



## Extraterritorial Obligations of the State to Uphold Economic, Social and Cultural Rights

### 9b. Military Destruction of the Jiyah Power Plant during the July 2006 War on Lebanon

**Country of victims:** Lebanon (primary), Syria (secondary)

**Source:** Rabie Wahba and Joseph Schechla, Housing and Land Rights Network-Habitat International Coalition, based on UN, international NGO and media reports.

**Signature:** 4 (cross-border issue).

**Obligations:** to respect and protect

**States breached their ETO:** Israel (primary), United States (secondary)

#### Description:

In the context of its war on Lebanon in the summer of 2006, Israeli forces brought about the destruction of approximately 70,000 homes and much of the country's civil infrastructure. On 15 July, Israeli fighter jets struck the Jiyah Power Station, resulting in (1) immense physical damage of the public facility, (2) denial of public access to energy (electricity), consequent loss and damage to property, and (3) grave environmental disaster.

The environmental consequences arose mainly from the spillage of fuel oil into the sea. This destruction has caused one of the world's greatest and most-costly economic and environmental recovery undertakings, exceeding \$200 million.<sup>1</sup> Initially estimated as comparable to that of the 1989 Valdez, Alaska slick, the estimated 12–15,000-ton<sup>2</sup> spill affected the marine environment, people and property along much of the Lebanese coastline, and contaminated the territorial waters and coast of at least two states (Lebanon and Syria)<sup>3</sup>, plus regional and international waters.

<sup>1</sup> The UN estimated that the harm to the Lebanese economy and cleaning up operations alone would be \$203 million. United Nations General Assembly, "Oil Slick on Lebanese shores," A/62/343, 24 October 2007, p. 7.

<sup>2</sup> Ministry of Environment, "الحالة في الشاطئ اللبناني بعد كارثة التلوث النفطي من جراء حرب تموز" [The Condition of Lebanese Beach after the Oil Pollution from the Conduct of the July War 2007], (Beirut: Ministry of Environment, Information Office, 30 May 2007), at: <http://www.oilspilllebanon.org/articles/june07.pdf>.

<sup>3</sup> Clean up efforts to remove the Valdez oil spill cost \$2 billion. Nimrod Halpern, "Lebanese oil slick three times bigger than Exxon Valdez leak," *Ha'aretz* (15 October 2006), at: <http://www.haaretz.com/hasen/pages/ShArtVty.jhtml?sw=cluster+bombs&itemNo=747008>. The Malta-based Regional Marine Pollution Emergency Response Centre (REMPEC) for the Mediterranean, advising the Lebanese government on the spill, confirmed "a very small quantity of tar balls" also had reached even Syria's northern coast. Richard Black, "Environmental 'crisis' in Lebanon," BBC News website (31 July 2006), at: <http://news.bbc.co.uk/2/hi/science/nature/5233358.stm>.

Furthermore, the damage resulted in depriving a large number of people of their sources of livelihood, especially those dependent upon fishing, tourism and industry affected by pollution and the electricity cuts. After the attack, Israeli jets deterred firemen from putting out the fire at the storage units, which continued for ten days. The Israeli Navy blockade prevented Lebanese and foreign officials from surveying the damage,<sup>4</sup> and Israel's continued bombing delayed the damage assessment and clean-up for four weeks.<sup>5</sup>

The Lebanese Ministry of Environment has contracted PROMAR Company to extract the free-floating oil around Fishermen's Wharf (Daliah) and al-Rawshah areas in Beirut. USAID contracted SEACOR Company for \$5 million to clean the coastline between Byblos and Anfah. Several international technical and relief agencies responded to the Jiyah attack, and the Swedish government provided one of the most ambitious efforts at treating the spill to restore the marine environment, the estimated cost of which was \$93 million.

### **Territorial HR analysis:**

#### *Israel:*

Article 23(g) of The Hague Convention IV concerning the laws and customs of war on land (1907) provides that destruction or seizure of the enemy's property, "unless such destruction or seizure be imperatively demanded by the necessities of war," is "specially prohibited." Article 25 prohibits "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings [that] are undefended..." Article 46 of The Hague Convention (1907) also sets forth that "private property...must be respected." Since the 1978 Beit El case, the High Court of Justice has ruled that the Hague Regulations (1907) are customary law, apply to states not actually party to the Convention and, therefore, automatically form part of municipal law and judiciable in Israel.<sup>6</sup>

Also relevant, Article 147 of the Fourth Geneva (Civilians) Convention provides that, "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" constitute a grave breach of the Convention. This status of legal obligation to prosecute and remedy violations committed by the state party's nationals and/or carried out in or from its jurisdiction or territory of effective control can be assured through common Article 1 of the Civilians Convention, calling on states party to "respect and ensure respect" for the Convention in all circumstances.

As party to the relevant human rights treaties that oblige Israel to respect, protect and fulfill the human rights violated in this case, Israel ratified both human rights Covenants in 1991, and is, thus, obligated to implement the covenanted rights in domestic law and ensure their judiciability to the extent constitutionally permissible and as soon as possible after ratification.

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<sup>4</sup> Dania Saadi, "Lebanon Oil Spill May Rival Exxon Valdez of 1989 (Update 1)," *Bloomberg*, (8 August 2006), at: <http://www.bloomberg.com/apps/news?pid=20601087&sid=apje8CwcPPSA&refer=home>.

<sup>5</sup> Wael Hmaidan, "Sands are running out for Lebanon's ecosystem," *The Guardian* (16 August 2006), at: <http://www.guardian.co.uk/society/2006/aug/16/guardiansocietysupplement.pollution>.

<sup>6</sup> High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al*, Piskei Din 33 (2).

The International Covenant on Civil and Political Rights (ICCPR), specifically in the articles 2.2 and 2.3, affirms that "each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."<sup>7</sup> With particular respect to ICCPR, these rights would include the right to life.

With respect to the Covenant on Economic, Social and Cultural Rights, without such an explicit legal domestication and adjudication article as in ICCPR, the obligation to domesticate the covenanted rights is explained in the Committee on Economic, Social and Cultural Rights (CESCR) General Comments No. 3 on "the nature of state obligations," and No. 9 on "domestic application of the Covenant," affirming these obligations of states party. With particular respect to rights enshrined in ICECR, a State party's obligations to respect, protect and fulfill the right to livelihood (Article 11) and health (Article 12) may be affected in such an act as Israel's destruction of the Jiyah Power Station.

By that act of wanton destruction, Israel also may have breached article 1.2, common to both Covenants, prohibiting the deprivation of a people of its means of subsistence, particularly for those losing their livelihood as a result of the Jiyah attack. For such breaches, the nonderogable right of a person to legal recognition and remedy before domestic tribunals,<sup>8</sup> would require the state party to adjudicate effectively the cases of victims raising claims in Israeli courts.

Article 7 of the Israeli Penal Code (1996) defines a "domestic offense" such that encompasses the attack on Jiyah.<sup>9</sup> Article 12 of the Penal Code sets forth that its provisions apply to domestic offenses and, in Article 16, provides that the "(a) Israeli penal law shall apply to foreign offences which Israel, by multilateral international conventions, has undertaken to punish even if they are committed by a person who is not an Israeli national or resident of Israel regardless of where they were committed."

Article 77 of the 1977 Penal Code provides for personal liability of perpetrators and monetary compensation for victims.

However, 5 and 5A of Israel's Civil Torts Law (State Liability) (5712/1952) may need to be amended to allow individuals who suffered harm as a result of unlawful or criminal behavior by State agents to receive reparation, including compensation.

#### *United States:*

The State is a High Contracting Party to The Hague Convention (1907), Geneva Civilians Convention (1949) and ICCPR. None of these treaties is domesticated with implementing legislation.

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<sup>7</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. for Electronic version:

<http://www1.umn.edu/humanrts/instate/b3ccpr.htm>

<sup>8</sup> See ICCPR, Article 18.

<sup>9</sup> Defining a domestic offense as (1) an offence committed, wholly or in part, in the territory of Israel; (2) any act preparatory to an offence, and any attempt to commit or to instigate another to commit an offence, and any conspiracy to commit an offence, done or made outside the territory of Israel, provided that the offence is intended to be committed in the territory of Israel wholly or in part.

The Alien Torts Act, however, empowers United States courts to hear civil claims of foreign citizens for injuries by actions in violation of the law of nations or a treaty to which the United States is party.

As a High Contracting Party of the Geneva Civilians Convention, the obligation of the United States to prosecute and remedy violations committed by its nationals is affirmed in common Article 1 of the Convention, calling on states party to “respect and ensure respect” for the Convention in all circumstances.

### **Extraterritorial HR analysis:**

*Israel:*

As party to the relevant human rights conventions that respect, protect and fulfill the human rights violated in this case, Israel has breached, in particular, the Covenant on Economic, Social and Cultural Rights. However, Israel but also may have breached common article 1 in both Covenants, prohibiting the deprivation of a people of its means of subsistence.

ICESCR further reinforces the extraterritorial dimension of State parties’ human rights obligations. Its Article 11 provides that “The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

By ratifying the HR conventions mentioned above, Israel bears obligations that extend extraterritorially. The principle of international cooperation—including extraterritorial dimension of its treaty obligations—overrides the State’s obligation to respect, protect and fulfill all covenanted human rights.

This legal status provides the possibility for several procedures in the direction of adjudication, particularly reparation. Also The International Court of Justice has concluded that ICCPR “is applicable in respect of acts done by a State [also] in the exercise of its jurisdiction outside its own territory.”<sup>10</sup> Corroborating, all treaty bodies monitoring Israel’s human rights compliance have reaffirmed this principle with respect to Israel’s human rights obligations in the occupied Palestinian territories.<sup>11</sup>

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<sup>10</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion*, para. 111. The Court reached the same conclusion with regard to the applicability of CRC. *Ibid.*, para. 113. In *Congo v. Uganda*, para. 220, the Court concluded that Uganda was internationally responsible for its violations of international human rights law committed in both occupied and unoccupied sections of the Congo. The Human Rights Committee has clarified that “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party.” General Comment No. 31 (2004), para. 10. See also Human Rights Committee, *Lopez v. Uruguay*, communication No. 52/1979 (CCPR/C/OP/1), paras. 12.1–12.3 (1984).

<sup>11</sup> See the Concluding Observations of the Human Rights Committee, monitoring the Covenant on Civil and Political Rights, CCPR/C/79/Add.93, CCPR/C/ISR/2001/2; the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.27 (1998) and E/C.12/1/Add.90 (2003); the Committee against Torture CAT/C/XXVII/Concl.5 (2001); the Committee on the Elimination of Racial Discrimination (CERD) CERD/C/304/Add.45 (1998) A/52/18, para. 19(3), and CERD Prevention of Racial Discrimination, including Early Warning and Urgent procedures A/49/18 (1994). The Human Rights Committee interprets States’ human rights obligations to extend to protecting “anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.” See General Comment 31, “Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

The Fourth Geneva (Civilians) Convention (1949) governs the treatment of civilians in armed conflict and under occupation. Numerous authoritative parties and on-site investigations have reported that Israel violated the Civilians Convention during its conduct of the 2006 summer war on Lebanon.<sup>12</sup>

The International Law Commission (ILC) draft Articles on State Responsibility establish, in Article 1, that “Every internationally wrongful act of a State entails the international responsibility of that State.”<sup>13</sup> Article 31 establishes the obligation to make reparation for such wrongful acts.

Being of a nature that provides for claims and obligations of one state vis-à-vis another state, the Articles on State Responsibility provide, in Article 34, that reparations include restitution, compensation and satisfaction. However, the articles apply “without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State” (Article 58). In cases involving human rights violations and breaches of humanitarian law affecting persons, reparation to victims includes these elements, in addition to return (of refugees and displaced persons), rehabilitation, resettlement (if applicable) and a promise of nonrepetition.<sup>14</sup>

The UN General Assembly (GA) has welcomed the ILC’s Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm.<sup>15</sup> The GA and its 6<sup>th</sup> Committee repeatedly have invited and received further comments of states for any future action, including the elaboration of a convention on the basis of the draft articles, as well as on any practice in relation to the application of the articles and principles.<sup>16</sup>

The Rome Statute defines as a war crime any of eleven acts “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>17</sup> Specific acts in this category include “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,” “intentionally directing attacks against civilian objects [that are not military objectives] and “intentionally launching an attack in the

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<sup>12</sup> WCC calls on Israel to observe its responsibilities under Fourth Geneva Convention, [PR-01-34, of 14 September 2001](http://www.wcc-coe.org/wcc/news/press/01/43pu.html), at: <http://www.wcc-coe.org/wcc/news/press/01/43pu.html>

<sup>13</sup> “Responsibility of States for Internationally Wrongful Acts,” General Assembly resolution 56/83, 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

<sup>14</sup> “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” adopted by the General Assembly in resolution A/RES/60/147, 21 March 2006.

<sup>15</sup> “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm,” A/RES/62/68, 8 January 2008; <sup>15</sup> “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm,” 65/28, 6 December 2010

<sup>16</sup> “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm,” A/C.6/68/L.20, 5 November 2013, at:

<http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N13/550/03/PDF/N1355003.pdf?OpenElement>.

<sup>17</sup> Rome Statute, op cit., Article 7 “Crimes against Humanity,” which include: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

knowledge that such attack will cause... damage to civilian objects or widespread, long-term and severe damage to the natural environment..."

United States:

Article 16 of the Articles on State Responsibility address circumstances of the aid or assistance by one State in the commission of an internationally wrongful act by another. However, no known precedent suggests the admissibility of such a case in U.S. courts.

### **Lessons learnt:**

In 2006 and 2007, Human Rights Watch, International Commission of Jurists, Habitat International Coalition-Housing and Land Rights Network, Internal Displacement Monitoring Center and other NGOs have investigated and reported findings on Israel's war on Lebanon. As mentioned, other independent and intergovernmental agencies, such as the Regional Marine Pollution Emergency Response Centre, investigated specific consequences of the attack. In addition, a series of UN Special Rapporteurs of the Human Rights Council conducted investigation missions in Lebanon, including four carrying out missions also inside Israel. Each of those reports covered the Jiyah Power Station attack to one or another degree of specificity. In addition, the UN Environmental Programme also investigated the environmental consequences of the war, with particular emphasis on the Jiyah attack.

After much investigation and reporting within the UN system on the 2006 war in Lebanon, the General Assembly passed resolution A/RES/61/194, calling upon Israel to assume responsibility for compensation for the costs of repairing the environmental damage and restoration of the marine environment.<sup>18</sup>

The conduct of war and other forms of armed conflict has given rise to well-established norms of criminal law relevant in the context of Israel's 2006 summer war on Lebanon. The principal applicable instruments are the Rome Statute of the International Criminal Court (1998) and the London Charter of the International Military Tribunal (1942). Important jurisprudence and procedural guidance come from the Nuremberg and Tokyo International Military Tribunals, as well as the more-recent international war crimes tribunals on the Former Yugoslavia, Rwanda and Sierra Leone.

### **Jurisdiction:**

Other legal issues potentially involved: ESC rights and obligations arising from IHL and human rights treaty obligations.

Legal experts and international human rights bodies have established that human rights law and its corresponding State obligations do not disappear with the outbreak

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<sup>18</sup> United Nations General Assembly, A/61/194, 20 December 2006, p. 2, at: <http://www.undemocracy.com/A-RES-61-194.pdf>. A/61/194 was adopted with 170 votes to 6 (Australia, Canada, Israel, Marshall Islands, Palau, and United States voting against); United Nations General Assembly *Verbatim Report* meeting 83, session 61 page 8, The President on 20 December 2006, at: [http://www.undemocracy.com/generalassembly\\_61/meeting\\_83](http://www.undemocracy.com/generalassembly_61/meeting_83). In a second vote, Nauru joined those opposed in a roll call vote, with Israel not voting. United Nations General Assembly *Verbatim Report* meeting 78 session 62, 19 December 2007, p. 7.

of conflict.<sup>19</sup> In support of that legal fact, international case law and the findings of most UN human rights treaty bodies provide ample support for the contention that a State's human rights obligations extend to areas beyond its national borders to areas within its "effective control."<sup>20</sup> Where states engage in actions involving the deployment of ground troops, the argument asserting "effective control of territory" may be stronger.<sup>21</sup>

### **Strategies:**

The ideal option would be for the state of the perpetrators of the attack on Jiyah to prosecute them effectively in domestic courts with provision for reparations to the injured party. The likelihood of Israeli courts hearing such cases is unforeseen; whereas, the High Court consistently has ruled in favour of the state's political leadership and in deferential favour of the state in matters related to security and land confiscation/dispossession of indigenous all categories of Palestinians.

### **State responsibility:**

The concept and draft Articles of State Responsibility apply to the extent that the injured state may raise a claim against another state responsible for the harm. Those articles also provide for direct and indirect duty bearers. As explained in the analysis below, the relevance may become clearest in the case of the Jiyah Power Station attack and its resulting environmental damage. In the case of other forms of wanton destruction, other remedial and complaint mechanisms would be more appropriate.

To the extent that indirect responsibility can be proved, the United States would be the likely sovereign to be the subject of a claim under the Articles of State Responsibility (articles 16–18). Other countries supplying relevant weapons and other forms of military aid to Israel also may be implicated in the claim for reparations (articles 34–39) and/or countermeasures (article 22). Thus, to that extent, the responsibility could be shared, if more difficult to prove than direct state responsibility.

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<sup>19</sup> For a discussion of extraterritorial applicability of human rights law and corresponding State obligations, see Ibrahim Salama and Francoise Hampton, "Working paper on the relationship between human rights law and international humanitarian law," UN Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2005/14, 21 June 2005, paras. 78–92. See also the examination of case law in the High Court of Justice, Queen's Bench Division, Divisional Court, *R. al-Skeini and others v. Secretary of State for Defence*, 14 December 2004.

<sup>20</sup> Examples included International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion of 8 July 1996, *I.C.J. Reports 1996 (I)*, p. 226, at p. 240, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *I.C.J. Reports 2004*, para. 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *I.C.J. Reports 2005*, para. 219. European Court of Human Rights, *Loizidou v. Turkey* (40/1993/435/514), 18 December 1996; and *al-Skeini* op cit., and, in the case of Israel's human rights obligations in the post-1967 occupied territories, see the Concluding Observations of the Human Rights Committee, monitoring the Covenant on Civil and Political Rights, CCPR/C/79/Add.93, CCPR/C/ISR/2001/2; the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.27 (1998) and E/C.12/1/Add.90 (2003); the Committee against Torture CAT/C/XXVII/Concl.5 (2001); the Committee on the Elimination of Racial Discrimination (CERD) CERD/C/304/Add.45 (1998) A/52/18, para. 19(3), and CERD Prevention of Racial Discrimination, including Early Warning and Urgent procedures A/49/18 (1994). The Human Rights Committee interprets States' human rights obligations to extend to protecting "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party." See General Comment 31, "Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

<sup>21</sup> European Court of Human Rights, *Bankovic and others v. Belgium and 16 Other Contracting States*, Case No. 52207/99, 12 December 2001, at: <http://www.echr.coe.int/eng/Press/2001/Dec/Bankovicadmissibilitydecisionepress.htm>.

Remedies for the general case (No. 9) would follow those provided below for more-specific case (No. 9b), except that the application of state responsibility in claims by Syria would pertain only for the Jiyah Power Station attack, because of resulting environmental damage to its territory. Moreover, in a state-to-state claim based on state responsibility, it may be possible for any allied and indirectly affected state (e.g., an Arab League member state) to raise a claim against Israel under the draft Articles, invoking article 48.

### **Remedies:**

The following discussion explores the possibility of raising cases through tribunals in various jurisdictions in pursuit of remedy. The prospects are considered in turn, from most local to most distantly removed jurisdictions, with respect to the Israeli attack on Jiyah Power Station, or other material or human damages arising from gross violations.

#### *Domestic jurisdiction:*

The ideal option, as in most cases, would be for the state of the perpetrators of the violations to prosecute them effectively in its domestic courts with provisions for reparation to the injured parties and their heirs. The likelihood of Israeli courts hearing such cases is unforeseen. Over the past 60 years, the Israeli High Court consistently has ruled in biased favour of the state's political leadership, the state's discriminatory institutions and ideology and with deference toward the state in cases involving acclaimed security matters and land and property confiscation/dispossession of all categories of the indigenous people of the territory under state jurisdiction and effective control. It declines to apply legal norms inconvenient to the state's colonization program and purpose. Hence, the Israeli High Court is not known or expected to respect principles of public international law that do not serve these purposes of discrimination and dispossession.

In matters of Israeli state violations by commission or omission in the July 2006 war on Lebanon, no less bias could be anticipated of the Israeli High Court. Therefore, any petition to the Court would serve only the costly purpose of demonstrating the exhaustion of all domestic remedies, in order to enable raising the case in an international jurisdiction or other international complaint procedure.

The prospects of prosecuting crimes and wrongful acts by Israel outside of its domestic jurisdiction vary and could involve several categories of plaintiff. The definition of victim can include a broad spectrum of persons and institutions affected by the destruction of the Jiyah Power Station, or other types of wanton destruction, massacres, wrongful personal injury, and other losses/damages, especially violations of rights to life, health, housing, livelihood and land. For instance, the State of Lebanon itself qualifies as a potential plaintiff, as it has lost considerable public investment and resources to Israeli violations and war crimes. The Lebanese population, including individuals, who suffered from the pollution and lack of basic public services such as electricity also may have standing to seek remedy in certain legal jurisdictions.

#### *State-to-state claims:*

States invoking Articles of State Responsibility may include several States in the international community as victims in pursuit of remedy and reparations, as provided

in Article 48. One or more affected states may bring a claim for remedy and reparations against Israel for the Jiyah attack and other harm to the state or state property by invoking the draft Articles. Such a claim could be in addition to claims raised under actual treaty law provisions and general principles of public international law. The venue for such claims would be the International Court of Justice, where only states and, requesting an Advisory Opinion, certain UN bodies have standing. In such cases, the entitlement to reparation is with the affected state and, as historically shown in such cases as Nazi Holocaust reparations, individual victims might not be served at all, or not in sufficient measure, from such forms of remedy.<sup>22</sup> State-to-state claims generally do not serve the same objectives as human rights claims.

A claim of aggression is theoretically possible as a claim by Lebanon against Israel. Two principle obstacles complicate that option, however: (1) the political crisis within Lebanon and the prospect of reciprocal claims against Lebanon for not regulating Hizb Ullah effectively in its (causal) cross-border raid on Israeli troops in July 2006, and (2) for lack of a Security Council-adopted definition of aggression.

*Foreign jurisdiction:*

Individual victims and/or their representatives could raise claims in foreign jurisdictions of other countries with legal systems conducive to such procedures. These would be legal initiatives aimed at natural or legal persons responsible for the Jiyah attack and other crimes. In most foreign jurisdictions, the defendant would have to be within the court's geographical jurisdiction in order for the trial to proceed. The legal system in at least one state, Spain, may allow for investigation and trial proceedings to begin without the physical presence of the defendant(s) in Spanish territory. In certain countries, this foreign jurisdiction option could be possible under alien torts laws and procedures, as in the United States. However, the defendant would have to be physically present in the court's jurisdiction in order to be subpoenaed to hearings and summoned for trial.

*International jurisdiction:*

The jurisdiction of the ICC could be used, even though Lebanon and Israel are both non-parties to the Rome Statute. Both plaintiff and defendant would have to be citizens of state that had ratified the Rome Statute. Alternatively, Lebanon and Israel, or Israel and the nonratifying state of any another plaintiff (e.g., Syria), then would have to make a declaration under Article 11 of the Rome Statute, allowing for retroactive application of the ICC's jurisdiction to cover the Jiyah attack or other abuse. However, this may be unlikely for reasons of state and political interests.

The ICC Prosecutor could open a case, receive testimony and call suspects to trial of crimes related to Israel's conduct of the July 2006 War on Lebanon. However, the ICC Prosecutor has demonstrated no such activism to date and the Court's resources are so scarce that such an initiative would be unlikely, even in the instance of sufficient will on the part of the Office of the Prosecutor.

The UN Security Council could refer the issue to the ICC Prosecutor. However, that would require collective political will, particularly among the permanent Security

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<sup>22</sup> C.f. Norman Finkelstein, [The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering](#) (New York: Verso, 2000).

Council members. Such will and agreement are elusive and unlikely to manifest in the foreseeable future.

The UN Security Council also could establish a special tribunal for the purpose of prosecuting crimes committed in the 2006 Lebanon war in general, or the Jiyah attack, in particular. However, as noted above, the lacking political will on the part of the Council forecloses that option.

#### *Universal jurisdiction:*

In several legal systems, universal jurisdiction may apply, enabling lawyers and claimants to invoke international treaty law obligations, especially international and extraterritorial obligations of state, in order to pursue a trial of a duty holder responsible for the Jiyah Power Station attack, as well as other war crimes and crimes against humanity.

#### *Responsibility of the United States of America*

By the 15 July date of the Jiyah Power Station attack, Israel's air force already had established a pattern of wanton destruction of Lebanese infrastructure that was not the subject of military necessity. Nonetheless, the United States and its officials aided, abetted, guided and supported Israel in the conduct of its July 2006 War on Lebanon. Article 16 of the Article on State Responsibility could be invoked in a case asserting U.S. state responsibility and/or officials' criminal liability, including claims for reparations on the part of the United States of America. For such a claim in an appropriate jurisdiction (i.e., ICJ, or putative special tribunal), it would be necessary to establish that the relevant decision makers in the United States, in this case, had knowledge of the consequences of Israel's decision to attack Lebanese civilian infrastructure, including the Jiyah Power Station, as well as other protected civilian properties and persons.

#### *Developments in international law and diplomacy*

Since 2006, the UN General Assembly (GA) has adopted a series of resolutions since 2007, acknowledging Israel's extraterritorial obligation for the harm resulting from this specific wrongful act in the context of Israel's 2006 war against Lebanon. In 2014, the GA specified the international law-based demand for "prompt and adequate compensation" for the damages wrought on the environment of both Lebanese and Syrian territorial waters and coastline, as well as other consequent harm. The resolution also asserts the responsibilities of the State of Israel responsibilities "vis-à-vis reparations and compensation," thus engaging the legal definition of reparations in the General Assembly definition of reparations.<sup>23</sup> With regard to "compensation," the GA's 2014 resolution acknowledged the conclusions in an August 2014 report by Secretary General Ban Ki-moon<sup>24</sup> indicating the value of damage to Lebanon amounted to \$856.4 million.<sup>25</sup>

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<sup>23</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: <http://www2.ohchr.org/english/law/remedy.htm>.

<sup>24</sup> "Oil Slick on Lebanese Shores," A/69/313, 14 August 2014, at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/69/313>.

<sup>25</sup> "Oil slick on Lebanese shores," A/RES/69/212, 19 December 2014.