The three petitions before us were submitted against the background of the combat situation in which Israel has found itself since July 12 2006, when the combat
activities began between Israel and the Hizbollah organization, which acts from Lebanon against the IDF and citizens of the State of Israel.

**The Background of the Petitions**

1. On the morning of July 12 2006, the Hizbollah organization committed an act of aggression inside the territory of Israel, as a result of which eight IDF soldiers were killed, and two other soldiers were abducted and taken across the border. As a result of that attack, the Government made a decision, on that very day, that determined, *inter alia*: "Israel must respond with the appropriate severity to this aggressive act, and shall indeed do so. Israel shall respond aggressively and severely against those who committed the act and against those who are responsible for it, and shall act to frustrate attempts to act against Israel" (government decision no. 258). Within that decision, the government approved the recommendations presented to it by the military, and also authorized the Prime Minister, The Minister of Defense, the various Deputy Prime Ministers and The Minister of Public Security to approve the particular activities that were presented by the military. Since July 12 2006, the IDF has been carrying out massive military activity within Lebanon, and the State of Israel is being attacked simultaneously by thousands of missiles and "Katyusha" rockets, which have caused the death and injury of scores of Israeli civilians in the north of Israel, and significant damage to property. On July 13 2006 the Minister of Defense appeared before the plenum of the Knesset Foreign Affairs and Defense Committee, and in that meeting, the Minister and intelligence and operations officials gave briefings. In addition, on July 15 2006 the Minister of Defense decided to exercise his authority pursuant to section 9c(b)(1) of the Civil Defense Law, 5711-1951 (hereinafter: "The Civil Defense Law"), and declared a "special situation on the home front", a declaration that has significance regarding authority to give orders for defense of the civilian home front from military attacks. On July 16 2006 the Government convened once again in order to discuss the security situation, and discussed, *inter alia*, the subject of the special situation on the home front. The government decided, *inter alia*, that it would discuss extension of the order declared by the Minister of Defense within 48 hours of the declaration, after the recommendations of the inter-ministerial team headed by the Director General of the Prime Minister's Office (Government Decision no. 273). The next day, on July 17 2006, the Prime Minister made an announcement before the plenum of the Knesset regarding the security situation. In his speech before the Knesset, he announced, *inter alia*, as follows:

"Extremist and violent terrorists are wreaking havoc in the entire region, and putting its stability in danger. The area in which we live is threatened by these murderous terrorist groups. It is the regional – as well as international – interest, to overtake them and stop their activity… we shall continue to act with all force until we have attained that… in Lebanon we shall fight to ensure that the conditions that were determined by the international community long ago are upheld, and those were clearly manifested just yesterday in the decision of the G8:

Return of the hostages, Ehud (Udi) Goldwasser and Eldad Regev.

**Absolute cease fire.**
Deployment of the Lebanese army in all of Southern Lebanon.

Removal of the Hizbollah from the area, while implementing UN resolution no. 1559.

[Until these have been fulfilled,] we shall not cease our activity.

In both fronts, these are actions of self defense in the most essential and basic sense. In both cases, as one whole, we have an interest whose importance and significance go far beyond the sum of its parts."

On that day the government also adopted decision no. 282, in which it was decided, inter alia, to extend the Defense Minister's declaration of a "special situation on the home front", pursuant to the authority granted to the Government in section 9c(b)(3) of the Civil Defense Law. The Government further decided "to contact the Knesset Foreign Affairs and Defense Committee and request its approval to extend the period of effect of the declaration, until the Government decides to cancel the declaration." Note further that the Knesset Foreign Affairs and Defense Committee held two additional meetings regarding the situation. In the meeting on July 18 2006, the Chief of Staff of the IDF, GOC Home Front Command and the Intelligence Branch Research Division Head appeared. In the meeting on July 26 2006, the Prime Minister gave a report to the committee regarding the security events. An additional Government decision, which is related to the petitions before us, is decision no. 309, which the Government made on July 23 2006. In that decision, it approved the Protection of Workers in a State of Emergency Law Draft Bill, 5766-2006 (hereinafter: "The Protection of Workers in a State of Emergency Law), which was intended to prevent termination of employees who were unable to reach their places of work during the combat. Regarding the financial damages caused to residents of Israel as a result of the present security situation, we were informed, in the response to the petitions submitted on behalf of the Attorney General, that on July 27 2006 an agreement was signed between representatives of the Government, the General Federation of Laborers in the Land of Israel (Histadrut) and the liaison office of the financial organizations. This agreement was intended, inter alia, to arrange the aspects regarding the labor relations affected by the security situation and by the instructions of the military. These understandings in the area of labor relations were entrenched in an agreement which the Government views as a collective bargaining agreement, and the Government even declared its intention to submit a law draft bill in order to ensure the application of the provisions of that agreement to all of the workers in the economy. In the framework of the agreement of July 27 2006, the Minister of Finance also announced his intention to submit, for approval by the Knesset Finance Committee, the Property Tax and Compensation Fund Regulations (Payment of Compensation)(War Damage and Indirect Damage)(Temporary Provision), 5766-2006 (hereinafter: "the 2006 property tax regulations"), to determine, inter alia, a mechanism for making compensation to localities that are not considered border settlements pursuant to the Property Tax and Compensation Fund Law, 5721-1961 (hereinafter: the property tax law) and the regulations issued pursuant to it. These regulations will further determine the area and period for which employers will be entitled to compensation from the State for indirect damage, as well as determining the extent of the indirect damage. On July 31 2006, the Knesset Finance Committee indeed approved the regulations, and on the same day, the
Knesset passed the Protection of Workers in a State of Emergency Law, whose purpose is, as mentioned, to protect workers who were absent from work due to the security situation.

The Petitions

2. As mentioned, against the background of the events stemming from the fighting, the three petitions were submitted and heard together on July 30 2006. They all deal with the legal steps necessary due to the situation which has been created. In the petition submitted by the petitioner in HCJ 6204/06, MK Dr. Y. Beilin, he claims that the Government of Israel acted illegally when it refrained from deciding to declare war pursuant to section 40(a) of Basic Law: The Government, despite the fact that Israel has in fact been, since July 12 2006, at war. It is further argued in that petition that despite the provision in section 40(c) of Basic Law: The Government, no announcement on behalf of the government was made to the Knesset Foreign Affairs and Defense Committee regarding the intent to go to war, nor was a similar announcement by the Prime Minister made to the Knesset plenum. Petitioner emphasized that the subject of his petition is not the question of the justification of the decision of the leaders of the State regarding war, but rather the constitutional duties they have regarding the way the decision to go to war is made. Petitioner further relates in his petition to the financial repercussions that exist, according to his argument, due to the lack of a declaration of war. Thus, petitioner asks that respondents make use of their authority pursuant to section 40(a) of Basic Law: The Government, and that the Government decide upon a declaration of war. Petitioners in HCJ 6235/06, who are business owners in Haifa and Tiberias, ask that a state of emergency be declared, applicable immediately in the area of Haifa and the North, and that the Government be obligated to enact emergency regulations in order to prevent the collapse of petitioners' businesses, and so that they can continue to exist from the financial standpoint during the period of emergency. Petitioner in HCJ 6274/06, The Movement for Quality Government in Israel, asks that respondents exercise their authority pursuant to law in order to bring about real monetary compensation of employees and employers, especially in the north of the country, who have been financially harmed by the current military campaign. Petitioner argues that respondents are responsible for monetary compensation of the citizens who have been financially harmed by the war, and that respondents' failure to exercise their authority is an attempt by the State to shake off its responsibilities toward its citizens on the line of fire, which is not reasonable and causes an unequal distribution of the financial burden, and which strikes a blow to the values of solidarity and mutual dependency.

Discussion

3. We shall first discuss the arguments of petitioner in HCJ 6204/06 regarding the requested relief of a declaration of war. These arguments are based upon section 40 of Basic Law: The Government, which states:

Declaration of War 40. (a) The State shall not go to war except by way of Government decision.
(b) This section does not prevent military actions needed in order to defend the State and the security of the public.
(c) Announcement of the Government decision to go to war pursuant to subsection (a) shall be relayed to the Knesset Foreign Affairs and Defense Committee as soon as possible; the Prime Minister shall make an announcement as soon as possible in the Knesset plenum as well; announcement of military activity, as mentioned in subsection (b), shall be relayed to the Knesset Foreign Affairs and Defense Committee as soon as possible.

Section 40(a), which is, according to petitioner's argument, the relevant provision in the matter, is intended to ensure that the State of Israel will not go to war without a decision of the Government, [the members of which bear] joint responsibility toward the Knesset (see section 4 of Basic Law: The Government). Section 40(c) of Basic Law: The Government determines that the government must report the decision it made pursuant to section 40(a) of the basic law to the Knesset Foreign Affairs and Defense Committee, and that the Prime Minister must make the announcement, as soon as possible, in the Knesset plenum. These provisions are a concrete expression of the responsibility of the Government toward the Knesset.

In his arguments before us, petitioner's counsel, Mr. Ashlagi, extensively discussed the constitutional importance of aforementioned section 40(a), and the great importance that the Government act legally and fulfill the constitutional proceedings required by the basic laws, upon which the joint responsibility of the Government toward the Knesset is based. The State argued before us, regarding the present conflict between Israel and the Hizbollah, that the Government does not find cause in the current situation to exercise its authority pursuant to section 40(a) of Basic Law: The Government, but rather, according to its view, the situation is one of military activities pursuant to section 40(b) of Basic Law: The Government, and that the Government decision of July 12 2006 was made accordingly.

4. The issue of the constitutionality of the Government decision making process regarding commencement of military activity in Lebanon stands at the center of MK Y. Beilin's petition. According to Basic Law: The Government, the Government is the executive branch of government, and is responsible, jointly, toward the Knesset. By force of its role as the executive branch of government, the Government is responsible for the foreign relations of the State, and by force of its status and section 2(a) of Basic Law: The Army, the army takes its orders from it. The democratic character of our system of government requires the subordination of all military agencies to the Government, and the Government, as mentioned, is responsible toward the Knesset (see, on this issue: AMNON RUBINSTEIN & BARAK MEDINA, HAMISHPAT HACHUKATI SHEL MEDINAT YISRAEL – RESHUYOT HASHILTON VE’EZRACHUT (6th ed. 5765-2005), at pp. 979-981; MORDECHAI KREMNITZER & ARIEL BENDOR, CHOK YESOD: HATSAVA (PERUSH LE’CHUKEI HAYESOD, IZHAK ZAMIR ed., 5760-2000), at pp. 44-45). Indeed, in order to safeguard the principles of the regime, it is greatly important that significant combat activities do not take place without a government decision and without parliamentary supervision. That is also the point of departure of section 40 of Basic Law: The Government; the provision in that section is intended to ensure that there will be no deviation from the fundamental principles regarding the responsibility of the Government for the military activity on behalf of the State, and in order to ensure the responsibility of the Government toward the Knesset as a result of such activities. For that purpose the provisions of
subsections 40(b) and (c) of Basic Law: The Government were enacted, determining both the exception to the provision in section 40(a) and the Government's duty to report to the Knesset. It should be emphasized that section 40(a) of the basic law did not define what "going to war", which appears in that section, is. That is a complex question, and it has many aspects. The definition of the term "war", when dealing with powers of the Government vis-à-vis military activity, involves and is intertwined in the foreign relations of the State and the Government's conduct on the plane of international relations. Thus, the interpretation of the term "war" in this context, which has implications on the international plane, is dependent primarily upon the rules of international law. A Government decision that is liable to be interpreted as a declaration of war can have far reaching results on the plane of international relations, and, indeed, in the international arena, formal declarations of war have not been customary in recent decades. It is also worth mentioning that according to international law, a formal declaration of war is not a condition for the existence of a state of war or armed conflict, nor is it needed in order for the rules of international law regarding the conduct of war to apply (see Christopher Greenwood "Scope of Application of Humanitarian Law", in DIETER FLECK, HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS (1999) 43; INGRID DETTER, THE LAW OF WAR (2d ed. 2004) 9-17; ROBBIE SABEL, MISHPAT BEINLEUMI (5763-2003), at pp. 423-424).

Note that in Israeli law as well there is no necessary link between the existence of a state of war, with all the legal implications it involves, and an official declaration of war on the part of the Government. The term "war" appears in various laws, and its interpretation depends upon the purpose of the legislation, and the legislative surroundings in which the term appears, not upon a formal process of declaration of war (see, e.g.: section 99 of the Penal Law, 5737-1977 – the offense of aiding the enemy in war; section 1 of the Death Declarations Law, 5738-1978 – the definition of the term "nispeh" [killed]; section 221(c) of the Customs Ordinance – commission of the offense of smuggling in a state of war. See also CrimA 6411/98 Manbar v. The State of Israel, 55 PD (2) 150, 194-197). In support of his argument, petitioner's counsel argued before us that over the past few days, steps have been taken for a wide scale call up of reserve soldiers. He further argued that the Minister of Defense publicly stated that we are at war, and that all indications show that this is a war, in the sense of section 40(a). This argument is not persuasive, as it does not rely upon a legal basis. Massive military activities, the opening of fire by the enemy (including a terrorist organization) upon the civilian population, the sense of emergency, and the threat toward the civilian population and the casualties as a result of the combat activity on both sides of the border, all lead the public to view the present security situation, in which the State finds itself, as a state of war. It should be emphasized, that even from a legal standpoint, for the purpose of various laws, the present security situation is likely to be considered a state of war. However, that is not sufficient to establish cause for a declaration of war pursuant to section 40(a) of Basic Law: The Government. Section 40(a) provides that: "The State shall not go to war except by way of Government decision" (emphasis added – DB). In the circumstances which have developed, the Government was permitted to determine that the military activities upon which it decided are not "going to war", but rather military activity for self defense, as a response to aggression. The Government acted on this matter clearly within its powers, according to its wide discretion regarding foreign policy and defense (see and compare: HCJ 5128/94 Federman v. The Minister of the Police, 48
We add further that the concern expressed by petitioner's counsel of violation of the constitutional objective of the section's provisions is baseless. Despite the fact that the Government decided that the military activity in Lebanon is pursuant to section 40(b) of the basic law, de facto, it took all the steps determined in the law that are relevant to a decision pursuant to section 40(a). The decision to carry out military activity against the Hizbollah organization was made by the plenum of the Government. A report of that decision was relayed to the Knesset Foreign Affairs and Defense Committee, and a number of reports were also relayed to that committee regarding later developments. Those reports fulfill the requirement of parliamentary supervision of the government decision. As noted above, the Prime Minister even gave a detailed announcement to the Knesset plenum. Thus, de facto, the Government fulfilled its obligations according to the more stringent requirements of section 40(a). We further add that the decision not to make use of section 40(a) of the basic law has no significance, as far as financial compensation and the necessary assistance to the residents of the North are concerned. Thus, the fashion in which the Government acted in making the decisions under discussion is in line with its authority and the scope of its discretion, and does not establish cause for our intervention (compare: HCJ 3975/95 Kaniel v. The Government of Israel, 53 PD (5) 459, 493; HCJ 963/04 Loifer v. The Government of Israel, 58 PD (3) 326, 334-335).

5. The question of determining the ways of compensating the residents of the North, which was raised in all the petitions before us, is a serious question, which is worthy of immediate steps by the Government and the Knesset. There is no doubt that the residents of the areas located within the range of the unceasing, continuous fire of the Hizbollah, have the right to be compensated by the State for the direct and indirect damage that has been caused to them. A large population is harmed, and grounded to fortified rooms and bomb shelters. Their lives – the economy, commerce, agriculture, and industry – have been interrupted. Workers cannot get to their places of work, and their employers have run into financial difficulties. Each of these reasons requires the particular attention of the Government and the Knesset, in order to find fitting solutions. It appears, from the declaration of the representative of the Attorney General, that at this very moment steps are being taken by the Government, which will also be brought for approval before the Knesset, which will include various arrangements for compensation of the residents of the North. It further appears from that declaration that the fitting legal tools have also been found in existing law (see sections 35-38b of the Property Tax Law, and the Property Tax and Compensation Fund Regulations (War Damage and Indirect Damage), 5733-1973), and to the extent that alterations in the present situation are necessary, the Government will initiate legislation and enact regulations immediately. We were informed, on behalf of the Knesset, that private law draft bills for that same purpose are pending before the Knesset. The Government also declared, as mentioned, that on July 27 2006 it reached an agreement with the Histadrut and with the liaison office of the economic organizations regarding arrangement of the labor relations between employees and employers which are affected by the present security situation. The agreement also determines a mechanism that will make possible compensation to localities which are not today considered "border settlements" according to the Property Tax Law and the regulations issued pursuant to it. We comment, however,
that this agreement is in effect for a period that ended on July 31 2006, and it was argued before us that the agreement does not cover all of the numerous problems arising as a result of the combat activities. In any case, in light of the declarations submitted to us regarding the steps being taken to solve those problems, we assume that the Government will indeed act with the speed necessary to ensure immediate mitigation of the damage being caused to the residents of the North and appropriate compensation for the severe economic blow they have suffered. And indeed, on July 31 2006 the Knesset adopted the Protection of Workers in a State of Emergency Law, regarding protection of the rights of workers in the present security situation. The Knesset Finance Committee also enacted, on the same day, the 2006 Property Tax Regulations, the objective of which is to arrange compensation for certain aspects of the economic damage to residents of the North due to the combat. The provisions of the law and the regulations entrench the content of the agreement signed on July 27 2006, and thus, to the extent that the petitions relate to a lack of compensation arrangements, a change has occurred in the legal situation since the filing of the petitions. To the extent that the arrangements which have been determined do not satisfy the petitioners, and should they find legal cause, the gates of this Court are open to them. We comment, in closing, that regarding the arguments of petitioners in HCJ 6235/06, asking that a state of emergency be declared and that emergency regulations be enacted, there is no need for the relief they request. On May 31 2006 the Knesset already decided to extend the state of emergency existing in Israel since its establishment for an additional year, pursuant to the Knesset's authority in section 38 of Basic Law: The Government. Furthermore, petitioners did not succeed in pointing out any reason justifying the employment of the means of enacting emergency regulations in order to arrange the compensation to which they claim they are entitled.

Thus, the petitions are rejected.

Justice A. Procaccia:
I concur.

Justice E. Arbel
I concur.

Decided according to the judgment of Beinisch, J.

Given today, 7 Av 5766 (August 1 2006).