The Use and Abuse of Self-Defence in International Law: The Israel–Hezbollah Conflict as a Case Study

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Well, they had been attacked. They were responding . . . The fact was that Israel was subject to a military threat from Hezbollah on a continuing basis, Hezbollah had committed an act of aggression, and Israel was acting in its own self-defence – and if reacting in its own self-defence meant defeating the enemy, that was perfectly legitimate under international law and, frankly, under good politics.

JOHN BOLTON, US Ambassador to the UN during the Lebanon crisis

1 INTRODUCTION

They say the “truth” (or “al-haq” as the Arabs like to say), is usually the first casualty of war. And so it was with the Israel–Hezbollah conflict that caught the world’s attention in the summer of 2006. As the editors of the Yearbook promised its readers in volume 11:

The UN’s inaction, backed, regrettably, by the US and Britain, has led to the destruction of the Lebanese infrastructure and the displacement of some 900,000 Lebanese from the south of the country. Although the UN has been slow to act a resolution has finally been passed, resolution 1701 . . . Despite the initial reluctance of some European countries to send troops, this is now being built up. A fragile peace remains. The action taken by Israel is a subject which will certainly be a dominant feature in next year’s volume.

This article assesses the factual situation that led to the conflict and compares Israel’s recourse to armed force with the principles and norms of international law as set out in the Charter of the United Nations (hereafter “UN Charter”), the jurisprudence of the International Court of Justice (hereafter “ICJ”), and the writings

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2 See the preface to the Yearbook of Islamic and Middle Eastern Law, Vol 11 (2004–5) p. xi.
of legal scholars. In the following pages, the question of what amounts to an “armed attack” entitling a State which has been attacked to respond with lawful force in self-defence in accordance with Article 51 of the UN Charter is examined in some detail. This article will not, however, address the extent to which Israel’s actions in Lebanon amount to a breach of international humanitarian law and what possible consequences might arise from this conclusion. Rather, it will focus on the rules regarding the recourse to armed force. Nor will it examine the relationship between the Lebanese Government and Hezbollah. Suffice it to say that the international responsibility of a state will be engaged if it knowingly allows its territory to be used to attack another state. In this respect, the Lebanese government has denied all responsibility.

It is submitted that Israel’s bombardment, blockade and subsequent invasion of southern Lebanon could not be excused as an act of self-defence under international law, as these actions were unnecessary and disproportionate. Rather, it would seem that Israel’s actions, being both offensive and punitive, would be more accurately described as acts of aggression contrary to the purposes and principles of the UN Charter and customary international law. This article will further argue that even if Israel had invoked the “needle-prick” or “accumulation of events” theory of self-defence, which it has done in the past and which has been considered on occasion by the ICJ, the actions of Israel’s Armed Forces would not be justified. Nor, for that matter, would Israel’s actions in the Lebanon meet the Caroline test of necessity which will be examined in more depth below. Of course, this is not to say that Israel does

3 A similar article, on which some of this material is based, was published by the author in Vol 14 of Human Rights Brief (American University, Washington DC, 2006). See “Israel, Hezbollah and the Conflict in Lebanon: An Act of Aggression or Self-Defence?” which is available online at: http://www.wcl.american.edu/hrbrief/14/1kattan.pdf?rd=1.


5 Although there are Hezbollah MPs in the Lebanese Parliament, this is not sufficient to establish state responsibility. See Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Reports (2007), para. 406 where the ICJ held that the acts complained of have to be attributable to the state. See also, Art 8 of the Draft Articles on State Responsibility, which the ICJ held to be a rule of customary international law, reproduced in Crawford, J., The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge: Cambridge University Press, 2002), p. 110.

6 See the Corfu Channel Case (U.K. v. Albania), Judgment-Merits, 9 April, ICJ Reports (1949), at p. 22.

7 See the letters sent from the Chargé d’affaires of the Permanent Mission of Lebanon to the UN Secretary-General and the President of the Security Council, signed by Caroline Ziade, UN doc. A/60/941 S/2006/529, 17 July 2006. (“The Lebanese Government announced from the first instance when the events broke, that it had no prior knowledge of what happened. Nor did it endorse the operation carried out by Hizbollah, which led to the abduction of the two Israeli soldiers.”)

8 See, e.g. Blum, Y.Z., “State Response to Acts of Terrorism” (1976), 19 German Yearbook of International Law, pp. 223–237 (where a former Israeli Ambassador to the UN argues in favour of the needle-prick theory of self-defence, i.e. that a consistent pattern of terrorist attacks may cumulatively amount to an armed attack for the purposes of Article 51 of the UN Charter).