

To the Human Rights Council of the United Nations – June 2007 session

Objects

- An open letter and request for re-opening investigations into the weapons utilized by the Israeli Defence Forces in the war in Lebanon in the summer of 2006 and in the attacks on Gaza in 2006
- and a request to establish 2 panels of independent international, Lebanese and Palestinian medical doctors and scientists - one with the task of reconsidering claims that illegal weapons were used and
- the other with the task of performing field testing for the assessment of genotoxic and other health risks in the south of Lebanon.

Introductory remarks

The UN Commission of Inquiry into Human Rights violations in Lebanon was established on August 11 as “***an independent body with the mandate to establish facts, not a court nor a judiciary body which aimed to assess a crime***”.

The UN Commission for Human Rights in its report on Lebanon (1) observed that “*The policy (of the IDF*) of assimilating each person to a potential enemy had caused violations of human rights, that amounted to collective punishment*”. That the IDF exercised “*Indiscriminate use of force against Lebanese civilians*” and that “*Human rights had not been respected*”. Moreover that “*the use of some weapons was illegal, such as the use of cluster munitions..... excessive and not justified by military necessity, and went beyond the arguments of proportionality. They were a flagrant violation of international conventions*”

The Commission, in its closing report in November 2006, has thus made a severe judgment about the IDF breaches of the international conventions, the illegal use of some ammunitions and the enforcement of collective punishment on civilians. Nonetheless, it also stated (point 24°) that “***None of the weapons known to have been used by IDF are illegal per se under international humanitarian law***”. And that only “*the way in which the weapons were used in some cases transgresses the law. The Commission addressed more specifically the use of cluster munitions*” and suggested starting a procedure for the banning of what are in effect mines (“*...promote urgent action to include cluster munitions to the list of weapons banned under international law*”).

Although the suggested action to ban cluster munitions is a welcome step and it fosters hopes that something can be done to enforce the current international legislation on “rules of war”, and that the calls in 2001 and 2003 for a moratorium by the Euro Parliament will be immediately be transformed in regulations.

Nonetheless the overall lack of conclusions on the facts that emerged about the “other” weapons utilized, accompanied by the statement that in itself sounds conclusive that “***None of the weapons known to have been used by IDF are illegal per se***” marks a worrying misunderstanding, or belittles the extensive and possible “***newly developed or modified weapons/ammunitions***”. The report falls short in answering the very concerns that gave rise to the mandate of the Commission.

Moreover, no attention was devoted to the abidance, or omission of, of the respect for the humanitarian law rule which requires that weapons be evaluated prior to use in combat regarding their “legality” in light of existing norms. The International Court of Justice repeated this in its “nuclear” case.

The 2006 war in Lebanon and the summer campaign in Gaza for which the Commission was

instituted, were characterized, if not uniquely in this century and certainly in very extensive ways, by the novelty and the type of casualties reported by civilians. This implied the need to search the facts in depth, to document the novelty of the agents producing them and the weapons/ammunitions that were utilized.

In the report of the Commission, the allegation from different and numerous witnesses are mentioned (point 247°) : "*allegations were made concerning the use by the IDF of a range of weapons or, more accurately, ammunition which **might be considered illegal**. Allegations were made in relation to the use of depleted uranium, white phosphorous and fuel air explosives. Some witnesses also brought to the Commission's attention injuries they described as abnormal, e.g. completely charred but intact corpses, or human bodies that apparently simply vaporized*". In addressing these issues in the specific sections of the report, it is evident that different relevance and weight was given by the Commission to statements by the IDF in comparison with the reports from doctors, scientists and people in Lebanon and even UNIFIL personnel. Thus the commission concludes, in the face of disagreement among witnesses, and in disregard of recorded facts and material evidence, that (point 24°) "*None of the weapons known to have been used by the IDF are illegal per se under international humanitarian law* ".

Grounds for questioning the present conclusions of the inquiry and for asking for its reopening

There are two grounds for our questioning the above mentioned conclusions:

- the unequal value given to different sources of information
- and the lack of sufficient collection of facts.

We ourselves, not lawyers but scientists and doctors, find the determination to raise these issues in front of the Council since, among all other concerns in terms of the respect of international laws, protocols and recommendations, these faults lead, as a consequence, to a lack of concern about monitoring the risks involved in the exposure of the population to different contaminating/toxic agents on the future health of the population. Neither are adequate long term studies encouraged. Yet, from the standpoint of doctors, scientists and of the human rights of the populations, these are the essential issues.

In the detail of the report about the use of these weapons that the Commission itself identifies as illegal munitions, few excerpts illustrate the grounds for our questioning better than this;

1 About the use of white phosphorus

(point 259°), this was reported "*at Marwaheen on 16 July during the gathering of the civilians in the village prior to their evacuation under UNIFIL supervision. This was witnessed by civilians concerned and interviewed by the Commission. UNIFIL officers on the scene also confirmed it.... 12 white phosphorous rounds were fired directly at the civilians*". Moreover (point 261°) "*on 23 October it was reported in The Guardian newspaper that the Government of Israel had "admitted that it used ... phosphorous weapons in its attacks against targets during its month-long war in Lebanon this summer". The Israeli admission was made by Minister Jacob Edery, who was questioned on the subject by Zahava Gal-On, a member of the Knesset. Mr. Edery said that "[T]he IDF holds phosphorous munitions in different forms. The IDF made use of phosphorous shells during the war against Hezbollah in attacks against military targets in open ground*".

One would have thought that the unanimous reporting by the civilians and UNIFIL, and of improper use made by an international paper (as well as Haaretz) of WP ammunitions, would have at least challenged the credit to be given to the statement. given by a party with an

obvious conflict of interest ie Minister Edery. It was plainly wrong for the Commission to deny any breach of the rules given that the WP was aimed as a weapon at the population. This must be clarified by further investigation and deliberation.

2 About the use of fuel - air explosives

The IDF eventually admitted the use of such weapons but only as "carpet countermines". Notwithstanding other evidence and the early statements of Lebanese doctors about the clinical features of the civilian casualties which were characteristic of exposure to the blast and fireball of fuel air weapons, the Commission again accepted as conclusive the above IDF statement.

The IDF did not accommodate the other data and/or required further investigation of the issues. On the use of fuel - air ammunition/bomb/missiles, there was widespread information in Lebanon and abroad due to the fact that suspicion of their use was reported by doctors in July 2006 to the Lebanese Council of Physicians and to the Lebanese Government. The doctor's reports in the press, on television in Lebanon, in the Arab world and in Europe, showed the unusual features of the corpses of civilian victims who had been attacked while traveling in the open by bombs/missiles delivered by planes. We question how this evidence could have escaped further investigation by the Commission. We suggest, again on the basis of the later consolidation of these reports, that the Council advises further analysis of the 'incident' reported at the Ramhallie bridge, near Sidon and of another similar event in nearby Tira. Witness statements and clinical/technical documentation for both scenarios are available on demand from the Council, if the investigation is to be reopened, as we here demand.

3 **Small bombs, 'DIME' and intelligent-targeted weapons** are all devices for the "*reduction of collateral damage*" which the Israeli Air Force Major General Yitzhak Ben-Israel described as being designed "*to allow those targeted to be hit without causing damage to bystanders or other persons*". "*Small Diameter Bomb, modified to incorporate a composite case and Dense Inert Metal Explosive (DIME) fill, offers the potential for precisely delivering a lethal blast against soft targets and dramatically reducing collateral damage*" (4). Although it was claimed that in summer 2006 "*The American version is still in a testing stage and had not been used on the battlefield at that time*" (5) its RPG (virtual) testing was admitted to have been funded by DARPA (6) in January 2005. It should be possible for the Commission to be informed or for it to find out if it was completed in the following year and a half ie before the IDF attacks, or if Israel deployed an "Israeli version" of this weapon type.

Pleas for the need to acquire the facts on this issue were brought to public attention by a number of war experienced doctors in the emergency and surgery departments in Lebanon and Gaza. They were themselves alerted to the frequency of inexplicable injuries without visible or Xray detectable fragments in the bodies and with clinical consequences of a kind not seen before. A journalistic investigation, with the support of scientific analysis, indicated that DIME type weapons were compatible with the cause of these wounds and deaths reported by doctors in Gaza (7). It is now possible to record that children in the area of Tira, Lebanon and old people rescuing their dead relatives were subjected to "targeted weapons" causing similar kinds of wounds. Given that, on this specific issue also, the Commission has unilaterally privileged the declaration of a party which has a conflict of interest, we ask that the Commission reopens the inquiry and establishes an independent and fresh panel to consider the verbal evidence and documentation available to it on the use of these weapons. Witness statements and clinical/technical documentation for these cases is available on demand from the Council if it is plain the investigation will be reopened, as we here demand.

The common denominator of all the above weapons is that they leave no traces visible by 'naked eye' or common instrumentation and it is impossible to identify exactly their use in an emergency ward situation. This makes more difficult to provide for the care of the wounded in this most extenuating circumstance. Exactly this fact, that these weapons do not leave

fragments on/in the victims' bodies means these weapons locates them outside established conventions of war (8). As a consequence of this characteristic, in order to demonstrate their utilization is needed the collection of data and facts of different nature and a methodology of the enquiry which needs to be scientifically and medically supported.

Another common denominator of these weapons is that there is no specific legislation on their use. This also implies that none of them is specifically banned. The lack of specific legislation is due either to their novelty (DIME, small bombs), to their modification (fuel air weapons), or to the fact they might have been used in different ways with relationship to their permitted usage (WP). Altogether they share a "limbo-like", grey and "unclassified" juridical status.

At the same time their illegality is recognized, based on the current conventions that in general ban all weapons that are not traceable in the victims, unless with complex analysis, and/or on the fact that their radius of action cannot be confined to a target, or by the chemical nature of their active agents.

Given the blurred confines of the legislation and the legality/illegality of the contested weapons, the recognition by the IDF of the use of fuel air weapons ONLY as carpet deminers, of white phosphorus ONLY against/over military installations, of 'intelligent' small bombs/missiles ONLY with the aim to reduce casualties, raises the suspicion of a convenient cover up for their presence in the battle fields and a way for making acceptable eventual "mistakes or extension in modalities of their usage" that would eventually justify reiteration of their usage.

We really would not want to see that an enquiry initiated to find the truth might turn around and become a way to make possible to name and justify the presence in war of a variety of illegal weapons, thus diluting the stringency of the Geneva conventions and of the convention for the control of chemical weapons and other WMD.

It is necessary to add that the use by the IDF in Gaza also of some of the above weapons has been denounced, and reports as well as witnesses are available in support. No data from Gaza were at the disposal of the Commission since John Dugard, the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories, who was charged by the Commission to undertake an urgent fact-finding mission. His attempt to carry out his "high-level fact-finding mission" and to travel to Beit Hanoun in the Gaza Strip, was not allowed by the Israeli authorities to make a field survey in Gaza. This fact goes without comment, and it is still not known to us if he managed to reach the location for a survey.

Talking about the final recommendation of the Commission

The Commission in its final report recommends further inquiry (2), states that "*The scientific research currently under way in Lebanon and abroad on the effects of certain weapons used during the conflict needs to be continued*" and suggests that "*The results will be decisive in the examination of the lawfulness of certain "new weapons" in the light of international humanitarian law. The Council should encourage these efforts and follow-up developments*"

The requests we pose to the Council are in general in agreement with these recommendations but we add some points and warnings, as detailed below.

Transparency- it is not mentioned in the report who are the entities responsible for the further research ie if they are independent from governments and political parties.

Methodology-It should be stated what kind of investigation tools are to be set on the ground and what is the programmed methodology for the acquisition of the data.

We are aware that researching is a generic substantive and we know, because of our

profession, that the methodology of data acquisition and their elaboration are critical points. Both have a direct relationship with the independence of the scientific team. We would appreciate and strongly suggest that the Council will consider these specific points and deliberate for a qualified research not only generically.

Enactment of Institutional responsibility - During all the time of the Israeli attacks in 2006 the fact is that the use of new weapons in both Gaza and Lebanon was denounced in formal letters to the local Institutions and reported publicly in the media by many doctors in both locations. These were the doctors that were receiving the dead and wounded victims. Official letters were written by Lebanese doctors to their Government and to the Order of surgeons of Lebanon and both the Lebanese and the Gaza doctors gave interviews to the press which obtained wide diffusion worldwide and were not contested. International scientists called for independent investigations based on these reports, and for production of a UN lead independent scientific investigation of the cases. We also attempted, as independent international scientific group, to obtain direct information from the Lebanese Government, from the responsible person at WHO in Lebanon and from the international referee, as to whether a scientific/medical commission was being put in place or was already at work. All the requests and approaches noted above went unanswered.

Some of the doctors mentioned above might have also been heard by the Commission but the reasons are unclear as to whether the specialist reports, if sought, were not taken in due consideration and was not established a joint analysis of the reports with a team of doctors and scientists, or at least none of this is mentioned in the final report. The denounces based on clinical evidences of the use of new weapons have thus not received technical attention and consequently a strategy for the protection of the population from eventual danger consequent from the use of these weapons was not recommended.

Conversely, the verbal declarations of the IDF were accepted at face value and integrated in the report as final conclusions.

There is now documentation and information collected through doctors, victims and people present at the site of the attacks showing new weapons were utilized in Gaza and in Lebanon.

Lack of further investigation about the denunciation of the extended use of novel weaponry that is from one side “unclassified” yet, and from the other side was directed against civil population could amount to a serious lack of accomplishment by the Governments and by the mission of the international Institutions of UN and poses on the forefront the issue of the relevance of International Institutions in regulating and directing the use of force in the world and of their potential to peacefully compel towards the respect of the present human rights and regulation of the conduct in war.

The environmental report from UNEP is the only “material” fact finding mission, that we are aware of, that was done in Lebanon. The data from this survey were all analyzed in one laboratory, the Spitz laboratory in Switzerland. In previous surveys by UNEP more than one laboratory was utilized. The methodological aspects of fact finding by the UNEP team were also criticized by independent scientists who produced reports on the uranium contamination in some locations in Lebanon (9).

Meanwhile, it has not been taken into consideration yet and is not mentioned as a concern in the final report that the concomitant presence of different contaminants in the environment can be traced from this time for their eventual effects in animals in the bombed areas and that methodologies of analysis for genotoxic effects are available and should be utilized to see if there is any effect of the environmental changes caused by war. At this point in time this is the most relevant concern in the protection of the population and for its right to health and care and it would be negligent not to take action in this direction.

Conclusions and Demands

To our knowledge, the use both in Gaza and in the area of Tire, Lebanon of Focused Lethality Munitions (FLM) using the [Dense Inert Metal Explosive \(DIME\)](#) (3) technology are indicated by doctors, witness and clinical data.

Moreover, there is clear evidence that "intelligent" weapons have been used selectively on children in both Gaza and Tire. It is irrelevant if this has occurred because of an intrinsic failure in the "intelligent" control of the delivery of the bomb in the field (failures in the experimentation) or if it was a deliberate testing of bombs of different intensity on unarmed people. These points are irrelevant to the conscience, to the law and to the victims. We also are aware of evidence from at least two different attacks near Sidon and Tire with death of civilians, induced by bombing in open spaces with fuel - air devices of high power.

We request the Council, at its next meeting in June 2007, to promote and organize immediately the continuation of the work of the Commission, in particular with two working groups to be established:

- A panel of independent (from Governments and military) international, Lebanese and Palestinian medical doctors and scientists with the task to reconsider, within the realm of their expertise, claims of the use of illegal weapons, by collecting and considering already acquired and additional scientific and medical evidence.

- A panel of international, Lebanese and Palestinian medical doctors, veterinarians and scientists with the task to perform field testing according to the recognized procedures for the assessment of genotoxic and other health risk in animals in the areas heavily bombed and destroyed in the south of Lebanon. These studies will help establish if it is a. necessary to issue warnings for the health of the children and the population b. to quarantine the regions at risk c. to activate an alerting system in the local medical structures which are presently unable to cope with a possible eventual later outbreak of health problems d. to design an epidemiological protocols for the future years and e. create a local culture for this kind of follow up.

We also support the recommendations already issued by the Commission to the Council, such as the request that "(d°)The Council should call for the mobilization of professional and technical expertise necessary to cope with the ecological disaster on the maritime environment on the Lebanese coast and beyond. In this context, it should be useful to engage the Barcelona Convention system covering the Mediterranean and the Regional Marine Pollution Emergency Response Centre for the Mediterranean based in Malta; and (e°) The Council should establish a follow-up procedure on the measures to be taken, notably for the rebuilding of Lebanon and above all reparations for victims among the Lebanese civilian population"

sincerely grateful for the attention

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for the
*newweapons working group**, May 23, 2007

*newweapons is an international group of scientists, doctors and information professionals,
based in Italy. www.newweapons.org

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REFERENCES

* editorial note

° points as numbered in the Commission report, November 2006

(1) Resolution of UNHR commission A/HRC/3/2, November 23, 2006 and press release
dec1, 2006 <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SODA-6W65A6?OpenDocument>

(2) “.....promote initiatives and call for the mobilization of the international community to assist Lebanon and its people; the Council should encourage the United Nations system (UNESCO, UNEP, UNHCR, UNICEF, WHO), and the Bretton Woods institutions in their multi-sectoral programmes and projects to promote and undertake precise and concrete actions, including with professional and technical expertise in the necessary reconstruction efforts (buildings, bridges, cleaning of areas affected by clusters, environment, archaeological sites (Byblos); and the Council should give careful attention to the fate of child victims.....”

(3) The DIME is produced within a SDB project of the AFRL with Federal US Government funding. It is managed by AFRL and AAC (integrating the technology within the Advanced Concept Technology Demonstration (ACTD) construct) located at Eglin AFB FL and by the SDB I contractor, Boeing, in St Louis, MO.

(4) <http://www.globalsecurity.org/military/systems/munitions/sdb-flm.htm>

(5) (<http://www.globalsecurity.org/military/systems/munitions/dime.htm>)

(6) DARPA- Defense Advanced Research Projects Agency is the central research and development organization for the [Department of Defense \(DoD\)](#)

(7) "Gaza. Inexplicable Wounds And New Weapons" edited by Flaviano Masella and Maurizio Torrealta, Rainews24, October 11, 2006

(8) Convention On Prohibitions Or Restrictions On The Use of Certain Conventional Weapons Which May Be Excessively Injurious Or To Have Indiscriminate Effects
[Protocol I. Protocol on Non-Detectable Fragments](#) "It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays." http://www.mineaction.org/docs/120_.asp#p1

(9) Reports from Drs. Busby, Kobeissi, Williams; " War Dust Uranium in Beirut" Rainews24, January 19, 2007 and KHIAM SOUTHERN LEBANONA BOMB'S ANATOMY By Flaviano Masella, Angelo Saso, Maurizio Torrealta, November 9, 2006.