN doc S/2018/969, 30 Oct 2018, §§30–33.

166 Conflict-Related Sexual Violence: Report of the Secretary-General (covering the period from January to December 2014), UN doc S/2015/203, 23 March 2015, §62.

167 'The quantity varies the quality, and equality doesn't mean uniformity. The reason for this is that Islam does not state that men and women have equal and similar rights. However, Islam never tends to give men a preference over women. Islam considers the principle of human equality between men and women. Islam was not opposed to the equal rights of men and women, but rather opposed the similarity of rights.' M. Motahhari, *Women's Rights System in Islam*, trans. Haidar Al-Haidar, Dar Al Islameyah, 1991, p 110.

168 Ibid, p 120.

169 S. Alouh, 'Women of Hezbollah: The Bees That Do Not Share Honey' (in Arabic), *The Legal Agenda*, 4 May 2018, <https://legal-agenda.com/> (last accessed 9 August 2022).

al-Hakim pointed to the fact that ‘all of these women, whether mothers or wives of martyrs and fighters, enrolled in the women’s organizations and were persistent in their activities’.¹⁷⁰ In this context, the prominent role of women within the movement is often linked to the ideological importance of Sayyida Zainab, Al-Hussein sister.¹⁷¹

However, in terms of political representation within the Lebanese state institutions, it is worth noting that Hezbollah has never been represented by a female minister or member of parliament. According to Nasrallah, while nominating women ministers is possible for Hezbollah,¹⁷² the selection of female deputies is difficult to conceive of until such time when the position of member of parliament regains its core function as part of the state’s legislative body¹⁷³ instead of being ‘burdened with social duties’ resulting from the ‘misunderstanding of the deputy’s role in society’.¹⁷⁴

With regards to the military effort, women’s participation in armed conflicts has long been a point of contention between Islamic ANSAs. In this context, the societal gender–role division has led to a rather limited role for women in the conduct of war. Hezbollah’s standpoint on this topic can be deduced from Nasrallah’s statement noting that

from an Islamic perspective, jihad [or the waging of war] was mandatory for men but not forbidden for women. For women it is possible and permissible in normal cases. In some cases where the fighting requires the participation of men and women, then it becomes an obligation for men and women.¹⁷⁵

This said, given the large number of male recruits joining the movement, Hezbollah does not seem to see women’s participation in the fighting at the front lines as a necessary measure for the time being. However women in Hezbollah play a key role within the organizational and political leadership as well as within the ideological, educational, humanitarian, and mediatic fields in addition to other activities.¹⁷⁶ This position is further exemplified by the partaking of

170 Ibid.

171 Interview with Dr Hassan Jouni, 11 May 2022.

172 ‘An Exclusive Interview with Hezbollah Secretary–General Sayyed Hassan Nasrallah’ (in Arabic), Al Mayadeen, 4 January 2018, <https://www.almayadeen.net/episodes/826/> (last accessed 9 August 2022).

173 The work of members of parliament in Lebanon has largely deviated from their core mission – to advance the state’s legal framework and hold the government accountable – and has instead been focused on catering to clientelism, for instance attending weddings and funerals as well as managing personal requests submitted by their sectarian voters.

174 ‘An Exclusive Interview with Hezbollah Secretary–General Sayyed Hassan Nasrallah’, supra fn 172.

175 Z. Kouyoumdjian, ‘Sayyed Hassan Nasrallah (Part 1/4): This is How He Answered Viewers’ Calls About the South, Aoun, Geagea and Berri’, Zaven Kouyoumdjian YouTube channel, 10 December 2020, <https://www.youtube.com/watch?v=b8AFRdr1RB4&feature=youtu.be> (last accessed 9 August 2022).

176 Interview with Dr Hassan Jouni, 11 May 2022.

women in Hezbollah's military parades,¹⁷⁷ albeit without their presence on the frontlines, which can be deduced from the fact that no female 'martyrs' have been mourned by the movement.

3. THE PROHIBITION OF USING AND RECRUITING CHILDREN IN HOSTILITIES

IHL and IHRL prohibit the recruitment of children into armed forces or armed groups and their participation in hostilities.¹⁷⁸ While Article 4(3) of AP II sets the minimum age for recruitment and participation in hostilities at 15 years, Article 4(1) of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that '[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years'.¹⁷⁹

From an Islamic standpoint, some categories of persons are excluded from jihad,¹⁸⁰ whether defensive or offensive. This position is emphasized in Khamenei's advisory opinion: 'Jihad is not mandatory for women and children, however defending Islam and Muslims is a must for every

177 'Lebanese Hezbollah women hold a model of Katyusha rocket launchers in front of a portrait of Hezbollah's former Secretary-General Abbas Musawi, during a rally in Saksakieh village, southern Lebanon, Sunday July 22, 2007' (image caption), 'Hezbollah: Rockets Can Reach All Israel', China Daily, 24 July 2007, https://www.chinadaily.com.cn/world/2007-07/24/content_5442360.htm.

178 Rules 136 and 137, ICRC CIHL Database, supra fn 90; Art 4, Paras 3(c),(d) and (e), AP II; Art 4(1), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. In the Commentary on Rule 137, the ICRC notes: 'In the framework of the war crime of 'using children to participate actively in hostilities' contained in the Statute of the International Criminal Court, the words 'using' and 'participate' have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.' (Rule 137, ICRC CIHL Database, supra fn 90).

179 Art 8(b)(xxvi) of the Rome Statute lists as a war crime 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'. Although there is a growing trend towards a prohibition of any form of military recruitment or use in hostilities of persons under the age of 18 years, for the purpose of this research, we consider ANSAs to be bound by the 15-years standard and that any commitment to the 18-years limit for recruitment of children in their armed forces goes beyond their strict obligations under international law.

180 Jihad is a holy war waged on behalf of Islam as a religious duty and considered one of the ten 'Ancillaries of the Faith' (practices of the Religion) in the Shiite doctrine. The Qur'an and Sunnah have mentioned the necessity of jihad, its virtue, and the effects resulting from abstention from Jihad on the individual and the Islamic community. However, 'There is no blame (to Jihad) On those who are infirm, Or ill, or who find No resources to spend (On the Cause), if they Are sincere (in duty) to God And His Apostle: No ground (of complaint) Can there be against such As do right: and God Is Oft-Forgiving, Most Merciful.' The Holy Qur'an, supra fn 81, Sura 9, Verse 91.

religiously competent being and each within his ability, including women but not children'.¹⁸¹ In this context, one should consider that the definition of a child varies in Islam when compared to the internationally recognized standard.¹⁸² In Islam, the age of puberty¹⁸³ is often used to determine that a person has reached a certain level of maturity which would entail religious obligations, including the conduct of jihad. Therefore, religiously speaking, boys should in no circumstance be recruited under the age of 15 lunar years (meaning about 14 years and 7 months).

Aside from military and combat skills, Hezbollah puts strong emphasis on the preparation of its members and fighters: 'There is moral and religious preparation, in addition to a patriotic preparation and connection to the homeland and to the Palestinian cause, as well as an ethical and legal preparation.'¹⁸⁴ To this end, members have to attend a series of training courses before they can accede to the military training. In this context, Nasrallah publicly stated:

Let all the world know that our children and grandchildren count the years of their youth. They want them to pass quickly so that they become 16 or 17 years old and get enrolled in the fighter sessions. They want to be 18 years old to join the resistance fighting on the fronts. We salute them.¹⁸⁵

This goes to show that Hezbollah seems to differentiate between various stages: membership in the Imam al-Mahdi scouts¹⁸⁶ (4–18), recruitment as a fighter (16–17) and participation in hostilities (18 and above). At the age of 18, girls can choose to either lead the scouts or join Hezbollah's women's commissions. On the other hand, boys must complete a religious cultural course at age 15. If they pass, they can choose to lead the scouts or begin preparing for combat. During this period, trainees are considered part of the 'mobilization forces'¹⁸⁷ without having the

181 Jihadi Fatwas, supra fn 86, p 19.

182 Art 1, Convention on the Rights of the Child: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'

183 'Q: What is the age of puberty for boys and girls? A: It is the completion of nine and fifteen lunar years for girls and boys respectively. However, discharging semen and growing of pubic hair are signs of puberty as well' (according to Khamenei's fatwas), Al Maaref, 16 January 2012, <https://english.almaaref.org/essaydetails.php?eid=2103&cid=265> (last accessed 9 August 2022).

184 Interview with Dr Hassan Jouni, 11 May 2022.

185 'Sayyed Nasrallah's Full Speech on the Celebration of Second Liberation, August 31, 2017', Al Ahed News, <https://english.alahednews.com.lb/40165/593>.

186 The Imam al-Mahdi Scouts is a youth movement which originated in Lebanon in 1985 and is affiliated with Hezbollah. The movement obtained a license from the Lebanese Ministry of Education in 1992 and was recognized by the World Organization of the Scout Movement in 1998. It is named after Muhammad bin al-Hasan al-Mahdi, who the Twelver Shia believe is the 12th and final Imam.

187 Individuals who voluntarily join Hezbollah and support the fighting forces only during aggression and imminent threats by maintaining secured positions, ensuring fire cover and providing logistical support.

authority to participate on the frontlines of any armed conflict. After reaching the age of 18, trainees have the right to join one of the special units¹⁸⁸ as a contracted or regular fighter.

Drawing from the above, Hezbollah sets the age of participation in hostilities at 18 (except in emergency operations of the mobilization forces), whereas Islam would allow it to start at the age of 15. This is said to be linked not only to the fact that Hezbollah is in no need of additional fighters but also to the value placed by Hezbollah on the relationship with the fighters' families.¹⁸⁹ That is, it does not want to deprive families of their children as is the case, for instance, with the adopted position of refraining from recruiting single children unless both parents and child declare their consent in writing.¹⁹⁰

Moreover, Hezbollah is meticulous about its recruitment system, with applicants undergoing several security checks and investigation procedures. Although this is done mainly for fear of being infiltrated,¹⁹¹ it also serves as an age assessment mechanism. Hezbollah scrutinizes the identity and background of the concerned persons, gathering and triangulating information from their official documentation, their hometown (often under Hezbollah influence) and personal means of communication. In addition, Hezbollah relies on the official documents issued by the Lebanese state to determine a member's age.

Otherwise they occupy civil jobs or fulfil non-military roles in peace time. They do not usually receive financial allocations from Hezbollah.

188 The 'intervention' unit and Special Forces known as the Radwan unit (Hajj Radwan being the military name of the military leader of Hezbollah, Imad Moghniah), which officially appeared mainly during the war in Syria. Aside from the Al Abbas Regiments (whose name is name derived from Abbas bin Ali, the son of Imam Ali, '[w]e have (in Hezbollah) the "Radwan" Force and the "Al-Abbas" Regiments, and they specialize in offensive action.' 'Sayyed Nasrallah's Interview on Al Manar TV – Full Text', supra fn 143.

189 Interview with Dr Hassan Jouni in 11 May 2022.

190 Sheikh Naim Qassem, Deputy Secretary-General of Hezbollah: 'In Hezbollah, we have made a long-standing decision not to send those who are the only sons of their parents to the front ... In the face of the insistence of the fighters/Mujahideen and the insistence of fathers and mothers who have their only son, we decided that if the father and the mother agree in writing, their only son can go to fight.' '"Hezbollah" Justified Sending the 17-Year-Old Son and the Only One of His Parents to Jihad' (in Arabic), An Nahar, 16 July 2017, <https://www.annahar.com/arabic/article/619980>.

191 'During the preparatory phase, each recruit is subjected to a rigorous background security check by Hezbollah's internal security apparatus. Anyone who has lived abroad for a lengthy period of time, for example, will be treated as a potential security risk and face great difficulty in joining.' N. Blanford, 'Joining Hezbollah', The Cairo Review of Global Affairs, Fall 2011, <https://www.thecaireview.com/essays/joining-hezbollah/> (last accessed 9 August 2022).

Furthermore, one can draw from the list of publicly mourned fighters or those detained by the enemy¹⁹² that the recruitment and use of minors in hostilities is not prevalent,¹⁹³ although some cases have been reported in Lebanon¹⁹⁴ and Syria,¹⁹⁵ with reports¹⁹⁶ stating that '[s]ome armed groups fighting with the Syrian government, such as Hezbollah and the Popular Committee, also reportedly recruited children in small numbers'. For instance, in 2017, the killing of 16-year-old Mahdi Abu Hamdan made headlines.¹⁹⁷ Abu Hamdan¹⁹⁸ was said to be '17 years and several months old' according to Hezbollah officials¹⁹⁹ with a former Hezbollah MP commenting: 'this is

192 In the last deal to release all the captives between Hezbollah and the Israeli army in 2008, there was no one from the official fighters of Hezbollah below 18, whether during captivity or after their successful release. The same is the case for the eight captives of Hezbollah in the hands of Al-Nusra, the Syrian takfiri group. They were released through a deal in 2017, and in the same year, another captive was released through a deal with ISIS – Ahmad Maatouk, who was also not under 18.

193 Interview with Dr Hassan Jouni, 11 May 2022.

194 Children and Armed Conflict: Report of the Secretary-General on in the Syrian Arab Republic, supra fn 2.

195 'Of the verified cases attributed to pro-government militia, children were associated with domestic militia in 76 cases and with foreign ones ... [i]ncluding the Fatemiyoun Brigade, Hizbullah, the Al-Quds Brigades and the Defenders of the Shrine.' Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, supra fn 165, §19 and fn 5. 'A total of 23 cases of child recruitment and use by government forces (13) and pro-government militia (10)', including Hizbullah and the National Defence Forces/popular committees.' Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, UN doc S/2021/398, 23 Apr 2021, §12.

196 HRW, 'Syria: Kurdish Forces Violating Child Soldier Ban', 15 July 2015, <https://www.hrw.org/news/2015/07/10/syria-kurdish-forces-violating-child-soldier-ban-0> (last accessed 9 August 2022).

197 '16-Year-Old Boy Among Five Hezbollah Fighters Killed in Syria', Al Arabiya News, 10 July 2017, <https://english.alarabiya.net/News/middle-east/2017/07/10/16-year-old-boy-among-five-Hezbollah-fighters-killed-in-Syria->

198 Abu Hamdan, whose brothers were martyred, was said to have been prohibited by Hezbollah officials from fighting on the frontline, being the only child remaining. He and his parents reportedly insisted, sending an official letter to the leadership, upon which he was deployed. Nawar al-Sahily, former Hezbollah MP: 'The martyr was 17 and several months old'. 'Nawar Al-Sahili for Al-Jadeed: The One Who is the Age of Mahdi is a Soldiers in the Army', Al Jadeed News (YouTube channel), 9 July 2017), https://www.youtube.com/watch?v=Kyl6qaal5_g (last accessed 9 August 2022).

199 Sheikh Naeim Kasseem, Deputy Secretary-General of Hezbollah's speech during Abu Hamdan's funeral, '"Hezbollah" Justified Sending the 17-Year-Old Son and the Only One of His Parents to Jihad', supra fn 190.

not the first martyr of this age and will not be the last'.²⁰⁰ Two other cases are those of Mohamed Hassan al-Houk²⁰¹ and Ali al-Hady Houssine,²⁰² killed at age 17.

4. PROTECTION OF EDUCATION

Under customary IHL,²⁰³ children affected by armed conflict are entitled to special respect and protection. This notably includes access to education, food and health care. Under Article 4(3)(a) of AP II, children shall be provided with the care and aid they require, and in particular 'they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care'. In addition, schools are considered to be civilian objects and are thus protected against attacks, unless they are used for military purposes and become lawful military objectives. Under the principle of precautions, parties to armed conflict, including ANSAs, must take constant care, in the conduct of military operations, to spare civilian objects, including schools. In addition, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to schools. In light of this principle, the use of functioning schools for military purposes must be avoided except for imperative military reasons.²⁰⁴

From an Islamic perspective, education has long constituted an ideological cornerstone of Islamic Sharia with the strong encouragement of believers to pursue knowledge: 'the scholarly believer is preferred over the worshipping believer'.²⁰⁵ Prophet Mohammad also reportedly

200 'Nawar Al-Sahili for Al-Jadeed', supra fn 198.

201 'The Killing of Two Hezbollah Students In Syria ...Their Results Were Released After Their Burial' 9in Arabic), Arabi21, 9 July 2017, <https://arabi21.com/story/1019646>.

202 'Martyr Ali Hadi Hussein', Al Abouroun, n.d., <https://sites.google.com/site/ashekmz/shohadaa/shhda-shhr-hzyran/alihoussein> (last accessed 9 August 2022).

203 Rule 135, ICRC CIHL Database, supra fn 90.

204 Rules 7 and 15, *ibid*. See also the Guidelines for Protecting Schools and Universities From Military Use During Armed Conflict, http://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf (last accessed 29 December 2020): 'Guideline 1: Functioning schools and universities should not be used by the fighting forces of parties to armed conflict in anyway in support of the military effort. (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods. (b) Parties to armed conflict should neither use force nor offer incentives to education administrators to evacuate schools and universities in order that they can be made available for use in support of the military effort.' The Guidelines as well as the Safe Schools Declaration are non-binding instruments through which a number of states have expressed political support for and a commitment to protecting education in armed conflict. See Global Coalition to Protect Education from Attack, 'Safe Schools Declaration and Guidelines on Military Use', <https://protectingeducation.org/gcpea-publications/safe-schools-declaration-and-guidelines-on-military-use/> (last accessed 9 August 2022).

205 Abu Hamid Al-Ghazali, *The Revival of the Religious Sciences* (الحياء علوم الدين) vol 1, p 14.

confirmed that ‘seeking knowledge is an obligation on every Muslim, male and female’.²⁰⁶ It is worth noting here that education did not only consist of religious studies, but also included the ‘worldly sciences’.²⁰⁷ One of the earliest examples of how Islam values education, especially in armed conflict, can be summed up in the release by Prophet Muhammed of ‘a number of the seventy prisoners of war taken at the Battle of Badr in March 624 AD in exchange for teaching ten Muslim children to read and write’.²⁰⁸ However, given that these rules were established in a time when education was not delivered via the modern school system,²⁰⁹ Islamic rules of armed conflicts only refer to the protection of civilians and civilian objects, without specific mention of schools.²¹⁰

Against this backdrop, Hezbollah seems to align with Islamic principles, consecrating the importance of education even in times of armed conflict by providing educational services or expending specific efforts together with its allies to allow for the continuation of access to education in conflict-affected areas.²¹¹ However, its conduct on the battlefield reveals instances in which it has used schools for military purposes (although located away from the frontline)²¹² or has directed attacks towards them. This was the case in its early days during the Israeli occupation of South Lebanon.²¹³ In that specific instance, the occupation had taken the school as

206 A. al-Dawoody and V. Murphy, ‘International Humanitarian Law, Islamic Law and the Protection of Children in Armed Conflict’, 101 *International Review of the Red Cross* (IRRC) 911 (August 2019) 568–569.

207 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 304.

208 Al-Dawoody and Murphy, ‘International Humanitarian Law, Islamic Law and the Protection of Children in Armed Conflict’, supra fn 206, 569.

209 The Islamic world's initial educational institutions were quite informal. Mosques were once used as gathering places where people might gather around a knowledgeable scholar, listen to his lectures, study books and acquire knowledge. Some of Islam's finest scholars were taught and later educated their students in this manner.

210 ‘Under the Islamic law of armed conflict, whether in situations of international or non-international armed conflict, civilians and civilian objects cannot be deliberately harmed or damaged. While the Islamic law of armed conflict does not protect “schools” by name, as civilian objects, education facilities are nevertheless protected by the detailed rules’. Al-Dawoody and Murphy, ‘International Humanitarian Law, Islamic Law and the Protection of Children in Armed Conflict’ supra fn 206, 570.

211 ‘#Special The Syrian Air Force drops parachutes carrying the general examination questions for the third secondary certificate over the cities of al-Fouah and Kafriya in Idlib countryside #Central_war_media’, MMU official Telegram channel, 29 May 2016, https://t.me/C_Military1/861 (last accessed 9 August 2022).

212 The military documentary provided by the CCSD shows Hezbollah’s use of schools as a remote base (away from hostilities) or departure point to the frontline during the battle against Syrian militants at Lebanon’s northeastern border.

213 H. H. Denton, ‘Bomb in Tyre Kills 39’, *The Washington Post*, 5 November 1983, <https://www.washingtonpost.com/archive/politics/1983/11/05/bomb-in-tyre-kills-39/1757fc1b-f218-4e75-8be9-820260758b29/>.

its headquarters, rendering it subject to attack as a legitimate military objective both under IHL and Islamic rules of war.



A school used by Hezbollah forces as a gathering centre in Lebanon.²¹⁴

Other incidents were recorded by HRW during the 2006 war²¹⁵ in which a school located in Kiryat Yam was damaged by Hezbollah rockets. In Syria, Hezbollah was not specifically called out for attacking or using schools, at least not systematically.²¹⁶

5. HUMANITARIAN ACCESS

Common Article 3, Paragraph 2 of the 1949 Geneva Conventions provides that ‘an impartial humanitarian body, such as the ICRC, may offer its services to the Parties to the conflict’. This provision is considered to be one of the legal bases on which impartial humanitarian organizations may provide humanitarian relief and protection to people in need. Under customary IHL, the parties to an armed conflict ‘must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control’.²¹⁷ Humanitarian relief personnel and objects must be respected and protected.²¹⁸

From an ideological perspective, Twelver Shiites have been marked by the stories of the killing of Imam Hussein, his swordless brother Abbas and their companions in a brutal massacre. They

²¹⁴ Photo captured from, ‘Secrets of the Second Liberation, Episode 10, Al-Nusra and the Curse of the Green Bus’ (Part Two). Al Manart, 20 November 2020. <https://program.almanar.com.lb/episode/144157> (last accessed 9 August 2022).

²¹⁵ HRW, *Civilians under Assault*, supra fn 117, p 76.

²¹⁶ See *Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General*, supra fn 165, §§35–38; *Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General*, UN doc S/2021/398, 23 Apr 2021, §§28–31.

²¹⁷ Rule 55, ICRC CIHL Database, supra fn 90.

²¹⁸ Rules 31 and 32, *ibid*.

thus perceive themselves as having been victims of great injustice and oppression. Therefore, there is a

highly humanistic attitude that is well-established and rooted in Hezbollah's collective unconscious ... and because of the injustice they suffered – meaning Al-Hussein, his family and companions – they became the defenders of the oppressed, of women and children and non-combatants.²¹⁹

Therefore, Hezbollah fighters see it as their religious duty to help the poor and the oppressed. This position is maintained for all non-combatants in armed conflict regardless of whether they sympathize with or oppose the movement. This is due to the fact that in Islam,

once control is gained over a city, the population of that city is to be treated the same way as [the conquerer's] own population, whether Muslims or non-Muslims, including the recognition of their rights and the preservation of their properties.²²⁰

Looking at Hezbollah's practice in Syria, it is important to outline that Hezbollah and the Syrian authorities resorted to the conclusion of a wide range of agreements with opposing militant groups, for example to allow the passage of vaccines and medical aid into the respectively besieged areas,²²¹ or to allow militants to leave certain besieged towns – at times with their weapons²²² – in order to regain control of these areas. In this setting, one of the most important agreements concluded was the one regarding the cities of al-Fouah and Kefraya, then besieged by opposing militant groups, in exchange for the cities of Madaya and al-Zabadani under the control of Hezbollah and the Syrian authorities.²²³ The so-called Four Towns Agreement,

219 Interview with Dr Hassan Jouni, 11 May 2022.

220 Tayy, *The Islamic New and Old Law of War*, supra fn 13, pp 313–314.

221 It is important to highlight that Hezbollah and its allies have resorted to sieging as part of their military tactic throughout the war in Syria, a situation which has impacted the provision of aid to civilians. Moreover, they have followed a classical 'pincer movement' whereas a predetermined area is fully encircled with a single opening left for enemy militants to withdraw. This strategy was applied, for instance, in al-Qusayr, then besieged by Hezbollah and the Syrian military. With reference to that case, Nasrallah clarified: 'We blockaded al-Qusayr, we could have kept blockading it and fighting everyone inside till we killed them all [meaning the militants]; instead we opened a path for them to leave.' 'The Second Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al Manar TV – Friday 25 September 2015', supra fn 164. Several similar cases have been recorded, albeit with varying levels of tightening the siege according to the situation.

222 These deals allowing enemy militants to exit a besieged area in secured buses with their weapons while being provided with basic needs such as medicine and food have been cited to confirm that Hezbollah does in fact distinguish between civilians and fighters and is willing to avoid entering into battles to the greatest extent possible, provided that agreements can be reached. Interview with Dr Hassan Jouni, 11 May 2022.

223 Taking the siege of al-Zabadani as an example, Nasrallah explained that the first thing an attacking force should do to take control of any given city is to impose a siege as this would discourage enemy fighters. If the objective is only to control the city, Hezbollah would leave a pathway for militants to leave the area. However, in the case of al-Zabadani, 'this egress was not open for the militants'. If it was, the city would

concluded in April 2017, was a comprehensive deal which covered several humanitarian issues including medical and food assistance delivery. The agreement – including the Syrian Government and Hezbollah on one side and spearheaded by Hay'at Tahrir al-Sham and Ahrar al-Sham Islamic Movement on the other – was reached through mediation and negotiation efforts led by UN and Iranian delegates on behalf of the opposition ANSAs and the Syrian authorities and allies respectively. The agreement included two main points, the first being the evacuation of all combatants and wounded, as well as their families and anyone else who wanted to leave al-Zabadani, in exchange for the exit of 10,000 civilians from al-Fouah and Kefraya. Secondly, a six-month ceasefire was to be established with the opening of a pathway for ground relief operations to ensure all the people who stayed in al-Fouah and Kefraya as well as Madaya and Sarghaya would receive food, water, medication and fuel. Hence, there is evidence suggesting that Hezbollah has taken measures to request or facilitate the provision of humanitarian aid to civilians, although this was often done on a condition of reciprocity – meaning that allowing a convoy to enter areas besieged by Hezbollah and its allies would require the opposing party to allow humanitarian aid to be delivered to specific areas under siege by their militants. That was reportedly the case for Douma and Eastern Ghouta.²²⁴ In other instances²²⁵ such as Bloudan, where Hezbollah and its allies had regained control, '[Hezbollah] asked for support to supply food, fuel and medications in order to reach ... Bloudan's population and secure all the necessities to live and survive in this region'.²²⁶ Furthermore, Hezbollah and its allies delivered aid by parachute to the friendly population of Deir ez-Zor²²⁷ as well as al-Fouah and Kefraya, then

have fallen into the hands of Hezbollah, stripping it of the 'chance to tackle the al-Fouah and Kefraya issue'. This means that Hezbollah maintained a tight siege on the city to ensure it had enough bargaining power to drive the enemy to 'resort to negotiations' and reach agreements pertaining to other areas of interest to Hezbollah. 'The First Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al-Manar TV – Friday 25 September 2015' (in Arabic), Al Ahed News, 25 September 2015, <https://archive.alahednews.com.lb/details.php?id=115869> (last accessed 9 August 2022).

224 '#Special The Syrian Red Crescent brought 6 vehicles containing humanitarian aid to the city of Douma in the eastern Ghouta of Damascus #Central_war_media', MMU official Telegram channel, 26 May 2016, https://t.me/C_Military1/806 (last accessed 9 August 2022).

225 Nun Esperanza (Mar Yakub/ St James Monastery – Damascus countryside, Qarah): 'We didn't have any water to drink, so we drank cow's milk instead of water. When Hezbollah knew we needed water and food, they came to help us ...they used a very beautiful sentence: "Your service is our mission".' Footage from Al-Manar TV's documentary about the intervention of Hezbollah in Syria, 'Bloudan in the Presence of War', filmed by the MMU, Al Manar, 28 August 2019, <https://program.almanar.com.lb/episode/79950> (last accessed 9 August 2022).

226 IRL's commander (Abou Mostafa) talking about providing food and aid to civilians in Bloudan.

Ibid.

227 '#Special Russian cargo planes drop 26 umbrellas carrying food and medical aid over the city of Deir ez-Zor, besieged by ISIS militants. The Syrian Red Crescent has received this aid, which will be distributed to the besieged people,' MMU official Telegram channel, 24 April 2016,

besieged by opposing militants. In this setting one should note that Hezbollah's capacity to positively or negatively influence its allies when it comes to the facilitation of humanitarian access remains vague. Several reports have outlined the severe consequences for civilians resulting from the imposed sieges, with 'supplies of food, water, fuel, medicine and electricity ... blocked or drastically curtailed', which in turn 'had dire consequences for the ability of the hospitals and clinics to treat those injured by shelling and gunfire'.²²⁸



In terms of Hezbollah's position vis à vis cooperation within humanitarian actors, and as outlined in its IHL profile in section 4A, the main criteria for Hezbollah's acceptance are the impartiality and neutrality of the said actors. Hezbollah has reinforced this stance due to the experience of 2006 where many donors reportedly refused to offer help to areas under Hezbollah's control: 'Some donors gave strict instructions to implementing partners to avoid contact with Hezbollah,

https://t.me/C_Military1/112 (last accessed 9 August 2022).

228 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, supra fn 152, Annex III, §38.

an approach considered impractical due to the organisation's deep-rooted presence in Lebanese society.'²²⁹

Looking at the situation in Syria, it is key to note that aid delivery has been exclusively led by the Syrian Red Crescent due to the Syrian authorities' centralization of humanitarian assistance. It is difficult to assess Hezbollah's acceptance of other actors who could have otherwise conducted such humanitarian relief operations. Furthermore, Hezbollah was reportedly involved in some cases of denial of humanitarian access along with other 'pro-government militia'.²³⁰ Interestingly, Hezbollah voiced its support for the protection of humanitarian relief personnel as well as goods, transport and infrastructure when it publicly denounced the targeting of aid workers²³¹ or relief convoys.²³² Finally, Hezbollah has itself undertaken the provision of aid, for instance to Palestinian and Syrian refugees in Lebanon,²³³ including those who arrived from Syria's al-Yarmouk camp,²³⁴ an area that Hezbollah and the Syrian government had kept under siege.²³⁵

6. PROTECTION OF HEALTH CARE

Under Common Article 3, Paragraph 2 of the 1949 Geneva Conventions, the 'wounded and sick' shall be collected and cared for. As stipulated in Article 7 of AP II, 'in all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones'. Medical personnel, facilities and transport that are exclusively assigned to medical purposes must be respected and protected in all circumstances, although they lose such protection if they carry out or are used to commit acts harmful to the enemy.²³⁶ Attacks directed against medical personnel and objects displaying the

229 G. Gasser, 'Lebanon: Crisis of Civilian Protection', The Humanitarian Response Index 2007, https://daraint.org/wp-content/uploads/2010/10/HRI_2007_lebanon.pdf (last accessed 9 August 2022).

230 Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, *supra* fn 165, §§47–50.

231 'Statement on the United Nations Report on the Freedom Flotilla' (in Arabic), Media Relations in Hezbollah, 5 September 2011, <https://mediarelations-lb.org/post.php?id=6984> (last accessed 9 August 2022).

232 'Statement on the Zionist Piracy the Dignity Ship' (in Arabic), Media Relations in Hezbollah, 21 July 2011, <https://mediarelations-lb.org/post.php?id=6204> (last accessed 9 August 2022).

233 '"The Capital of the Resistance" Cares Most for the Syrian Refugees' (in Arabic), Bintjbeil, <https://archive.bintjbeil.org/article/79061> (last accessed 9 August 2022)

234 'Hezbollah's Aid to Refugees', MTV Lebanon YouTube channel, 29 December 2012, <http://www.youtube.com/watch?v=8HvJpk7dcP4> (last accessed 9 August 2022).

235 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* fn 152, §175.

236 Rules 25, 28 and 29, ICRC CIHL Database, *supra* fn 90.

distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.²³⁷

‘[W]hoever saves a life, it will be as if they saved all of humanity’.²³⁸ This Quranic verse points to the significance of life-saving action in Islam. This is further evidenced by Prophet Mohammed’s interest in having doctors and women escort his army to the battlefield. As narrated by his female companion Umm Attiah: ‘I accompanied the prophet in 7 battles where I treated and healed the wounded.’²³⁹ From this, one can deduce that the provision of health care, including to the wounded and sick in times of war, is Islam’s desired conduct. Hezbollah maintains this Islamic view especially as Imam Ali used to urge his soldiers to ‘not kill a fugitive, nor finish a wounded man’.²⁴⁰ This stance is also reflected in the advisory opinions of Khamenei who prohibits leaving the wounded enemy without medical treatment, especially if the injury might lead to death or severe damage.²⁴¹ Moreover, Khamenei’s fatwas also forbid the killing of wounded enemy captives: ‘It is not permissible to finish off a wounded enemy prisoner by killing him, even in order to rid him of suffering and pain and even if this was at his request.’²⁴²

Hezbollah’s adherence to this principle can be understood through the institutionalization of health-care provision within its combat structure through a dedicated military medical aid unit. ‘While the concept of the medical aid as a group or formation came to life in 1984’,²⁴³ it was only with the 2006 war that Hezbollah resorted to the creation of a separate entity. Although there were ‘many medical points in the south of Lebanon that even worked as field hospitals [and] played a crucial role for a certain period of time’,²⁴⁴ the 2006 war proved the need to develop a military medical aid institution.

237 Rule 30, *ibid.*

238 Quran.com, Sura 5, Verse 32, <https://quran.com/al-maidah/32> (last accessed 8 August 2022).

239 Sayyid Mohsen Al-Amin, *Shia Notables (Ayan al-Shia (أعيان الشيعة))*, vol 3, p 482.

240 Mirza Husain Noori Tabarsi, *Mustadrak al-wasail wa mustanbas al-masail*, vol 11, p 86, Hadith no 12481.

241 Jihadi Fatwas, *supra* fn 86, p 26.

242 *Ibid*, p 27.

243 Interview with medical officer in Hezbollah’s military medical aid unit, 15 January 2022.

244 *Ibid*.



Female Islamic Health Commission (IHC) members wearing the IHC emblem during a field ambulance manoeuvre. The blue crescent symbolizing Islam appears to contain a drop of blood in reference to medical services.²⁴⁵

Similarly, Hezbollah's involvement in the Syrian conflict required further strengthening of its medical structures, resulting in the creation of highly equipped²⁴⁶ mobile field hospitals which accompanied the Mujahideen as they proceeded.²⁴⁷ On the other hand, services provided by the military medical aid were also offered to enemy soldiers²⁴⁸ and civilians: 'We used to treat them with humanity despite their beliefs and different affiliations; this is our religion and these are our morals'.²⁴⁹ To confirm this stance, Nasrallah clarified that 'it was [Hezbollah's] ambulances that transported the Qusayr fighters' wounded [meaning Syrian opposition fighters] and brought

245 'Ambulance Manoeuvre' (in Arabic), Islamic Health Authority, 30 August 2017, <https://www.hayaa.org/essaydetails.php?eid=32308&cid=580> (last accessed 9 August 2022).

246 Hezbollah prepared 'advanced field hospitals with intensive care rooms and surgery rooms that enabled [the military medical aid unit] to do all types of surgeries including critical head surgeries as well as surgical operations on the abdomen to stop haemorrhage'. Interview with medical officer in Hezbollah's military medical aid unit, 15 January 2022.

247 Interview with medical officer in Hezbollah's military medical aid, 15 January 2022.

248 Military documentary showing the paramedics of the military medical aid unit providing medical care to the enemies who surrendered to Hezbollah fighters. Footage from, 'Secrets of the Second Liberation', Episode 11: 'Unveiled - the battle of ISIS', filmed by MMU, Al Manar, 27 November 2020, supra fn 140. Hezbollah fighters assuring a wounded enemy that they will call an ambulance to treat his injuries. Hezbollah's fighters call the operation room to send an ambulance to rescue one of the militant fighters. Footage from Al-Mayadeen TV's documentary about the intervention of Hezbollah in Syria, 'The Second Liberation: The End of ISIS 2017, Part 1' (in Arabic), filmed by the MMU, Al Mayadeen Documentaries (YouTube channel), 4 August 2019, https://www.youtube.com/watch?v=_6NAIZ4DiXU&t=6s (last accessed 9 August 2022).

249 Interview with medical officer in Hezbollah's military medical aid unit, 15 January 2022.

them to Lebanon'.²⁵⁰ This move was praised by the political analyst of an overtly anti-Hezbollah newspaper, who admitted that Hezbollah had acted 'upon moral and religious grounds'.²⁵¹



Use of the Red Crescent emblem in Hezbollah's Sheikh Ragheb Harb Hospital in South Lebanon.

It is worth noting that as the war in Syria progressed, the military medical aid unit – an integrated team of medical engineers, doctors, paramedics and trainers – gained experience and managed to secure surgical rooms comparable to those in any hospital, with respect to sterilization, ventilators, heart electric shock machines and surgical tools, which would be transferred within a typical period of time to progress at the same rate as the Mujahideen in the field.²⁵² Moreover, the military medical aid unit's work is not limited to providing medical services to the wounded but extends beyond that to prevention: '[M]edical attention is provided to the Mujahideen in order to prevent injuries as much as possible, keeping up with the medical treatments and intervening in areas of food safety as well as pesticide spraying and waste management'.²⁵³

In addition to the medical teams accompanying the troops on the ground, Hezbollah has set up a civilian medical institution called the Islamic Health Commission (IHC), which operates on all Lebanese territory. What started as a birthing centre in the late 1980s eventually became 'the largest health institution in the region'²⁵⁴ with the capacity to mobilize health-care workers at a

250 'The Second Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al Manar TV – Friday 25 September 2015' (in Arabic), Al Ahed News, supra fn 164. 'Les blessés syriens de Qousseir affluent vers les hôpitaux de la Békaa', L'Orient-Le Jour, 10 June 2013, <https://www.lorientlejour.com/article/818397/les-blesses-syriens-de-qousseir-affluent-vers-les-hopitaux-de-la-bekaa.html>.

251 S. Haddad, 'Un point de vue sur les agissements du parti de Dieu', L'Orient-Le Jour, 12 June 2013, <https://www.lorientlejour.com/article/818753/-un-point-de-vue-sur-les-agissements-du-parti-de-dieu.html>.

252 Interview with medical officer in Hezbollah's military medical aid unit, 15 January 2022.

253 Ibid.

254 Statement by Hezbollah participant at the Chatham House Rule roundtable discussion on access to healthcare in times of armed conflict and pandemic organized by Geneva Call, Beirut, 29 March 2021. According to the Meir Amit Intelligence and Terrorism Information Center, the organization operates an extensive network of 87 hospitals, medical centers and clinics throughout Lebanon and includes a civil

scale to address health crises such as Covid-19.²⁵⁵ It is worth noting that the IHC has been providing services to Lebanese and non-Lebanese people ‘without discrimination based on sect, religion, and nationality or gender’,²⁵⁶ and regardless of whether or not the patient is affiliated with Hezbollah. In 2014 the IHC was also deployed in Syria, filling the gap in areas where the Syrian Government could no longer provide adequate health-care services.²⁵⁷

With respect to the protection of health-care facilities from attack, HRW reports have pointed out instances where Hezbollah rockets damaged health-care facilities during the 2006 war against Israel.²⁵⁸ Whether or not the targeting was deliberate could not always be clearly established.²⁵⁹

In the Syrian context, reports of the Independent International Commission of Inquiry on the Syrian Arab Republic note that the sieging activity of governmental forces and Hezbollah, for instance in al-Qusayr in late 2012, had ‘harrowing consequences for the civilians remaining inside Al-Qusayr town and the surrounding villages. The cutting off of medical supplies into Al-

defense department with 22 centers across the country. It provides medical services to most of the Shiite population in Lebanon, which is estimated at about two million people, nearly 30% of the entire population.

<https://www.terrorism-info.org.il/en/islamic-health-organization-hezbollah-institution-providing-health-services-hezbollah-operatives-shiite-population-general-means-gaining-influence-creating-shiite>

255 In the face of the Covid-19 pandemic, the Islamic Health Commission (IHC) gathered ‘1,500 doctors, 3,000 nurses and 20,000 health-care/services providers’. H. Safi Al-Din, ‘What is Hezbollah’s Plan to Confront the Coronavirus?’ (in Arabic), Al Mayadeen, 26 March 2020, <https://www.almayadeen.net/news/politics/13290>.

256 Statement by Hezbollah participant at the Chatham House Rule roundtable discussion on access to healthcare in times of armed conflict and pandemic organized by Geneva Call, Beirut, 29 March 2021.

257 ‘The Islamic Health Authority Arrives in Israel’, supra fn 80.

258 For instance, Hezbollah’s rockets hit three hospitals according to the letter directed by HRW to Hezbollah, leaving ‘a gaping hole in the outer wall [of the Nahariya Hospital in Western Galilee and destroying] eight rooms, along with beds, equipment, and various systems installed in the ceilings and walls.’ It is worth mentioning that ‘no one was injured because the patients and the service had already been transferred to the hospital’s basement’. In another instance in the Mazra Mental Hospital, ‘the rocket, which was loaded with steel spheres, caused trauma among patients and staff members, but no physical injuries’. HRW, *Civilians Under Assault*, supra fn 117, p 88.

259 ‘In some of those cases, we could find no evidence that there had been a legitimate military target in the vicinity at the time of the attack, suggesting it was a deliberate attack on civilians. In other cases, we found that there had been a military object in the vicinity but, even assuming Hezbollah had been intending to hit the military target instead of civilians, the unguided rockets it used was [sic] incapable of distinguishing between the two.’ Ibid, p 4.

Qusayr town, in particular, had dire consequences for the ability of the hospitals and clinics to treat those injured by shelling and gunfire.²⁶⁰

Other reports such as the UN Secretary-General's reports on children and armed conflict in the Syrian Arab Republic do not explicitly refer to Hezbollah or 'pro-government militias'²⁶¹ when detailing attacks on medical facilities and personnel.²⁶²

7. THE PROHIBITION OF FORCED DISPLACEMENT

IHL prohibits the forced displacement of civilians 'unless the security of the civilians is involved or imperative military reasons so demand'.²⁶³ It also provides that in case of displacement, all possible measures shall be taken to ensure that the displaced persons are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.²⁶⁴ Displaced persons have a right to return to their homes as soon as the reason for their displacement ceases to exist and security allows.²⁶⁵

Before delving into the concept of forced displacement, it is interesting to shed light on Islam's understanding of 'asylum',²⁶⁶ also called 'Aman', which translates as 'safety'. In Islamic terms, asylum is not only a right, but also a duty and represents a comprehensive form of protection. Unlike modern international and national instruments, Islamic rules clearly endow individuals with the right to grant (or be granted) asylum, whereas this right is usually reserved for states.²⁶⁷ In this context, asylum is regarded as a duty, meaning that Muslims are urged to leave places

260 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, *supra* fn 152, Annex III, §38.

261 This term refers to non-state armed groups supporting the Government of the Syrian Arab Republic. They include the popular committees or National Defence Forces of Suwayda' and Asaliyah, the so-called Shabbiha and Hezbollah. Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, *supra* fn 165, §§39–40.

262 Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General, *supra* fn 216, §§32–33.

263 Art 17, AP II and customary IHL (Rule 129, ICRC CIHL Database, *supra* fn 90).

264 Rule 131, ICRC CIHL Database, *supra* fn 90.

265 Rule 132, *ibid*.

266 'All forced migrants who are in need of protection should be granted Aman (refuge or asylum) if they seek it. They can seek asylum from within dar al-Islam. They may also come from dar al-harb (the world where Muslim law does not apply).' K. Elmadmad, 'Asylum in Islam and in Modern Refugee Law', 27 *Refugee Survey Quarterly* 2 (2008) 53. And/or 'Islam reaffirms the tradition of granting territorial asylum by any individual or by Muslim leaders to asylum-seekers looking for protection. This kind of asylum was called *istijara* or *talab al-jihar* (asking for assistance from a neighborhood or assistance from a community).' *Ibid*, 55.

267 *Ibid*, 54.

where there is injustice and persecution, and seek protection elsewhere.²⁶⁸ This position is derived from the Quranic verse ‘and make not your own hands contribute to your destruction but do good; for God loveth those who do good’.²⁶⁹ This duty of asylum is not limited to asylum seekers but extends to Muslims who have accepted to protect them. It entails providing asylum seekers, both refugees and internally displaced people, with all the rights guaranteed to nationals, such as food and shelter, including the right to work, education, freedom of movement and family reunification, until they decide to leave.²⁷⁰

Going back to the concept of forced displacement, an analysis of Hezbollah’s public statements shows its condemnation of acts of forced displacement in the context of armed conflict and as a result of terror attacks. More concretely, Hezbollah denounced the decision taken by ‘the occupying Zionist authorities’ to destroy eight Palestinian villages, displacing over 1,500 inhabitants ‘to evacuate Palestinians from what remains of their land and seize it by violence and force’.²⁷¹ In another instance, Hezbollah decried the terror attacks conducted on churches in Egypt stating that these aim to drive the displacement of Christians ‘from Sinai and from other areas in Egypt, Syria, Iraq and Lebanon, and open the door to sedition and sectarian and ethnic division for the benefit of the Zionist enemy’.²⁷²

Moreover, Khamenei’s religious rulings, which are considered binding on Hezbollah, have outlined that ‘deporting people from their homes and areas is prohibited, unless their stay poses a danger either to them or the forces. This is decided on and settled by the highest military command and according to the law.’²⁷³ An indication of Hezbollah’s will to abide by this commandment can be drawn from the military documentary filmed during the Syrian war where Hezbollah faced difficulty in regaining control over one of the areas where civilians remained.²⁷⁴ This clip shows how Hezbollah members proceeded to evacuate civilians to ensure their safety. In this context, field commanders were seen giving instructions to fighters in one of the battles to not intimidate or terrorize civilians, with one of the fighters addressing civilians: ‘I want you to be protected and we will take you to a secure place to ensure you stay safe’, and continuing to

268 Ibid.

269 The Holy Qur'an, supra fn 81, Sura 2, Verse 195.

270 Elmadmad, ‘Asylum in Islam and in Modern Refugee Law, supra fn 266, 54.

271 ‘Statement on the Zionist’s Decision to Destroy Eight Palestinian Villages’ (in Arabic), Media Relations in Hezbollah, 24 July 2012, <https://mediarelations-lb.org/post.php?id=7584> (last accessed 9 August 2022)

272 ‘Hezbollah Condemns the Targeting of Churches in Egypt and Calls on Everyone to Unite in a True Alliance to Confront the Terrorists and Their Sponsors’ (in Arabic), Media Relations in Hezbollah, 9 April 2017, <https://archive.alahednews.com.lb/details.php?id=136897> (last accessed 9 August 2022).

273 Jihadi Fatwas, supra fn 86, p 36.

274 Hezbollah commander talks about instructions to the fighters: ‘Resisters can't shoot unless they see a clear target’. Footage from ‘Secrets of the Second Liberation, Episode8’, supra fn 109.

explain ‘these are our families and our eyes’²⁷⁵ – a common way to express in Arabic that a person is dear to you.

In terms of Hezbollah’s practice, the movement reportedly took measures to warn opposition fighters²⁷⁶ and civilians ahead of military operations conducted by its members or allies in Syria. Such measures were said to include leaflet distribution by helicopter, as well as contacting residents to allow them to safely evacuate.²⁷⁷ These procedures were not only prior to the military intervention, but were also implemented throughout these operations. Moreover, Hezbollah would resort to agreeing a truce with the enemy forces to allow the evacuation of remaining civilians, and even concluded agreements with the militants to set the conditions and timeframes for the exit of civilians from certain areas. The Syrian Government, for one, has been known to provide logistics and means of transportation for militants and civilians who want to leave with them.²⁷⁸ However, one should note that the Syrian Government imposed these deals on militants, not civilians – at least according to Nasrallah:

the regime carries no condition that forces civilians to leave. It is up to the civilians’ own will. They shall stay in Zabadani if they wish, and they’re free to leave if that’s what they wish for too. All these allegations regarding demographic changes are unjust and unfounded.²⁷⁹

In light of what has been presented above, Hezbollah has voiced its rejection of forced displacement and demographic alterations on several occasions.²⁸⁰ According to one of

275 Hezbollah commanders talk about moving civilians to a safe place, ordering their fighters to not intimidate them. Footage from Al Manar TV’s documentary about the intervention of Hezbollah in Syria, ‘Secrets of the Second Liberation, Episode 7: Towards Yabroud’ (in Arabic), filmed by the MMU, Al Manar, 16 October 2020, <https://program.almanar.com.lb/episode/139735> (last accessed 9 August 2022).

276 Hezbollah commander in the operation room warning the militants of Al-Nusra by radio: ‘Statement from the Military Operations Command of the Islamic Resistance: ... the matter has been settled accordingly, and based on our Islamic values, we call on you to surrender, and we guarantee your physical and moral safety. The other option is death, and those who have been warned are excused.’ Footage from ‘The Second Liberation, The End of Al-Nusra, Part 2’, supra fn 110.

277 ‘The Second Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al Manar TV – Friday 25 September 2015’, supra fn 164.

278 IRL fighters providing assistance to the families of the militants while leaving Arsal. Footage from ‘The Second Liberation: The End of Al-Nusra, Part 2’, supra fn 110.

279 ‘The Second Part of the Full Text of the Interview With His Eminence Sayyed Hassan Nasrallah with Al Manar TV – Friday 25 September 2015’, supra fn 164.

280 Hezbollah issued the following statement, commenting on the so-called Praver Plan: ‘The Zionist Knesset approved, in a first reading, the so-called "Praver Plan", which provides for the confiscation of about 700,000 dunams of Negev land and the removal of about 40 villages, thus displacing about 90,000 people ... Hezbollah strongly condemns this continued occupation and settlement attack’. ‘Statement on the Zionist Praver Plan and the Negev Bedouins’ (in Arabic), Media Relations in Hezbollah, 16 July 2013, <https://mediarelations-lb.org/post.php?id=8734> (last accessed 9 August 2022); ‘What is expected of these terrorist groups ... to emulate behaviour other than that stemming from their ideology, which is based on

Hezbollah's commanders, the movement made efforts to help civilians return to their homes after Hezbollah re-established control over their original areas of residence in cooperation with the Syrian military and security services.²⁸¹ Moreover, Hezbollah announced it would weigh in on the facilitation of the return of Syrian refugees to Syria in coordination with both the Lebanese and Syrian authorities.²⁸² Although the return of Syrian refugees was deemed forcible and unsafe by many international actors,²⁸³ a registration mechanism was set up for those who voluntarily wished to return, which enabled Hezbollah to work on returnees' legal status and organize their return in collaboration with the Syrian authorities and the Lebanese General Security.²⁸⁴

Looking at Hezbollah's conduct during the 2006 war, however, it becomes apparent that it did not take great care to avoid causing mass displacement. There are two main reasons for this. Either Hezbollah was not yet as experienced as it was when it entered into the Syrian conflict, or it indeed intended to cause the displacement of the Israelis it views as illegal settlers. The latter seems to be confirmed by an HRW report documenting Hezbollah's IHL violations in which Nasrallah reportedly declared Hezbollah's objective as being 'to cripple everyday life in northern Israel by compelling the flight of the civilian population in the north either to shelters or to the southern half of the country'.²⁸⁵

8. USE OF LANDMINES AND OTHER EXPLOSIVE DEVICES

The use of landmines – both anti-personnel (AP) and anti-vehicle (AV) – is not prohibited under customary IHL. However, when landmines are used, particular care must be taken to minimize

killing, bloodshed, insulting honor, attacking diversity, fragmenting ranks, terrorizing the safe and emptying the areas of their people who have resided in them for hundreds of years?'. 'Hezbollah Strongly Condemns the Brutal Crime Committed by the 'Al-Nusra' Gangs Against the Druze in the Idlib Countryside' (in Arabic), Al-Ahed News, 11 June 2015, <https://archive.alahednews.com.lb/details.php?id=111885> (last accessed 9 August 2022).

281 'We cooperated on this matter [the return of the citizens of Zabadani]. They returned back to their homes in massive processions and gradually started entering their homes under the supervision of the police, the apparatuses and the army. This is what created a sense of comfort for them'. With the assistance of Hezbollah, the people of Al-Zabadani come back to their homes. Footage from Al-Manar TV's documentary about the intervention of Hezbollah in Syria, 'Bloudan in the Presence of War', supra fn 225.

282 'Hezbollah Calls on Syrian Refugees from Qusayr to Return', France 24, 20 September 2019, <https://www.france24.com/en/20190920-hezbollah-calls-on-syrian-refugees-from-qusayr-to-return>.

283 HRW, "Our Lives Are Like Death": Syrian Refugee Returns from Lebanon and Jordan, 20 October 2021, <https://www.hrw.org/report/2021/10/20/our-lives-are-death/syrian-refugee-returns-lebanon-and-jordan> (last accessed 9 August 2022).

284 'Hezbollah Begins Accepting Requests from Syrian Refugees' (in Arabic), Al Modon,

<https://www.almodon.com/politics/2018/7/4/>; 'Lebanon's Hezbollah to Work with Syrian State on Refugee Returns', Reuters, 29 June 2018, <https://www.reuters.com/article/us-mideast-crisis-lebanon-syria-refugees-idUSKBN1JP29Q>.

285 HRW, Civilians under Assault, supra fn 117, p 13.

their indiscriminate effects.²⁸⁶ In addition, parties to the conflict using landmines must record their placement, as far as possible.²⁸⁷ At the end of active hostilities, they must also remove or otherwise render them harmless to civilians or facilitate their removal.²⁸⁸ Although the total prohibition of AP landmines is not considered customary law yet, more than three-quarters of states today are parties to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

Hezbollah's weapon arsenal, in addition to the types of weapons it allows or prohibits, is considered one of its military secrets. Academics close to Hezbollah have referred to Islamic Sharia's position to outline the boundaries:

In our view, since Islam requires not to use unnecessary weapons, and since it requires not to cause civilian casualties, Islam therefore supported the prohibition of the use of some methods of combat and weapons, including the use of burning, poisoning, cutting water, and throwing rocks except with strict conditions.²⁸⁹

And even more so if 'this weapon harms people without distinguishing between a combatant and a non-combatant, between the bearer of arms and the unarmed, and between the sheikh, the woman, the child and the man'²⁹⁰ and may harm the innocent even after the conflict is over. This reasoning applies to the laying of landmines and also to the use of other indiscriminate weapons, for instance weapons of mass destruction.²⁹¹ Therefore, leading Shiite clerics have reiterated this restriction: '[U]sing weapons of mass destruction is prohibited since these weapons ... exterminate everyone, the guilty and the innocent, Muslims and non-Muslims'.²⁹² This is further illustrated by Khomeini's prohibition of the use of chemical weapons in the Iraq-Iran war as a response to their use against the Iranian army.²⁹³

Coming back to Hezbollah's mine policy, a 2006 report issued by Geneva Call points out that while the movement 'has not officially banned landmines, it has stated that it never has, and

286 Rule 81, ICRC CIHL Database, supra fn 90.

287 Rule 82, *ibid.*

288 Rule 83, *ibid.*

289 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 90.

290 *Ibid*, p 91.

291 '[S]ome of the weapons of mass destruction are traditional, like biological and chemical weapons, and some are mines, traps, devices, and cluster munitions.' *Ibid*, p 300.

292 M. Sadiq al-Sadr, *Tribal Jurisprudence (Fiqh al-Asha'ir)*, vol 2, p 272, Al-Baseer Library for Printing, Publishing and Distribution, the Heritage Authority of the Martyr Al-Sadr, 1996.

293 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 301.

never will, use AP landmines'.²⁹⁴ On the other hand, Hezbollah is known to have used AV mines against Israeli tanks prior to the Israeli withdrawal in 2000 and is also known to have used command-detonated improvised mines (so-called 'roadside bombs') to attack the occupation's patrols²⁹⁵ or to assassinate Lahad's secret agents.²⁹⁶ In this context, Hezbollah has been said to take precautionary measures in order to minimize civilian harm. This can be deduced from the command's decision to abort the operation targeting Aqel Hashem²⁹⁷ due to the presence of one of Hashem's family members in his vicinity at the time.

Bearing the historical development of Hezbollah in mind, one should highlight that the EEU is considered one of the oldest and most important units within it. During the occupation of South Lebanon, Hezbollah relied primarily on carrying out ambushes, laying explosives and organizing suicide operations known as 'martyrdom operations'²⁹⁸ against the Israeli army. These tactics were frequently used by Hezbollah and 'were painful to the enemy whether they were done by bombed cars or by explosive belts'.²⁹⁹ For both types of operations, Hezbollah relied on its own

294 Geneva Call and the Program for the Study of International Organization(s), Armed Non-State Actors and Landmines, Volume II: A Global Report of NSA Mine Action, 2006, p 76, <https://www.genevacall.org/wp-content/uploads/2019/02/2.pdf> (last accessed 9 August 2022).

295 'Operation on the Road to Al-Aishiya – Al-Rihan' (in Arabic), Al Moqawama, 9 June 1996, <https://video.moqawama.org/details.php?cid=6&linkid=301> (last accessed 9 August 2022).

296 'A Bomb Exploded Killing Three Agents on Beit Yahoun Road' (in Arabic), Al Moqawama, 3 October 1995, <https://video.moqawama.org/details.php?cid=6&linkid=1934> (last accessed 9 August 2022).

297 'For instance, there is a well-known story related to the assassination of Aqel Hashem, the commander of the armed forces collaborating with the occupation. Hashem is a military man, and therefore targeting him does not constitute a violation of international law. Of course, targeting him was a complex and difficult operation that required the identification of his whereabouts, the infiltration through the occupied areas, the planting of an explosive device operating from a distance and finally waiting for the right moment to detonate it from the place of monitoring or hiding and within the area of danger. This process takes years of preparation and when they were able to place the explosives at the entrance of the place he was heading to, it turned out he was accompanied by his young daughter, and there is footage of that. So, orders were given by the command to abort the mission because of the presence of the little girl.' Interview with Dr Hassan Jouni, 11 May 2022.

298 See Box 4 for additional information on the legitimacy of martyrdom operations in Islam.

299 Interview with former military officer in Hezbollah's Explosives Engineering Unit (EEU), 17 January 2022.

fighters with Ahmed Qasir,³⁰⁰Amer Kalakesh³⁰¹ and Salah Ghandour³⁰² among the most famous. 'These operations mainly targeted military gatherings and some were even aborted due to the presence of civilians, such as the assassination of the leader of Lahad's army, Aqel Hashem'.³⁰³

BOX 4: THE LEGITIMACY OF MARTYRDOM OPERATIONS UNDER ISLAMIC SHARIA

The legitimacy of suicide or martyrdom operations has been the subject of an important scholarly discussion among Islamic circles. Diverging opinions on the topic are due to the plurality of sources of Sharia law which have touched upon the issue of suicide. Firstly, the Quran states that one shall 'take not life which God hath made sacred except by way of justice and law'.³⁰⁴ Moreover, the Almighty commands: 'nor kill (or destroy) yourselves',³⁰⁵ whereas according to a narration on the authority of Imam al-Sadiq about suicide, '[w]hoever kills himself intentionally, will be in the fire of Hell, wherein he will abide forever'.³⁰⁶

With reference to these sources, the great majority of jurists have concluded that killing oneself is forbidden. Nevertheless, some scholars have adopted a contradictory position which legitimizes suicide operations based on the consideration that these operations are in the interest of Muslims. Although many Shiite scholars agree on the permissibility of these operations, Hezbollah has endeavoured to seek the authorization of the legitimate ruler³⁰⁷ before carrying out such operations.

According to Khamenei – the Guardian Jurist followed by Hezbollah and a number of the Iraqi PMF – self-sacrifice for the sake of religion and national interests is one of the highest degrees

300 'Self-Sacrifice Martyr: Ahmad Jaafar Kassir', Al Ahed News, n.d., <https://english.alahednews.com.lb/15697/366>; 'L'opération du martyr Ahmad Kassir 11-11-1982', Al Ahed News, n.d., <https://french.alahednews.com.lb/4235/330>.

301 'The martyr Amer Tawfiq Kalakish', ShiaTV.net, 12 October 2021, <https://women.shiatv.net/video/1542141159> (last accessed 9 August 2022); 'From our Jihadi History...the Martyr Amer Tawfiq Kalakish "Abu Zainab"' (in Arabic), Al Markazia, 10 March 2019, <https://central-media.org/34444/633> (last accessed 9 August 2022).

302 'Martyr Salah Gandour Blasting One of "Israel's" Most Important Intelligence Headquarters in Bint Jbeil', Al Ahed News, n.d., <https://english.alahednews.com.lb/12580/366> (last accessed 9 August 2022); 'The Martyrdom Operation Salah Ghandour' (in Arabic), Al Moqawama, 15 April 1995, <https://video.moqawama.org/details.php?cid=6&linkid=297> (last accessed 9 August 2022).

303 Interview with former military officer in Hezbollah's EEU, 17 January 2022.

304 The Holy Qur'an, supra fn 81, Sura 6, Verse 151.

305 Ibid, Sura 4, Verse 29.

306 Wasa'il Al-Shi'a, Al-Hurr Al-Amili, vol 29, p 24, Bab 5, Hadith 1.

307 The legitimate ruler is the jurist who 'combines all the conditions', and his main duty is issuing legitimate decisions and to judge between people in disputes and disagreements. Khomeini used this term for those whom he chose as legal judges in various Iranian cities after the victory of the revolution.

of martyrdom, constituting the pinnacle of pride, magnanimity and greatness for any people.³⁰⁸ In contrast, Sayyid al-Sistani – the leader of the Najafi religious authority who is followed by many factions of the PMF – is famous for his fatwa concerning ‘sufficient jihad’, which prompted the establishment of the PMF and in which these operations are permitted on the condition that they would represent a victory for Islam and Muslims and weaken or harm the ‘infidels’.³⁰⁹

Although Hezbollah’s operations have since evolved, the EEU is still regarded as one of the movement’s strongest military competencies, which includes specialized teams tasked with the preparation of all explosive devices used by Hezbollah. Following Lebanon’s liberation, the unit conducted operations deep into enemy territory by attacking Israeli patrols beyond Lebanese-controlled areas, for example when taking captives in 2006 (known as the sincere promise operation or al-Wa’ed al-Sadek) and in the Shebaa operation in 2000.³¹⁰

In this context, sophisticated handmade devices were planted by Hezbollah and detonated electronically, by pressure or mobile telephone, in what can be understood as ‘offensive’ use of mines to target Israeli soldiers.³¹¹ Moreover, Hezbollah’s participation in the Syrian war allowed the EEU to expand its know-how through a combination of targeting or ambush operations (the most famous being the al-Otaiba ambush³¹²). Demining operations were also conducted following the restoration of parts of the land by the Syrian authorities.³¹³ Lastly, it is important to mention that Hezbollah did not resort to the ‘defensive’ planting of mines in Syria but made use of remote and command-detonated devices to target specific military objectives.

308 Al-Hayat Al-Tayebah Magazine (مجلة الحياة الطيبة), Doctrinal Views and Positions on Jihad and Martyrdom, vol 4, no 10, Summer 2002, p 375,

http://alh.journals.miu.ac.ir/article_3305_175a1a5f156dd1f8903b62084ae9e1bc.pdf (last accessed 9 August 2022).

309 Al-Sistani, Istefaat (استفتاءات), 1 January 2000, p 412.

310 ‘Diary of Resistance Operations – October 2000’, Al-Ahed News, n.d., <https://english.alahednews.com.lb/22191/434>; ‘Captivity Operation in Shebaa’ (in Arabic), Al Moqawama, 7 October 2000, <https://video.moqawama.org/details.php?cid=6&linkid=319> (last accessed 9 August 2022).

311 Geneva Call and the Program for the Study of International Organization(s), Armed Non-State Actors And Landmines, Volume I: A Global Report Profiling NSAs and their Use, Acquisition, Production, Transfer and Stockpiling of Landmines, 2005, pp 142–143, <https://www.genevacall.org/wp-content/uploads/2019/02/5.pdf> (last accessed 9 August 2022).

312 ‘Hezbollah and Syrian Army Ambush Over 175 Militants At Night In Otaybah’, WarClashes YouTube channel, 1 March 2014, https://www.youtube.com/watch?v=p-aToYUt-_w (last accessed 9 August 2022).

313 Mine cleaning by Hezbollah’s EEU. Footage from Al-Mayadeen TV’s documentary about the intervention of Hezbollah in Syria, ‘The Second Liberation: The End of ISIS 2017, Part 2’ (in Arabic), filmed by the MMU, Al Mayadeen Documentaries (YouTube channel), 4 August 2019, <https://www.youtube.com/watch?v> (last accessed 9 August 2022). IRL’s commander (Abu Mostafa) talking about providing food and aid to the civilians in Bloudan, ‘Bloudan in the Presence of War’, supra fn 225.

It is worth highlighting that the EEU's role in the period after the liberation of South Lebanon and the 2006 war was primarily focused on the clearance of landmines and cluster bombs left behind by Israeli troops. This is evidenced by Hezbollah's negotiation efforts to secure landmine maps from Israel in exchange for the release of detainees.³¹⁴ The motivation behind this swap deal lay in the fact that

[Hezbollah] lost a great number of explosive specialists who were martyred while fulfilling their duty to remove and disassemble landmines. This mission of disassembly and removal was in order to protect all civilians from any form of injury by these landmines.³¹⁵

This goes to show that Hezbollah does indeed possess the capacity and needed equipment³¹⁶ to conduct military demining, even though such clearance is usually undertaken within the framework of the national Lebanese mine-action efforts. Hezbollah has also been involved in mine risk education and victim assistance through affiliated organizations such as the Islamic Health Committee and the Welfare Association for the Care of the Injured and Disabled of the War (Al-Jarha Foundation).³¹⁷

9. DETENTION AND ADMINISTRATION OF JUSTICE

A. DETENTION

Common Article 3 of the 1949 Geneva Conventions, Articles 4 and 5 of AP II, as well as customary IHL provide numerous rules concerning the treatment of persons in detention, notably the prohibition of ill-treatment, the provision of food and water and of safeguards with regards to health and hygiene. Generally, persons deprived of their liberty are 'entitled to respect for their person, honour and convictions and religious practice' and 'shall in all circumstances be treated humanely, without any adverse distinction'.³¹⁸ ICRC access to persons deprived of their liberty is mandatory only in the context of IACs and, as such, is not an obligation for ANSAs. In the context of a NIAC, the ICRC 'may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families'.³¹⁹ Persons

314 'Hezbollah Hands Israeli Landmine Maps to the Lebanese Army', Kuwait News Agency, 6 February 2004, <https://www.kuna.net.kw/ArticleDetails.aspx?id=1414320&language=en> (last accessed 9 August 2022).

315 Interview with former military officer in Hezbollah's EEU, 17 January 2022.

316 '[P]ersonal protection equipment recovered at accident sites indicates that the group has quite professional equipment and could be expected to perform a relatively professional job'. Geneva Call and the Program for the Study of International Organization(s), Armed Non-State Actors and Landmines, Volume II, *supra* fn 294, p 92.

317 *Ibid*, p 77.

318 Art 4, AP II.

319 Rule 124, ICRC CIHL Database, *supra* fn 90.

deprived of their liberty in relation to a NIAC must be released as soon as the reasons for their detention cease to exist.³²⁰

In the same spirit, Islam was very strict with regards to the protection of captives during battle and beyond. To illustrate this, one of the most popular stories in the Shiite ideology revolves around the treatment of detainees, namely through Imam Ali's last instruction to his son Imam al-Hassan. When the latter complained about his father's request to treat the enemy captive with kindness, Imam Ali responded:

Yes, my son, we are the people of a household [meaning a people of high morals]. We do not exceed the sinner's sin except in generosity, pardon, mercy and compassion ... My right is upon you, so feed him, my son, from what you eat, and give him from what you drink, and do not tie his foot and do not chain his hand.³²¹

This position is reinforced by Khamenei's fatwa that commands:

[P]risoners must be dealt with in accordance with Sharia Law and Islamic morals. Therefore, it is not permissible to kill prisoners, nor wound or torture them, nor perform any act that leads to hurting or humiliating them or causing them harm.³²²

Another fatwa issued by Khamenei further elaborates the prohibition of a fighter determining the fate of the prisoner he captures. The decision regarding 'the fate of the prisoners of war rests with the Islamic ruler and Muslims as individuals do not have such powers'.³²³ This fatwa reflects what has been commanded by Ali ibn Hussein (al-Sajjad), the fourth Shiite Imam: 'If you take a prisoner who is not able to walk and you do not have a carriage to carry him, then allow him to go and do not kill him; you do not know what is the command of the Imam [meaning himself as the Islamic ruler] about him'.³²⁴

When it comes to the detention of women, Islam commands respect for women's honour and converges with the principles of international law,³²⁵ according to which women must be detained separately from men, unless required for the preservation of the family unit, and where

320 Rule 128, *ibid*.

321 Sheikh Muhammad Baqir al-Majlisi, *Bihar al-Anwaar*, vol 42, pp 287-288.

322 Jihadi Fatwas, *supra* fn 86, p 25.

323 'Q 1044: Is it permissible for a Muslim to take possession of any non-Muslim person whether kitābī or non-kitābī man or woman, in a non-Muslim country or in an Islamic one?', The office of the Supreme Leader. <https://www.leader.ir/en/book/23?sn=5200> (last accessed 9 August 2022).

324 Al-Kulayni, *Al-Kafi* (Fru' al-Kafi), *supra* fn 104, p 124.

325 Rule 119, ICRC CIHL Database, *supra* fn 90: 'Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.'

special care is dedicated to postpartum women and mothers of young children.³²⁶ This said, Hezbollah has reportedly never taken female detainees and that mainly for religious and moral reasons rather than legal grounds.³²⁷

Bearing the Islamic standpoint in mind, and in order to understand Hezbollah's practice as it relates to detention, it is important to consider the movement's nature as well as its evolution throughout the different conflicts to which it was party. A contextualized analysis therefore imposes itself to pinpoint Hezbollah's conduct in three main situations: 1) The Israeli occupation of Lebanon (1982–2000) where Hezbollah had to face the Israeli occupation forces and deal with Lebanese agents³²⁸ who had joined the enemy. 2) The period of Liberation, or al-Tahrir, (2000–present) during which Hezbollah has carried out a number of military operations to capture Israeli officers and soldiers,³²⁹ with the intention of reaching swap deals to release Lebanese and Arab people detained by Israel. During this period, Hezbollah has also dealt with agents who remained in Lebanon and those who sought to return. And finally, 3) Hezbollah's engagement in the Syrian conflict (starting in 2013) where Hezbollah and its allies captured Syrian opposition fighters. Similarly, Hezbollah fighters were also captured on the various fronts by the hostile forces, including the Israeli military, ISIS, Al-Nusra and several opposition armed groups in Syria.

The distinction between these phases lies mainly in the determination of the ultimate detaining party – meaning the detainees could be transferred to the authority of a different party from that which initially captured them – as well as the determination of the procedure to be followed during or after detention. With respect to the Israeli detainees, Hezbollah has always monopolized their detention and has never handed them over to the Lebanese authorities, even when, for instance, it was repeatedly prompted to do so by the Lebanese Government in the 2006 war.³³⁰ In this context, Hezbollah did not allow the ICRC to visit Israeli detainees in its custody, keeping all information about the prisoners under wraps.³³¹

As for the aforementioned Lebanese agents, Hezbollah used to detain and prosecute them in the absence of Lebanese state institutions in the territories then occupied by Israel. In some cases, Hezbollah resorted to releasing agents in exchange for the release of detainees from Khiam and

326 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 314.

327 Interview with Dr Hassan Jouni, 11 May 2022.

328 Mainly the SLA (Lahad Army), led by Antoine Lahad, Saad Haddad and Aqel Hashem.

329 The operations in Shebaa Farms in 2000 that led to the capture of three Israeli soldiers, the process of luring an Israeli Mossad officer and his arrest by Hezbollah and Operation al-Waed al-Sadeq (the Sincere Promise Operation) that led to the capture of two Israeli soldiers.

330 'The Minutes of the July 12 Ministerial Session – "March 14": the "Dagger" of Politics' (in Arabic), Al Akhbar, 13 July 2018, <https://al-akhbar.com/Politics/254085>.

331 'Hezbollah Rejects Red Cross Visits to Israeli Prisoners' (in Arabic), Al Jazeera, 23 April 2001, <https://www.aljazeera.net/news/arabic/2001>.

Ansar prisons.³³² During al-Tahrir, Hezbollah deviated from its previous practice, forbidding acts of revenge towards agents and their families and swiftly handing them over to the Lebanese authorities once caught for due process. Surprisingly, it even agreed to facilitate the return of families who had fled to Israel in 2000 out of fear that Hezbollah would retaliate against them through an agreement with the Free Patriotic Movement, sealing the political alliance between the two movements. The 2006 Mar Mikhael Agreement made reference to the ‘need to resolve the file of the missing from the Lebanese civil war’ and called upon the Lebanese residing in Israel³³³ to return to their homeland, highlighting that ‘all the political, security and livelihood circumstances surrounding the matter’ would be taken into account.³³⁴

In a 2019 public address Nasrallah appears to praise Hezbollah’s treatment of the agents during the liberation:

The French Resistance ...killed thousands. They did not even set up trials. I read in some research books that more than 10,000 French soldiers were charged with working for the Nazi army. They were killed without trials ...the resistance in 2000 did not kill a chicken. The people who surrendered, we handed them over to the Lebanese army and the Lebanese judiciary.³³⁵

Looking at the Syrian war, it is interesting to highlight that the different circumstances surrounding the capture of an opposition fighter can alter the result regarding the detaining power. For instance, those who surrender are entrusted to the Syrian Reconciliation Committee and the Russian Reconciliation Centre, which reputedly proceeds to settle legal matters, paving the way for the reintegration of ex-fighters in society.³³⁶ On the other hand, fighters captured in battle are detained and negotiated over in exchange for Hezbollah prisoners or those of its allies. This is evidenced by Nasrallah outlining the clauses negotiated between Hezbollah and ISIS in Aarsal: ‘We want all the captives and the corpses and bodies of our martyrs during these two

332 After the 1982 Israeli invasion of Lebanon, the Israeli army built a prison tent camp outside the southern village of Ansar. In addition, the Khiam detention centre was converted into a prisoner-of-war camp and used to hold captured fighters. Both were notorious, and several humanitarian organizations reported the use of torture and other serious human rights abuses at the facilities.

333 With the withdrawal of the Israeli occupation, members of the pro-Israeli Lahad army, or SLA, their families as well as collaborators and civilians working inside the Israeli settlements fled the country for fear of reprisals by Hezbollah. See J. Abi Ramia, ‘Life and Death of the South Lebanon Army (SLA)’, *L’Orient Today*, 19 September 2019, <https://today.lorientlejour.com/article/1187230/life-and-death-of-the-south-lebanon-army-sla.html>.

334 Memorandum of Understanding by Hezbollah and Free Patriotic Movement, 6 February 2006, section 6 – The Lebanese in Israel, <https://www.voltairenet.org/article163916.html> (last accessed 9 August 2022).

335 ‘Sayyed Nasrallah’s Full Speech Marking Late Sheikh Hussein Kourani’s One-Week Memorial Ceremony’, *Al Ahed News*, 20 September 2019, <https://english.alahednews.com.lb/49939/595>.

336 Ministry of Defence of the Russian Federation, Mission in Syria, ‘Coordination Centre for Reconciliation of Opposing Sides on the Territory of the Syrian Arab Republic Started its Work at the Hmeymim Airbase’, n.d., <https://syria.mil.ru/en/index/syria/news/more.htm> (last accessed 9 August 2022).

battles [the Badia battle and the Deir ez-Zor battle south of Raqqa]'.³³⁷ It is worth mentioning in this context that Hezbollah has at times negotiated agreements with enemy forces which have included conditions not only aiming to secure the release of journalists and clerics, including Christian monks and nuns, but also revealing the fate of the Lebanese soldiers captured in Aarsal: 'If they were alive, we want them. If they were martyrs, show us the burial locations. We want their remains.'³³⁸

Interestingly,

the widespread perception that ANSAs are unable to respect IHL due to the difficulties they face – both logistically and in terms of difficult operating and living conditions – is practically inaccurate. These groups have an interest in keeping the prisoners and the wounded. They have an interest in giving a good moral image of the armed group and these matters are certainly prevalent in the case of Hezbollah.³³⁹

Hezbollah has reportedly been keen on protecting detainees, taking care of their safety, health³⁴⁰ and wellbeing³⁴¹ to ensure prisoner exchange agreements can be concluded. If not for humanitarian reasons, then for strategic ones, since an alive and healthy soldier is inarguably more valuable than his remains.³⁴² In this vein, when asked about the potential detention by Hezbollah of a missing Israeli soldier, Nasrallah responded:

We wish! If we had him, believe me, we wouldn't keep him for a second whilst there are hundreds of our brothers and sisters in prisons; and you know there are women as well in

337 'Secrets of the Second Liberation, Episode 11, The Unveiling: The Battle of ISIS' (in Arabic), filmed by the MMU, Al Manar, 27 November 2020, supra fn 140.

338 'Sayyed Nasrallah's Full Speech After Liberating the Outskirts from Daesh August 28, 2017' Al Ahed News, <https://english.alahednews.com.lb/39978/593>.

339 Interview with Dr Hassan Jouni, 11 May 2022.

340 Military documentary showing the paramedics of the military medical aid unit as they provide medical care to the enemies who surrendered to Hezbollah fighters. 'Secrets of the Second Liberation, Episode 11, The Unveiling: The Battle of ISIS' (in Arabic), filmed by the MMU, Al Manar, 27 November 2020, supra fn 140.

341 Paramedics of the military medical aid unit providing medical care to ISIS fighters who surrendered to Hezbollah fighters, in addition to feeding them and their families. Footage from Al-Mayadeen TV's documentary about the intervention of Hezbollah in Syria, 'The Second Liberation: The End of ISIS 2017, Part 1' (in Arabic), filmed by the MMU, Al Mayadeen Documentaries (YouTube channel), 4 August 2019, https://www.youtube.com/watch?v=_6NAIZ4DiXU&t=6s (last accessed 9 August 2022).

342 In a deal mediated by a UN-appointed German intelligence officer, Israel freed Qantar and four other prisoners said by Hezbollah to be the last Lebanese captives in Israel. Meanwhile, Hezbollah handed the bodies of two Israeli soldiers to the Red Cross. A. Basma and A. Landau, 'Hezbollah Delivers Remains of Two Israeli Soldiers', Reuters, 16 July 2008, <https://www.reuters.com/article/us-israel-lebanon-prisoners-idUSL141960220080716>.

Khiam prison and no one asks about them. If we had the pilot, we wouldn't hesitate for a second to negotiate over him in exchange for our prisoners.³⁴³

However, despite Sharia law's position on the topic and Hezbollah's supposed strategic interests, reports have pointed to violations committed by Hezbollah in Syria, namely the arbitrary arrest of civilians during house searches³⁴⁴ as well as the severe maltreatment of detainees 'typically held for days outside the law ... before being transferred to [Syrian] security services'.³⁴⁵ Even with ongoing negotiations to retrieve the bodies of two of their fighters, Hezbollah was reportedly heavy-handed towards 'seriously injured armed group fighters ...[who] suffered beatings while under Hezbollah's control but were taken alive to the border and handed over to the [Lebanese Red Cross] for medical treatment'.³⁴⁶

B. FAIR TRIALS AND ADMINISTRATION OF JUSTICE

Under Common Article 3 of the 1949 Geneva Conventions and customary IHL, 'no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees'. Article 6 of AP II provides further details on fair trial guarantees and the administration of justice.

Before addressing Hezbollah's practice in this area, it is worth exploring the specificities related to the administration of justice from a Sharia-law perspective. Under the Islamic judicial system, rather than applying national laws, the judge or sheikh pronounces the verdict according to the various Sharia sources such as the Quran and the Sunnah, and the fatwas or advisory opinions and religious rulings issued by the religious authorities to which the opposing parties refer (in the case of Hezbollah, all the members consider Khamenei's fatwas as the reference). Moreover, the judge deals directly with the parties to conflict without the intermediary role of and support of a lawyer and is considered to 'implement the divine orders on everyone without fear or favouritism'.³⁴⁷ As for the Islamic trial procedures, these apply in the same way to everyone without discrimination based on gender, nationality or organizational position within Hezbollah for instance. These procedures might diverge from regular trial procedures. For example, the testimonies of the disputants should be written and signed before presenting them to the judge. In terms of witness testimony, Islamic principles require two male witnesses 'and if there are not two men then a man and two women ... so that if one of them errs the other can remind her'.³⁴⁸ Moreover, an investigation and verification committee assists the judge to reach a decision. On

343G. Tueni, 'Presidencies: An Interview with Al-Sayed Hassan Nasrallah', Part 1 (in Arabic). *supra* fn 24.

344 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/23/58, 18 July 2013, §68.

345 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* fn 152, §55.

346 *Ibid*, Annex III, §26.

347 Tayy, *The Islamic New and Old Law of War*, *supra* fn 13, p 334.

348 The Holy Qur'an, *supra* fn 81, Sura 2, Verse 282.

appeal, the case is reopened before the same judge,³⁴⁹ with the option to transfer the case to the central religious court.

Coming back to Hezbollah, the movement operates its own alternative religious justice system, commonly referred to as 'Hezbollah's judicial system', with highly educated Shiite scholars sitting as judges. The jurisdiction of Hezbollah's judicial body is optional and is often related to general matters or conflicts among Hezbollah members (such as a dispute over a sales contract); or between a Hezbollah member and another right owner, but also between disputants who are not affiliated with Hezbollah. This said, Hezbollah's judicial system does not replace the Lebanese courts' competency. It is a type of optional arbitration³⁵⁰ mechanism where the parties agree to settle their disputes based on Islamic Sharia law. In this context, the judges make no distinction between the status of disputants and apply the same rules to all parties, even high-ranking Hezbollah officials. This has led Hezbollah's judicial system to become quite popular as parties seeking justice feel the religious court would be less corrupt than the state's judicial system and hence more trustworthy.

In terms of internal accountability, it is worth mentioning that Hezbollah, like any other political party in Lebanon, has a written statute and bylaws. Moreover, the regulatory office which is part of Hezbollah's organizational structure receives complaints concerning the conduct of its members and ensures the adequate disciplinary measures are enforced. This internal accountability mechanism is open to all members regardless of their rank or position and no member is immune to these proceedings – in the spirit of Imam Ali's message to one of his high-ranking ambassadors when asked about the potential to avoid accountability.³⁵¹ In this vein, Hezbollah is perceived to be 'characterized by its high level of political awareness and religious morals and ethics. Therefore, there is a special body overseeing these moral issues within the party'.³⁵² One of the prominent cases that made the headlines was the expulsion of Nawaf al-Moussawi, a Hezbollah official, then Member of Parliament, after he threatened his daughter's former husband after he attacked her.³⁵³ This act was considered immoral and he was subsequently cut off, despite the significant political cost to Hezbollah of having lost a representative position in parliament.

349 'It is not permissible to plead to another judge after the ruling of the first judge, and it is not permissible for the other to overrule the ruling of the first unless the first ruling was not fulfilling the conditions, or his ruling was contrary to what was definitely proven from the Qur'an and Sunnah.' W. al-Khorassani, *Minhaj Al-Salehin*, vol 3, p 449.

350 The theory of arbitration law and the freedom to choose courts according to Art 762 of the Lebanese Code of Civil Procedure.

351 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 338.

352 Interview with Dr Hassan Jouni, 11 May 2022.

353 T. Heyman, 'Hezbollah Politician Offers Resignation After Shooting Claims', *The National*, 18 July 2019, <https://www.thenationalnews.com/world/mena/hezbollah-politician-offers-resignation-after-shooting-claims-1.887966?outputType=amp>.

In order to tackle specific security concerns, Hezbollah has resorted to the establishment of its own security apparatus which operates independently from its military wing and consists of two bodies: the external security unit and the internal security unit. The former undertakes security and intelligence missions which are linked to the intelligence war with Israel, while the latter, known within the Lebanese community as the Resistance's Security Service (RSS), tackles the safety and security of all military and civilian figures affiliated with Hezbollah. Moreover, the RSS deals with the issue of Hezbollah members cooperating with the enemy. Speaking of the RSS, Nasrallah explained that the 'very effective and strong anti-spy apparatus has helped deter the presence of CIA agents within Hezbollah but also helped expose false allegations of treason'.³⁵⁴

As a resistance movement, Hezbollah is notorious for the strict secrecy around its inner workings and military operations. This is one of the reasons the RSS has adopted rigorous procedures in its security zones which totally prohibit information gathering in the shape of interviews and the capturing of pictures and visuals unless conducted by the Lebanese authorities or the Lebanese Army. This has led to several instances of arrest of foreign journalists and even a French politician caught taking photographs in the vicinity of Nasrallah's residence.³⁵⁵ An official statement was later issued to justify this: 'Hezbollah has information about Israeli [plans] to target prominent figures within the movement [making them] really attentive and careful of any suspicious movements'.³⁵⁶ With this in mind, the RSS implements tedious background checks on the identity of persons in their custody and conducts thorough investigations.³⁵⁷ In case of doubt or evidence of treason, suspects are handed over to the Lebanese authorities for prosecution. Otherwise, they are freed. This arrest and investigation process has been a source of criticism towards Hezbollah, which has been accused of illegal detention.³⁵⁸ In this detention setting, no family visits or contact with ICRC representatives have been allowed.

Another interesting aspect worth analysing is Hezbollah's conduct towards members or leaders of the resistance who have been proven to have cooperated with the enemy, especially given that Hezbollah does not hand them over to the Lebanese authorities. Although it is not entirely clear how the movement deals with prisoners from within its ranks, Nasrallah pointed out in one of his

354 'Secretary-General of Hezbollah: CIA agents Among us is a Real Security Achievement for the Resistance, and we Will Strengthen Our Immunity More Than Ever' (in Arabic), Al Moqawama, 25 June 2011, <https://www.moqawama.org/essaydetails.php?eid=21049&cid=199>.

355 'He was arrested at my home entrance with a camera, and he was filming there.' 'A Press Conference for His Eminence Sayyed Hassan Nasrallah 5/8/2008', Media Relations in Hezbollah, <https://mediarelations-lb.org/post.php?id=6424> (last accessed 9 August 2022).

356 A statement issued by the media relations of Hezbollah (in Arabic), General Coordinator of Canadian Lebanese Institutions, 27 April 2008, <http://www.10452lccc.com/a.daily%20news08/arabic.april28.08.htm> (last accessed 9 August 2022).

357 RSS Commanders during investigations with ISIS captives. Footage from 'Secrets of the Second Liberation, Episode 11', supra fn 140.

358 'Journalists Were Arrested for 6 Hours...A Wave of Criticism Against Hezbollah in Lebanon' (in Arabic), Al Arabiya, 29 July 2021, <https://www.alarabiya.net/arab-and-world/2021/06/29>.

speached that they do not retaliate or otherwise punish them, despite the perception that ‘executing one single traitor would deter hundreds from the thought of treason’.³⁵⁹

On another note, it is worth mentioning that the RSS does not hold the authority to infringe on the competencies and powers of the Lebanese security bodies. Hence, they are not authorized by Hezbollah to intervene in regular criminal activity, for instance investigating cases of murder, theft or drug abuse etc.

10. THE SPECIAL PROTECTION OF CERTAIN OBJECTS, SUCH AS CULTURAL PROPERTY

Under customary IHL, each party must respect and protect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.³⁶⁰ The use of cultural property for purposes which are likely to expose it to destruction or damage is prohibited, subject again to imperative military necessity.³⁶¹ Destruction of or wilful damage to cultural property is prohibited. Parties are also obliged to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property.³⁶² These rules are contained to a large extent in Article 4 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, a provision applicable to both IACs and NIACs.

Similarly, the various Sharia law sources value and protect environmental and cultural heritage both in times of peace and war. In this context, Islam considered cultural property in its tangible (cultural heritage sites, monuments and places of worship³⁶³) and intangible forms (literature, art and sciences, also known as worldly sciences in Islam).³⁶⁴ Interestingly, tangible cultural heritage was often used to teach Muslims that only Allah is eternal. These ancient sites and objects provide evidence of the mortality of humans and the immortality of God. In this context, Imam Ali wrote to his son: ‘And remind your heart of what has happened to those who were before you and to your ancestors, walk through the path they followed and what they have left

359 H. Fadlallah, ‘The Principle of Retribution’ (in Arabic), Al Akhbar, 13 May 2015, <https://al-akhbar.com/Opinion/20704>.

360 Rule 38, ICRC CIHL Database, supra fn 90.

361 Rule 39, *ibid*.

362 Rule 40, *ibid*.

363 M. Rahmany and J. Zerondei, ‘The Role of Islamic Principles and Teachings in the Development of International Humanitarian Law’, in *War and its Ethical Constraints*, supra fn 126, p 118.

364 Tayy, *The Islamic New and Old Law of War*, supra fn 13, p 304.

behind of effects and look what have they done.’³⁶⁵ Additionally, Islam gave importance and respect to the social customs and norms of the different cultures the call to Islam had reached.³⁶⁶

In terms of the protection and preservation of cultural property during armed conflicts, two main aspects should be considered. First, Sharia law strictly prohibits destruction and damage in the land and environment (*al-fasḫ fi al-ard*). This is derived from the concept of aggression in combat which exceeds the proper bounds and limits, thus causing intentional indiscriminate destruction – an act rejected in Islam:³⁶⁷ ‘Fight in the cause of God those who fight you but do not transgress limits; for God loveth not transgressors.’³⁶⁸ Moreover, as previously outlined, civilian property is protected under Sharia law as long as it is not used for military purposes and the same reasoning applies to cultural property, where necessity commands the rule.³⁶⁹ This is confirmed in one of Khamenei’s religious rulings: ‘It is not permissible to demolish homes or bulldoze orchards in the areas of operations, unless there is a security and military necessity for that and under the order of the concerned authorities, with compensation and guarantee of their rights.’³⁷⁰ In this vein, Hezbollah’s position on the topic can be deduced from its official statements denouncing and condemning the targeting of historical Islamic places of worship, such as the attack on Medina³⁷¹ or the Shiite religious shrines in Iraq,³⁷² as well as the targeting of Christian churches in Tanta and Alexandria.³⁷³

Looking at Hezbollah’s perception of cultural heritage sites in Israel and Syria, one of the reasons invoked for their apparent protection has been linked, in the case of the former, to ‘Hezbollah

365 Ibid, p 303.

366 V. Arnal, ‘Destructive Trends in Contemporary Armed Conflicts and the Overlooked Aspect of Intangible Cultural Heritage: A Critical Comparison of the Protection of Cultural Heritage Under IHL and the Islamic law of Armed Conflict’, IRRC 914, December 2021, https://international-review.icrc.org/articles/protection-of-cultural-heritage-under-ihl-and-islamic-law-of-armed-conflict-914#footnoteref63_mjplbp3 (last accessed 9 August 2022).

367 Ibid.

368 The Holy Qur'an, supra fn 81, Sura 2, Verse 190.

369 M. Fany, ‘The Laws of Civilian Objects in Islam’, in War and its Ethical Constraints, supra fn 126, pp 420–421.

370 Jihadi Fatwas, supra fn 86, p 36.

371 Hezbollah Condemns the Suicide Bombings in the Area Around the Prophet’s Mosque and Qatif: The World is Facing the Test of Acting in Solidarity Against Terrorism’ (in Arabic), Al Ahed News, 4 July 2016, <https://archive.alahednews.com.lb/details.php?id=127068>.

372 ‘Hezbollah Condemns the Crime Committed by the Terrorists in the Shrine of Sayyid Muhammad bin Ali al-Hadi (PBUH) in Balad District in Iraq’, Al Ahed News, 8 July 2016, <https://archive.alahednews.com.lb/details.php?id=127178>.

373 ‘Hezbollah Condemns the Targeting of Egypt’s Churches and Calls on Everyone to Unite in a True Alliance to Confront the Terrorists and Their Sponsors’, Al Ahed News, 9 April 2017, <https://archive.alahednews.com.lb/details.php?id=136897>.

does not target cultural property and religious sites. For instance, it considers that cultural sites in Israel do not belong to Israel, but are rather those of the Palestinian people and all of humanity . Therefore, the Party [of God] does not target them.’³⁷⁴ Moreover, it has been said to be

known that the resistance has protected the cultural sites in its areas of control in Lebanon and Syria, for instance in the case of the ancient churches in Maaloula, Sednaya, Hama, Homs and Aleppo, in addition to the antiquities. This was not only limited to [their] protection [from attack], but also extended to restoring the old churches and sites entered.³⁷⁵

According to Dr Hassan Jouni, this willingness to protect cultural property can be attributed to the attachment of Shiites to their cultural heritage, particularly when it comes to the sanctity of their shrines. Hence, Hezbollah understands the sacredness of such places of worship and offers the same respect to those of others. Finally, Hezbollah cooperates with the ICRC and has a specialized team which follows IHL/IHRL and developments and is said to ‘include specialists in the field of cultural property protection’.³⁷⁶



While the research did not result in the identification of allegations or reports of Hezbollah targeting cultural property, some doubts remain concerning its potential use of cultural heritage sites for military purposes, for instance in the case of the Aleppo Citadel,³⁷⁷ because of its strategic

374 Interview with Dr Hassan Jouni, 11 May 2022.

375 Ibid.

376 Ibid.

377 ‘In the Video, the Hezbollah Flag Flies Over the Aleppo Citadel’ (in Arabic), Lebanon 24, 10 December 2016, <https://www.lebanon24.com/news/241231>.

position overlooking the city, and the operations carried out by Hezbollah against the Israeli occupation forces in the Beaufort Castle (Chateau de Beaufort),³⁷⁸ in South Lebanon.

Environmentally speaking, Islamic philosophy supposes that the land and earth are for God, and the Almighty made humans his successors. This is based on the Quranic verse: ‘Behold thy Lord said to the angels: “I will create a vicegerent on earth.”’³⁷⁹ However, the arrogance of humans is also understood to lead them to wars: ‘When he turns his back his aim everywhere is to spread mischief through the earth and destroy crops and cattle. But God loveth not mischief.’³⁸⁰ It is therefore impossible to deny the priority Islam gave to the preservation of the natural environment, prohibiting its destruction ‘due to the damage it would inflict on all living beings’.³⁸¹ Moreover, ‘there are specific instructions prohibiting damage to parts of the natural environment. An example is Prophet Muhammad’s prohibition of cutting down trees except those that block people from engaging in fighting.’³⁸² In one instance reported by *Al Akhbar* newspaper, a Hezbollah officer was quoted as recounting that the fighters had to delay their retreat as a result of their ‘commitment to the religious rules about the preservation of the environment and their insistence on putting out the fire [which had been triggered by their own rocket launch]’.³⁸³

378 ‘Operation Beaufort Arnon’ (in Arabic), Al Moqawama, 21 October 1997, <https://video.moqawama.org/details.php?cid=6&linkid=310>.

379 The Holy Qur’an, supra fn 81, Sura 2, Verse 30.

380 Ibid, Sura 2, Verse 205.

381 Tayy, The Islamic New and Old Law of War, supra fn 13, p 306.

382 A. Al-Dawoody and S. Gale, ‘Protecting the Environment During Armed Conflict: IHL and Islamic Law’, Humanitarian Law and Policy blog, ICRC, 3 June 2021, <https://blogs.icrc.org/law-and-policy/2021/06/03/protecting-environment-armed-conflict-ihl-islamic-law/> (last accessed 9 August 2022).

383 I. Bisher, ‘The Morals of the Resistance Put Out the “Flame” Twice’ (in Arabic), Al Akhbar, 21 August 2021, <https://al-akhbar.com/Opinion/314679>.

CONCLUSIONS

In light of the analysis conducted through this case study, a series of conclusions can be drawn to elucidate Hezbollah's understanding of and position vis à vis international law:

- Despite Hezbollah's familiarity with IHL and IHRL norms, the movement overwhelmingly refers to these frameworks to condemn violations by opposing actors, namely states such as Israel.
- When it comes to its own moral and ethical compass, Hezbollah adheres to Islamic Sharia and the rulings of the Wali al-Fakih to determine its conduct both in times of peace and war.
- Although Sharia law and IHL converge in the protection they offer to fighters and civilians, the main differences which surfaced in this case study revolve around the application of the principle of reciprocity. In this sense, IHL/IHRL norms which converge with Sharia law are accepted as long as they are respected by the opponent. On the other hand, what is regarded as a violation of IHL may be acceptable under Sharia law, as is the case with sieging and enslavement. However, there are ways to comply with IHL through the conclusion of agreements between the warring parties, an approach which was often adopted by Hezbollah.
- Hezbollah seems to be aware of these differences and is clearly inclined to follow Islamic Sharia.
- This said, there are instances where Hezbollah has shown readiness to take on obligations beyond those imposed by Islamic rules of war, provided they are deemed to benefit Muslims.

In light of Hezbollah's religious nature and its ambition to comply in word and deed with Islamic law, further examinations of two important aspects could be carried out based on this case study:

- A comparative analysis of the differences and similarities between IHL principles and the ethics of war in Islamic Sharia according to the Shiite school of thought - which at times differs from the Sunni school of thought.
- A subsequent exploration of how compliance with IHL/IHRL could be strengthened from a religious perspective through the use of religious instruments and methodologies leading to the issuance of religious rulings, namely within the Shiite madhhab.

ANNEXE

Map of Lebanon



Map 4282 United Nations
January 2010

Department of Field Support
Cartographic Section

SELECTED REFERENCES

Center of Civilization for the Development of Islamic thought, *Islam and International Humanitarian Law: Comparative Studies*, Beirut, 2017

---, *War and its Ethical Constraints: Comparative Studies Between Islam Fiqh and Humanitarian Law*, 2018.

Geneva Call and the Program for the Study of International Organisation(s), *Armed Non-State Actors And Landmines, Volume II: A Global Report of NSA Mine Action*, 2006, <https://www.genevacall.org/wp-content/uploads/2019/02/2.pdf> (last accessed 9 August 2022).

Human Rights Watch, *Why They Died: Civilian Casualties in Lebanon During the 2006 War*, 5 September 2007, <https://www.hrw.org/sites/default/files/reports/lebanon0907.pdf> (last accessed 9 August 2022).

--- *Civilians under Assault: Hezbollah's Rocket Attacks on Israel in the 2006 War*, 28 August 2007, <https://www.hrw.org/sites/default/files/reports/iopt0807.pdf> (last accessed 9 August 2022).

Tayy, M., *The Islamic New and Old Law of War*, Centre of Civilization for the Development of Islamic Thought, 2017.

UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN doc A/HRC/24/46, 16 August 2013.

UN Security Council, *Children and Armed Conflict in the Syrian Arab Republic: Report of the Secretary-General*, UN doc S/2018/969, 30 Oct 2018.