

Military and Strategic Affairs

Special Issue | April 2014

Challenges of Warfare in Densely Populated Areas – Conference Proceedings

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**The Challenges of Military Operations in Densely Populated Areas:
An Australian Perspective** | Mark Evans

Concluding Remarks | Amos Yadlin



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THE INSTITUTE FOR NATIONAL SECURITY STUDIES

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TEL AVIV UNIVERSITY
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Military and Strategic Affairs

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Editor's Note

This compilation of articles, published as a special issue of *Military and Strategic Affairs*, is based on presentations delivered at a conference on February 6, 2013, entitled "Challenges of Warfare in Densely Populated Areas." This conference was the product of cooperation between the Military and Strategic Affairs Program at the Institute for National Security Studies (INSS) and the International Committee of the Red Cross (ICRC), and was the second joint conference on this topic.

Fighting in densely populated areas presents extremely difficult challenges, and constitutes a significant challenge to every combat force. This is particularly true in all matters pertaining to finding an optimal balance between the need to carry out the military mission and the need to protect the civilian population that is not involved in the fighting. Cooperation between the INSS Military and Strategic Affairs Program and the International Committee of the Red Cross reflects the understanding that the discussion of the challenges of fighting in a densely populated environment must be an international effort. Discourse must include commanders, ethicists, and jurists from democratic countries that are forced to cope with similar dilemmas. The goal is to enhance knowledge and formulate doctrines of warfare that will make it possible to carry out the missions of an army at war, while fulfilling the obligations of international humanitarian law.

Gabi Siboni

Editor, *Military and Strategic Affairs*

Challenges of Warfare in Densely Populated Areas

Gabi Siboni

Fighting in densely populated areas is partly the result of the fact that the world's population has grown, building is much more congested, and there are hardly any empty areas that are strategically ideal for fighting. Yet in Israel's case, the necessity to fight in densely populated areas stems mostly from our enemies' a priori decision to change the rules of the game. By relocating their fire capabilities to within populated areas, they have changed the erstwhile approach that characterized the early stages of their attempt to contest the existence of the State of Israel. Hizbollah, for example, has intentionally deployed weapons and launch sites in some 160 villages throughout southern Lebanon in order to improve its ability to fire at Israel from those places, and at the same time increase its survivability chances precisely because it is hard for us to fight in populated areas. The flip side of the coin is that Hizbollah has also placed Israeli civilians in the line of fire because the rockets and missiles that it launches target precisely Israel's civilian population. This means that besides the fact that the world is becoming a more crowded place, our enemy has opted for a method that exploits this situation.

In terms of the challenges Israel faces, a doctrine that defines three main stages of action has been formulated over the past decade. The first stage involves attacking targets of high value, even if they are located in close proximity to civilians. In other words, if according to international law, Israel stands to benefit substantively from attacking these targets, and conversely, might suffer great damage if it fails to attack these targets, we will go ahead and target them. Such targets will be attacked without any early warning or prior notice despite the civilian presence. The second

Dr. Gabi Siboni, head of the INSS Military and Strategic Affairs Program

stage involves issuing an effective pre-strike warning to the civilians in the relevant sector with its high value targets. The warning can be disseminated via the entire gamut of options available to the IDF – from flyers, text messages, and phone calls, to internet websites or any others means with which the IDF can reach the residents and advise them to evacuate the site and seek shelter and protection. The purpose of the evacuation is specifically to avoid harm befalling those civilians. In the third stage, after confirming that the critical mass of the local residents has indeed left, the army transitions to an extensive attack on the targets, including the destruction of the target's environs and maneuvering operations in close proximity to it. It is critical to understand that the IDF resorts to this stage only in the wake of extensive fire or a sequence of shooting incidents or other intolerable situations that make it impossible to show further restraint. We went through such a series of incidents just before the 2006 Second Lebanon War, Operation Cast Lead in the end of 2008 and the beginning of 2009, and Operation Pillar of Defense in 2012. In all those instances, the IDF embarked on this sequence of actions only after the threat had crossed the threshold of what Israel could reasonably endure.

This approach aims to minimize as much as possible the scope of civilian casualties. Like putting an end to the threat to Israel, this, too, is the goal. Ultimately, the defense establishment and the IDF want to end the threat to Israel and prevent its recurrence. This must therefore happen quickly and forcefully so that Israel's population, which was forced to sit in bomb shelters and whose daily routine was disrupted, does not encounter this again.

The Institute for National Security Studies staged a simulation of the third stage, after the enemy's civilian population has been evacuated, thereby clearing our way to attacking the military targets. Here is the situation: Aerial photographs showed that missiles had been fired from a certain village and verified that additional launchers were deployed there. Forty-eight hours before the attack, we dropped flyers on the village, advising the locals to leave. Notwithstanding our warnings, not all the residents left. Some came under pressure from the terrorist organizations to stay put in order to serve as human shields in sensitive sites. We assume that children, the elderly, and the incapacitated were left behind, and that others may have opted not to leave because they wanted to protect their property. Some of them are relatives of the organization's members. We

could not accurately assess how many people are left or determine their precise location. The village is full of missiles and anti-aircraft and anti-tank weapons. Civilians can be found in the village, which is booby-trapped and strewn with landmines. There are between 20 and 25 combatants in well-camouflaged ambushes, set on abducting Israeli soldiers if they enter the village. They wear civilian clothing, and as such do not stand out from among the civilian population. Iron Dome batteries, famous for their 85-percent interception rate, are deployed in defensive positions. We could then envision two possible operational scenarios. According to the first scenario, we knew which building was used to conceal the launchers and we were also familiar with these missiles' capabilities. In the other scenario, we lacked that information. A missile was then fired at an Israeli community, causing civilian casualties and damaging property. The time factor was critical and it was necessary to make an operational decision right away.

The dilemma acted out in the simulation was real, not theoretical, representing one of the routine quandaries that we face. In that particular case, the military commander had a wide range of available alternatives: from directing various types of precision fire at various intensity levels with artillery fire, which is less accurate, to introducing ground troops in order to halt the fire from that area. In the simulation, we tried to examine the various problems while establishing a link between three elements: the operational commander as the leader who is charged with making the decision; legal experts, who can give the commander the necessary legal basis; and professors of ethics, who can provide the moral basis for such a discussion.

The main points that emerged during this simulation were that, to begin with, we had to realize that we would be operating without intelligence about how many civilians remained in the battle zone. We could ascertain that a large segment has left, but in most cases we would be hard pressed to know for certain how many still remained behind or in what condition we would find them. Were they civilians who chose to stay behind of their own free will, or were they threatened by the organization that controls the village? Here we also had to check whether the entire village was a legitimate target or whether it would become a legitimate target only if we knew exactly where the launchers were located, even though we knew that the village had a military record and was fortified. We also discussed the

principle of discriminating between combatants and noncombatants as well as the proportionality in the attacks. The use of the full range of means at the IDF's disposal was likewise raised. Are precision weapons the best solution? After all, even if they are, one must always bear in mind that we do not always have the ability to use them. They are not always available to the operational commander, who is sometimes de facto left with fewer options. He can theoretically bring into the arena supplementary forces or use remotely controlled weapons from the surface, deploy tanks, or order the ground forces to fire missiles or direct artillery fire into that specific area while taking into account the artillery's limited accuracy, dispersion, and targeting capabilities.

We viewed the advantages and disadvantages of every method. We did not try to reach any "magic formula" or find the one right solution to this problem, because none exists. We tried to understand the problems and bring them to the fore so that the jurists among us – such as the representatives of the International Red Cross, for example – would also be exposed to these relevant quandaries and so that, by the same token, the operational staff would similarly be exposed to the other side.

The discussion dealt with the need to protect Israel's civilians – which is, after all, our supreme goal – but it also focused on the need to prevent disproportionate injuries among the other side's civilians. Dilemmas that concern protecting the soldiers also came up, for example: What happens when a maneuvering force enters the arena? What indices should we use to gauge our ethical conduct? What considerations and dilemmas should we weigh with respect to protecting the other side's civilians and dispatching our forces into an arena that is fortified, as described above? Although we all believe that civilians are civilians wherever they are, the main dilemma that arose – and which I believe everyone can respect – is that it is problematic to ask the commanding officer to address the other side's civilians as though they were his own kinsmen by arguing that his family is on a par with the relatives of the enemy's terrorist. We respect the law and understand the legal demands, but this is a serious dilemma and it is very hard to make such a demand. The commander's attitude toward the other side will most probably not be identical to his attitude toward his own family.

To me, the position of international organizations and the international community's stance on this problem is bizarre, if not incomprehensible.

We are aware of the problem and have been dealing with it, but we have not heard them direct any demand – whether legal or moral-ethical – toward the party that directs its fire from amid civilian surroundings and uses civilians as human shields, which in itself constitutes a war crime. Nothing has been done in this respect, and this reality seems to have made no impression whatsoever on these organizations. Thus if such a demand has been made at all, it was raised very quietly and behind the scenes.

We have not seen anyone sue Hamas leaders in the international courts; no one has issued arrest warrants against them for their war crimes. What is even more absurd is that the Human Rights Watch report published after Operation Pillar of Defense demanded that Hamas severely penalize all those who directed fire at civilian communities. This is a big joke. Yet the Goldstone Report on Operation Cast Lead nevertheless outdid even that joke by asking Hamas itself to investigate the matter. In other words, something in the international community's perception of the problem and the way in which it perceives the two sides is skewed, abnormal, and warped.

Since our enemy's explicit strategy involves firing at civilian areas from inside civilian areas, it is difficult to take those international bodies' statements seriously, as this mode of conducting war is inherently a war crime. I therefore believe that we cannot continue to take this attitude lying down. We must insist that the international community stand behind its words. If this is indeed a war crime, then this should be proclaimed as such out loud and in the open. The international community must issue arrest warrants. Let there also be lawsuits against the terror groups in Lebanon and the Gaza Strip.

Why Urban Guerrilla Proliferates

Azar Gat

One obvious reason for the proliferation of urban guerrilla warfare is the twin processes of modernization and steep demographic growth, which means both that the space taken by human residential areas has risen dramatically and that these areas are massively concentrated in urban centers: towns and cities. But there is another reason that has to do with the great proliferation and spectacular success of guerrilla warfare in general in our times. I shall start by seeking to account for the proliferation of guerrilla or insurgency warfare in general, and then move to explain how this impinges on the growing popularity of urban guerrilla. The two developments are closely connected, and their root cause, though quite evident, is often overlooked.

Indeed, the success of guerrilla warfare in the past century constitutes an enigma, with insurgency earning a reputation of near invincibility. Mighty powers that proved capable of crushing the strongest great power opponents fail to defeat the humblest of military rivals in some of the world's poorest and weakest regions. It has been barely noted, however, that rather than being universal, this difficulty has overwhelmingly been the lot of liberal democratic powers – and encountered precisely because they are liberal and democratic. Much of the democracies' conduct in this respect – the butt of heavy criticism, some of it justified – is actually a badge of honor for them, but also the cause of their failures.

Historically, the crushing of an insurgency necessitated ruthless pressure on the civilian population, which liberal democracies have found increasingly unacceptable. This simple fact was originally pointed out by my friend Dr. Gil Merom of the University of Sydney. Premodern powers, as well as modern authoritarian and totalitarian ones, rarely had a problem

Professor Azar Gat, Tel Aviv University

with such measures, and overall they have proved quite successful in suppression. All empires worked this way, including democratic Athens and republican Rome. They could *only* work this way. The British and French empires sustained themselves at a relatively low cost only so long as the imperial powers felt no scruples about applying ruthless measures, as the British, for example, still did as late as 1857 in suppressing the Indian mutiny. However, as liberalization deepened from the late nineteenth century, the days of formal democratic empires became numbered. At the turn of the twentieth century, the British setbacks and eventual compromise settlement in South Africa and withdrawal from Ireland were the signs of things to come for other liberal democratic empires as well. How did Ireland that had been kept under the British heel for centuries suddenly succeed in seceding? It was only when the demand for self-determination became hard to resist by liberals, who *also* found the old methods of bloody suppression repugnant and unacceptable, that Ireland was able to gain independence. It has scarcely been noticed that the wave of decolonization after 1945 took place *only* vis-à-vis the liberal democratic empires, most notably Britain and France. The nondemocratic empires, far from being made to withdraw by indigenous resistance, were either crushed in the two world wars, as with Germany and Japan, or dismantled peacefully when the totalitarian system disintegrated, as with the Soviet Union.

Consider imperial Germany's conduct in Africa before World War I, which was exceptional even by colonial standards. In German Southwest Africa, today's Namibia, the Herero revolt in 1904 was countered by a policy and strategy of extermination. Wells were sealed off, and much of the population was driven out to the desert to die, while the rest was worked to death in labor camps. Only 15,000 out of 80,000 Herero survived. In German East Africa, today's Tanzania, the Maji-Maji revolt in 1905-7 was similarly answered with extermination. A small force of 500 German troops destroyed settlements and crops so systematically that more than a quarter of a million natives died, mostly of starvation. These were chilling demonstrations of the effectiveness of the old techniques of imperial suppression.

Skeptics might cite the successful guerrilla waged against Nazi Germany in Yugoslavia and the Soviet Union. However, there can be little doubt that had Germany won the Second World War and been able to apply more troops to these troublesome spots, its genocidal methods

would have prevailed there too. The Soviet Union's failure in Afghanistan is another obvious counterexample, but Afghanistan – the ideal guerrilla country – was the exception, the outlier, rather than the rule in the Soviet imperial system. Chechnya may be more enlightening in this respect, and the sequence is unmistakable: Soviet methods under Stalin – including mass deportation – were the most brutal and most effective in curbing resistance, while liberal Russia of the 1990s proved to be the least brutal and least effective, with Putin's authoritarian Russia constituting an intermediate case. It is in fact the ease with which the empire was held down within the Soviet Union itself and in Eastern Europe that is worthy of attention. Indeed, the sample of successful insurgency is entirely skewed, suffers from a heavy selection bias, for as Sherlock Holmes has noted, it is "the dog that didn't bark" – the imperial domains lying helpless under the totalitarian iron fist – that are the most conspicuous, and most telling. The same applies to China, whose continued successful suppression of Tibetan and Uygur nationalism is likely to persist so long as China retains its nondemocratic regime. In all the totalitarian powers insurgency is successfully deterred, nipped in the bud, or effectively crushed.

This is not to say that the democracies' conduct has been saintly. Atrocities, tacitly sanctioned by political and military authorities or carried out unauthorized by the troops, have regularly been committed against both combatants and non-combatants. All the same, strict restrictions on the use of violence against civilians constitute the legal and normative standard for liberal democracies. And although many, probably most, violations of this standard remain unreported, those incidents that have been exposed in open societies with free media are met with public condemnation and judicial procedures. All these developments radically limit the liberal democracies' powers of suppression, judged by historical and comparative standards.

The notion that ruthless brutality is the sine qua non of successful counter-insurgency suppression conflicts with the "winning of hearts and minds" that has been posited as the key to success in the recent liberal democratic discourse. Indisputably, winning over at least the elites of conquered societies – through benefits, cooptation, and the amenities of soft power – has always played a central role in imperial "pacification." Yet that velvet glove always covered an iron fist that had crushed local resistance mercilessly in the first place and remained unmistakably in

place as the *ultima ratio* of foreign control. The winning of hearts and minds has indeed become the liberal democracies' guideline for the pacification of foreign societies, but only because they have practically lost the ability to crush such societies by force. The unpleasant truth is that the winning of hearts and minds is very rarely successful and prohibitively expensive, whereas ruthless suppression is both highly effective and cheap.

This finally brings us to the recent rise in the use of urban environment by insurgents, which is largely a function, and a striking demonstration, of the liberal democracies' self-imposed limitations on the use of force. Traditionally, insurgency flourished in the remote parts of the countryside. Urban environment constitutes a deadly trap against an enemy who has no scruples about setting cities on fire, as in the past, or razing them to the ground with artillery fire, as in modern time. This traditional rationale was demonstrated by President Hafez al-Assad of Syria, who in 1982 had whole neighborhoods in the city of Hama destroyed with artillery fire, when his army brutally suppressed a revolt by the Muslim Brotherhood, killing an estimated 15,000-25,000 of the city's population. Today, the younger Assad's regime fails to suppress the insurrection in Syria despite its brutality. The tragedy in Syria has been going on for nearly two years, and is estimated to have cost the lives of perhaps fifty to sixty thousand people. However, the elder Assad inflicted nearly half that number of casualties in three days, and in a single city, in 1982. For fear of foreign intervention, the younger Assad is not free to emulate his father. Putin's Russia is no substitute for the backing of the former Soviet superpower, regrettably gone. Of course, in its own backyard Putin's Russia has been utterly ruthless, subjecting the city of Grozny to heavy artillery fire and intense aerial bombing and leaving it in ruins in 1999-2000, but practically eliminating Chechen resistance there in a remarkably short while.

By contrast, irregulars fighting against liberal democracies make urban areas their bastions precisely because they are able to take shelter within the civilian environment, while relying on their opponents to refrain from operating indiscriminately in these settings. Indeed, the devastation caused by Israel in the villages of southern Lebanon, from where Hizbollah fired rockets on Israeli towns and villages during the 2006 Lebanon war, created an outcry both in Israel and abroad, even though Israel had warned the inhabitants to leave, and "only" about 1000 Lebanese were killed, the majority of them Hizbollah people. The same applied even more to Israel's

Operation Cast Lead in Gaza in December 2008-January 2009, which made Israel all the more cautious during Operation Pillar of Defense in Gaza in November 2012.

Of course, in their wars in both Afghanistan and Iraq the Americans too encountered urban insurgency that took cover within the civilian population. And yet Israel has become the most outstanding case, and not merely because it is more vulnerable to criticism than the United States. Israel is special because the irregulars who fight it do so not in far-away countries, thousands of kilometers away, but on its own borders, only a few dozen kilometers from Israel's own population centers. And this gives them the unique capability to strike at these centers as their chief strategy. As they do not see themselves bound by moral limitations from doing so, an unprecedented situation has been created. I am not a fan of Israel's Prime Minister Benjamin Netanyahu or his policies, but he has captured the current reality very well by stating that Hamas and the other organizations now use their towns and cities as safe havens and launching pads for missiles which they shoot at Israeli towns and cities.

Thus, what we have been witnessing here is the common phenomenon of unintended consequences in its most paradoxical effect. A highly commendable attempt to distance the civilian population from the harms of war has been parasitically exploited by guerrillas who do not abide by this standard to plant their warlike capabilities and activities within the civilian medium, thereby *increasing* civilian involvement. This is somewhat akin to the famous poverty trap in the developed world – which also applies to the Palestinian refugees – where entitlements intended to alleviate poverty might sometimes actually expand and perpetuate it by creating dependency or because of a cynical exploitation of the system.

Does this mean that the democracies should retract or relax their self-imposed restrictions on violence against civilians, the main cause of their poor record of success in counter-insurgency wars, and, indeed, a testimony to their noblest qualities, for which they get so little credit? Although civilian life and property will inevitably continue to suffer in such circumstances, a significant stiffening of the democracies' attitude and conduct is unlikely to occur, nor should it. At the same time, however, a true and fair appreciation of causes and consequences of the current realities is very much required. Many of us may be sympathetic to the success of the guerrilla in colonial settings during the past century, including, one

may add, in the Palestinian territories. Yet rather than serving the cause of liberation and national self-determination, guerrilla in today's world, including Gaza and Lebanon, is harnessed to serve the most sinister and extremist causes, and threatens with the possible use of weapons of mass destruction. One may add that humanitarian interventions too inevitably encounter the same intractable problems just described, which, indeed, partly deters the democracies from getting involved.

Given their self-imposed restrictions on the use of force in civilian settings, the democracies' performance in such circumstances is unlikely to improve dramatically, and real remedies are in short supply. There is still an unfulfilled potential in the adaptation of high-tech warfare to the task of fighting irregulars and discriminating them from the civilian population in which they are nestled. Both Israel and the United States invest heavily in such technologies and have made major strides in this direction. In addition, the democracies try to cultivate indigenous allies, who not only enjoy greater local legitimacy than a foreign power and are more familiar with the local populations, but, one must admit, are also less constrained in their conduct. Finally, even unfriendly state regimes, which can be coerced, usually constitute a better option than no regime at all or a wholesale foreign intervention. The European aerial support for the rebels against Qaddafi in Libya was tailored to avoid the kinds of military involvement, most notably in urban settings, at which liberal democracies are at their weakest. Israel's policy vis-à-vis Hamas in Gaza, and, indeed, the West's policies towards Syria, are informed by similar considerations.

Of course, when vital interests are concerned and indigenous state authorities either do not exist or are unable to enforce their authority, direct military action on the ground, involving the challenge of guerrillas who use urban areas as their bases of operation, may still prove necessary, revealing the liberal democracies at both their best and weakest.

The Use of Weapons in Densely Populated Areas

Isaac Ben-Israel

The term “urban warfare” has always been understood to refer to combat by an army maneuvering in a city or in a densely populated area. However, in recent years, it has assumed an entirely different meaning: fighting against terrorists and terrorist organizations. In terms of weapons, as well as in terms of combat doctrine, we are talking about two different modes of combat.

Weapons

Combat against such organizations in densely populated areas has many facets, some of which have to do with weapons, for example during riots. Ten to fifteen years ago, the issue of non-lethal weapons was very popular, because there is no better way to capture the imagination than to evoke a scene in which, instead of firing at people and killing them, and meanwhile also unintentionally injuring uninvolved civilians, some clever contraption is used to scatter and neutralize the crowd without shooting at anyone. Much was invested in that; many methods were developed, but they more or less went up in smoke when used in riots that involve the use of weapons. Non-lethal weapons can be used against a large number of people who come to a particular spot, but if they too use weapons, then the non-lethal weapons become ineffective. You cannot use something like a cap gun, which does nothing more than scare people, against someone who wields a real gun. There are many aspects to this topic, but I have decided to focus on the factors that allow us to reduce the scope of collateral damage.

Everything related to the battlefield always draws upon two sources: the latest technology; and the operational needs and characterization of

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the battlefield. Technology is very important. Like other armies around the world, the IDF is very proud of the fact that in recent years, from one operation to the next, the number of people whom it did not purposely injure has declined. A bomb can injure someone unintentionally, but the IDF has gradually reduced the risk. This was facilitated, inter alia, by technological changes and by methods that were unavailable some 10, 15, or 30 years ago. In other words, it is not exclusively a matter of values. Values are one component, but values have always played a role in these matters. We are attempting not to hurt people who do not deserve to be hurt. It also has to do with the available technological capability

The key to this capability is the well known device, the computer, which was originally enormous in size but has gotten smaller over the years. Every miniaturization and improvement in computer technology has bred another operational capability, mainly because of the effect of what today is known as Moore's Law on the miniaturization of devices. The world's first two computers, built by Von Neumann and Turing, were stored in an enormous room. Compared to human capability, they offered a fantastic calculating capability. The first computer was able to complete 1,000 calculations in a second. None of us can do that. However, computers today perform 5 billion calculations per second. Computers have gotten smaller, and today, 4 or 5 billion transistors can be placed on one microchip. This is the implication of Moore's Law, which generally states that the number of transistors on integrated circuits doubles approximately every two years. This means that the computer then has twice as many transistors, and that it correspondingly gets smaller as it acquires greater speed.

I was drafted into the IDF after the 1967 Six Day War. At that time, the IDF had three computers, each the size of a small auditorium. The only way the computers could then be used was offline – in other words, you would write a program, run it, get the results in the output, and then present them to the operational echelon. Approximately a decade later, as the transistors and computers were getting smaller, more or less in the 1980s, for the first time, we installed computers on planes. In 1973 we already had a bombing computer on the Phantom, not in the form of a computer we know now, but more like what we now call an analog computer. In fact, it was actually capacitors, resistors, and coils that performed a certain function, but it was not a computer in the modern sense because all of this equipment could not be fitted onto the aircraft. The first time that this assembly was reduced

to an effective size and could be mounted on aircraft was in the 1980s. The Israel Air Force was the first air force in the world to use a computer on a fighter bomber. It was a US-made computer, and the aircraft was manufactured in the United States, but Israel was the first to integrate the two, thereby automatically improving the precision of the bombing by a factor of five or six. By the 1990s, the computer had become so small that it could be placed into a bomb. That was when the so-called “smart bomb” – or the “smart weapon” or “precision guided munitions” – appeared on the scene. Why is that a “smart” bomb? Because it has an electronic brain and is capable of actions that had previously only been a far-flung fantasy. Let me illustrate this with numbers. Thus, with the analog computers that were fitted onto aircraft in 1973, even if we tried to strike a target as tough to hit as a tank with pinpoint precision discharging the entire huge payload of the Phantom jet, chances of hitting and destroying that tank would still be no more than 1 or 2 percent, because the bombs were dispersed over a large area. A decade later, with a digital computer on aircraft such as the F-16, and a five-fold greater chance of hitting the target, this was still not particularly impressive and the strike chances never exceeded 7 percent. It took nearly 20 aircraft to hit one single tank with regular bombs. A large part of the development effort focused not on regular bombs, but on fragmentation bombs, cluster bombs, and similar weapons. One generation later, in the 1990s and in the twenty-first century, the aircraft deployed by the United States in the war in Iraq, for example, had a chance of more than 100 percent of hitting a tank. Of course, there is no more than 100 percent, but if one F-15 drops four smart bombs, each of them has close to a chance of nearly 100 percent of hitting a different target.

Between 1973 and 2003, the accuracy level increased by more or less a factor of 100. The chance of hitting the targets increased approximately 100 times, from 1 to 100 percent. It is hard to grasp the entire gamut of the consequences of this development, and they were especially notable in the context of the subject under discussion here. Before the first half of the 1990s, the import of the classic threat that the IDF needed to address – namely, war against the invasion of armies from the border – declined. Meanwhile, the threat that emerged in various forms in clashes with Fatah and evolved into confrontations with Hizbollah increased. It became clear that this technology must be adapted to something new: to combat that is ultimately very intricate in an area that is crowded and teeming with

civilians who are not combatants, where the targets are by and large human beings – not tanks, aircraft, or artillery.

The IDF began to make its technological adjustments to this new environment in the mid-1990s. The ratio of smart bomb usage rose steadily between 1991 and 2003. In the 1991 Gulf War, for example, the Americans used smart munitions at a rate of 8 percent, while in Kosovo in 1999, that rate rose to 35 percent. In Afghanistan in 2001, this ratio stood at 56 percent, while in the 2003 Gulf War and during the occupation of Iraq, it already reached 68 percent. In Operation Pillar of Defense in 2012, and even before that, in Operation Cast Lead in 2008, Israel's use of such weapons reached close to 100 percent. All of this prompted the United States and Israel to make changes.

In 1991, the Americans decided to introduce a certain change into their combat doctrine, which was more oriented to the new world, in which the enemy was no longer the Soviet Union, which was an enemy more or less on a par with their own capability level, but either a Third World country that might have had an army but was technologically inferior, or an organization of the type discussed above that has become the major threat – the main threat benchmark scenario encountered today. In the face of these threats, the Americans tried to develop a combat doctrine that they called asymmetric. The term "asymmetric" is used extensively. Although understood differently by many people, initially it meant that whereas the United States was a technologically organized superpower, the enemy was an organization like Hizbollah and Hamas. Since from the technological aspect neither they nor any Third World army could compete with the United States, they knew they had to exploit this advantage. The combat and technology doctrine was therefore formulated with the inherent edge that the Americans enjoyed.

With respect to urban warfare, this doctrine was based on four principles: precision attack, control of the combat arena, dominant maneuvering, and intelligence and information warfare. Precision attack is presented as a triangle with three legs. Thus far, we have only discussed the top vertex, namely precision guided weapons, but they must also have an intelligence sensor that indicates the target's location. Technically, it is possible to fly over the Sea of Galilee and direct a precision-guided missile to penetrate the window of a house in Damascus with an accuracy level of 1 meter. However, the problem is that the pilot cannot see Damascus;

he cannot see the target with his own eyes. At best, he can spot a small dot on the edge of the horizon. It is therefore impossible to activate the precision guided weapon without a sensor that supplies intelligence in real time. The real time intelligence sensors therefore constitute the second leg of the triangle. When we have precision guided weapons and the sensor intelligence, and we know precisely where to direct the bomb, we still need the third component to launch the weapons exactly at the right time. This third leg is the command-and-control systems. All of this was accomplished over the past 10 or 15 years thanks to computers. In the past, we would use telephones and the like, but what we called “on-time” information was in fact 24 hours behind, and this is ineffective. In this context, we also have unmanned aerial vehicles, but these are beyond the scope of this essay.

The Significance for Urban Warfare

What are the requirements for engaging in urban warfare? First, the threat in a crowded environment must be identified. Then a precision strike against the target must be launched with maximum efforts to minimize collateral damage. These are the requirements from the weapons, and they can be achieved to comply with the demands of the concept of precision attacks – which was developed at the same time but as separate and unrelated process – yet with the added features that could theoretically justify engagement in urban warfare.

First, weapons and accuracy, meaning a small warhead: in the past, bombs were intended to be as large as possible, aircraft were constructed that would be able to carry a somewhat heavier payload, with reinforced wing hard points. These measures were taken to achieve more of the original capabilities, thinking that even if we did not strike precisely, a large bomb would in any case cause the desired damage. If the target is localized to the pinpoint level, there is no longer need for large warheads, so that even when they are smaller, the collateral damage to the surroundings can be minimized. Yet this is still not effective when people are hiding inside bunkers or behind concrete walls that need to be cracked. In combat in an urban environment, by very nature of this type of warfare, the tough problems are the people who stand on the roof of a building and fire, or their commanders who gather in an apartment for a meeting. Once we know how to “penetrate” through that apartment’s window, we no longer need a large warhead.

The second characteristic is the sensors: We need real time high resolution identification during all hours of the day and in all weather conditions. The main requirement is higher resolution. An attack on a large target such as a tank or a military airfield differs considerably from an attack on a human target, especially when the strike is carried out by a drone flying at an altitude of 15,000 feet, which cannot distinguish between individuals. Therefore, the intelligence data must be augmented in order to ensure that the target that is being attacked is the right one. In other words, more sensors are needed. Nevertheless, the heart of the matter is to have a command and control system that can coordinate all these components and consolidate the intelligence information from the different sensors and from the intelligence agencies into such a level of target identification that it can ultimately direct the weapon to the target that the sensors had detected and can guarantee that only the correct individual is hit, but not uninvolved parties. This is something that the IDF started to work on only a short time before Operation Cast Lead.

At the same time, this entire aspect of weapons is worthless if it is not integrated within the combat doctrine because the two reinforce each other. The combat doctrine must nurture weapons development, which in turn allows for fulfillment of that doctrine.

Urban Warfare

Gal Hirsch

As someone who has worn a uniform since the age of 14, and as the commander of a host of platoons, companies, battalions, units, brigades, and divisions, let me review past examples of urban warfare with a view to the future. Talking about urban warfare makes us very nostalgic about the past. Warfare in the classic sense, which has inspired many classical works, poems, movies, plays, and insights, previously included clear arrays of a tactical formation with masses of soldiers (a phalanx). There were fortifications and armored columns and there was blitzkrieg. Nowadays we very much want to exhaust the army's total ability and demonstrate its full capability on the battlefield, with all of the IDF's intelligence power and firepower, while implementing the Revolution in Military Affairs (RMA) method, and since the early 1980s promoted in the Air-Land Battle instruction booklet for the battlefield. RMA talks about the use of technology to maximize the army's ability to advance on the ground and act against the first, second, and third echelons simultaneously. Although we aspire to do all those things today too, our enemy has other plans, and the modern campaigns are more irregular and located in densely populated areas. Our enemy wants to restrict our ability to deploy or manifest all of our abilities on the battlefield. It is forcing us to go into densely populated urban, mountainous, forested, and congested residential areas – in other words, into the multi-dimensional arena.

When I was the commander of the IDF's Officers School, we taught that the platoon or company operating in an arena considers that space as a circle and protects itself from all sides. The introduction of the new elements such as woodlands, built areas, densely populated spaces, and the underground tunnels that have gained such momentum in warfare

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in built up areas has made it incumbent upon the platoon, company, and battalion to operate at all times not only as a 360-degree self-protecting circle, but also to regard itself as a three-dimensional spherical ball on guard, operating against multi-story buildings and underground tunnels, within the entire 360 degrees around it. This is a supreme challenge, above all for the relevant force.

The main problem is that in such a crowded, populated, and intricate area, we only see what we can see; we simply cannot see most of the threats, as large segments of the enemy are concealed from us. Our encounters are consequently at very short range and put us in very uncomfortable situations – because the enemy exploits the civilian population for cover, because it blends in the civilian environment, and because it can be found on various levels, underground, above ground, and all around us – whereas we constantly lack information, data, and intelligence about it. This makes the circumstances in which the force must advance in a populated area very difficult.

I led the planning stages prior to Operation Defensive Shield (2002) for more than a year. The territory at that time was called “a different kind of battlefield.” When, in reaction to the bloody terrorist attack on Passover in March 2002 – which came on the heels of suicide attacks that left many hundreds of civilians dead in the hearts of Israel’s cities, not counting the casualties among our soldiers who died in combat – we were forced to launch that campaign, our response was both very proportionate and surgical. We first carried out incursions but were careful to confine our attacks to localized targets, only gradually expanding the scope of our operations. Ultimately, the die was cast so that when the propitious conditions were ascertained, we found ourselves being drawn into a full-fledged operation, which was highly contested the entire time I spent planning and preparing it, mostly on grounds of the massive damage it would cause because it would occur largely in built-up areas, refugee camps, and the Kasbahs. Our image, the scenes from the battlefield, and the general perception of us likewise played a deterring effect, and we were concerned that we might suffer many casualties.

We launched an operation in Judea and Samaria in reaction to that Seder night attack, and the mode of operation we were going to employ there involved all dimensions. We could simply have used the IDF’s enormous firepower to the maximum – after all, the IDF’s ability to direct massive fire

accurately toward any point in any area in which it decides to operate is legendary. Yet we did not resort to this form of action either in Operation Defensive Shield or in the other operations, and we continue to refrain from directing the IDF's firepower toward places that threaten Israel, its civilians, or the IDF itself. There are many reasons for this, and they are primarily rooted in our ethical values, which determine the end result. Even if we suffer losses in the short term, these ethical values definitely decide the long term outcome. We therefore do not use all of that firepower.

When we launched Operation Defensive Shield, the Paratroopers Brigade operated simultaneously from all directions. To circumvent the traps that Force 17, the Palestinian Authority's (PA) military intelligence, and many other PA forces joined by terrorist organizations operating on the ground had set for us, and to escape similar snares on the streets, we resorted to a unique strategic measure developed specifically for Operation Defensive Shield: the hammer, which we used to tear down walls and be able to move from house to house selectively and judiciously. We also deployed personal and platoon-level weapons instead of the IDF's massive firepower. We did that because of our ethical values and because we wanted to achieve proportionate results.

The final outcome is well-known. We are members of the OECD and our economy is thriving. We have a world class hi-tech industry, our educational system produced Nobel Prize laureates, and so on. All of this was made possible because we have the security achieved by having delivered the blow in Operation Defensive Shield and because we erected obstacles and the barrier along the Green Line. And notwithstanding all the criticism, I can vouch that our use of force was proportionate. We deployed our five divisions simultaneously as though we were dousing the fire with a blanket. We moved in densely populated areas; we kept civilian casualties to the minimum whenever possible, and I can affirm that this was achieved in spite of tremendous difficulties.

We all aspire to have fantastic intelligence capabilities. We all want to know more, monitor the terrain, obtain precise information, and strike only the necessary targets. I have great admiration for the IDF's work in Operation Defensive Shield, in Operation Cast Lead (December 2008-January 2009), and in the Second Lebanon War (in 2006), and I can honestly say that we are doing our utmost to operate with maximum accuracy by utilizing the best technology. We have a long way to go before

we obtain the kind of intelligence information that can pinpoint a specific individual as our particular target and can hit only a single window in that person's home but nothing else. For that, we have to undergo a very thorough process of developing know-how, new methods, and novel technologies. We must identify the changes in the situation and realize that both the circumstances and the various components that make up the entire puzzle are undergoing dynamic modifications, as are the campaigns, and that we therefore need to make the relevant adjustments continually.

In May 1988, I was the commander of a company during the battle of Maidun in Lebanon's Beqaa Valley. We embarked on this operation with some doubt as to whether or not civilians would still be found in the village. The operation was conducted in the same method that I described above: We went into the refugee camps and the Kasbahs as in Operation Defensive Shield, going in with our personal weapons and with our sharpshooters, using our machine guns, shooting discriminately, and deploying accurate weapons, leaving behind the IDF's firepower – the artillery batteries and the tanks. During the initial hours of the battle, when we suffered many casualties and I lost many friends and fellow comrades-in-arms, we were fighting in ditches and bunkers and in face-to-face combat inside houses. At some point, the penny finally dropped and we realized what was becoming evident as the battle's chronology unfolded. It dawned on us that either this was a fortified compound with no civilians, or this compound's main characteristics were not civilian. It used to be a village once, but now it was a fortress, a citadel. From that moment on, a company of Merkava tanks and an engineering unit went into action. We used artillery and took control of the village, eliminating the Hizbollah terrorists at the site. We withdrew after having completed our mission. In between, we lost three soldiers and 25 of our troops were wounded, all of them my buddies and fellow soldiers from the Paratroopers Brigade. As a young company commander, I wondered whether we could not have ended this incident by using just two warplanes. Instead, we covered the entire distance by marching on foot, taking them by surprise both with our timing and our mode of operation, fighting in the ditches as in the 1967 battle on Jerusalem's Ammunition Hill, and fighting among the houses and buildings in a densely populated area. We worked very selectively until it became absolutely clear that this was a fortified environment. Only then did we expand our use of force until we finally won the battle. There were many reasons for why we acted

that way. It enabled us to achieve a more decisive victory. Getting there on foot is not like scrambling a warplane, but in the end it is the moral values that determine the outcome.

The overall global urbanization has eliminated the army's advantage of deploying over large stretches of land and exhibiting its full capabilities on the ground. Our need to put our values to the test in a complicated environment full of civilians is manifested in many examples. As the commander of the Paratroopers Battalion in Nablus, my battalion, together with other IDF units, waged a very tough battle against Hamas's terrorism. At that time, Israeli civilians were victims of terrorist attacks all over Israel while we operated inside the terrorist dens, in Nablus's Kasbahs and in the refugee camps. One of my soldiers, Samuel, was a member of the squad of soldiers dispatched to bring supplies to the soldiers manning a rooftop position in the city's Clock Square. He came across a group of civilians walking up the stairs. We did not clear the staircase before bringing up the supplies. Even though we were in a state of war, we did not evacuate the population because we were in fact using their quarters. We did not disrupt their routine because we did not want to interfere with their day-to-day schedules or disrupt their normal course of life. A group of people whom we assumed were students were coming down the stairs. One of them pulled a knife out of his sleeve and stabbed Samuel. A hand-to-hand battle took place at point blank range. We could not use our weapons at such ranges. Samuel was killed, and his comrade Raz sustained serious wounds. This was one example of the outrageous and extremely frustrating enemy abuse and exploitation of the civilian environment, our moral values, and our desire to help them maintain their day-to-day life – which is something that we sincerely want to preserve in the places we control or in which we operate. Yet frustration and anger cannot be the basis for a work plan and a solution had to be found. Amid that civilian environment carrying on with its daily routine and pursuing its normal activities, at that time we activated a very large force consisting of undercover agents, who scored significant achievements. The area is conducive to such methods, allowing the troops to work in disguise – an activity at which we excel. The implication of this mode of operation was that while the one side exploited its capabilities and its normal civilian environment, we used the same environment to achieve our own goals.

We came across the unique characteristics of the urban environment once again when fighting broke out in September 2000 during an intensive terrorist offensive against Israel, which prevailed through Operation Defensive Shield in 2002. The terrorists launched their offensive in a particular and special way, introducing a novel mode of operation. We noticed the first signs of this already on the so-called *Nakba* “(Catastrophe) Day” (the annual commemoration day for the events that befell the Palestinians in 1948) in May 2000, when an interesting development was observed on the battlefield, namely, a new phenomenon in the densely populated outskirts of the cities. We studied it and eventually gave it the nomenclature of “disturbances involving the use of weapons.” This is how they evolved: The Palestinians sent women, children, and civilian adults to the intersections where Israeli civilians were traveling and to their city centers to demonstrate and face off the IDF forces using ostensibly “legitimate” tactical weapons: rocks, concrete blocks, Molotov cocktails, slingshots, and all sorts of other supposedly non-lethal weapons. Yet, as everyone knows, a stone can send you to the hospital and leave you there for a year. It is a very dangerous weapon; stones are weapons, pure and simple. These local residents were sent out to the intersections with instructions to use their weapons from within the crowd, from inside the neighborhoods, and from the same place from which live ammunition was fired. They shot from the crowd, pulling their weapons from inside their coats or pointing them from the windows of their homes. They shot as they stood amid their kinsmen. This is the definition of the new concept of disturbances involving the use of weapons. We realized that we had to find a unique operational solution for this and indeed eventually developed a very special operational solution. It was in fact an entire doctrine, which the Ground Force Command likewise termed “disturbances involving the use of weapons,” and which consists of specifically targeting armed men alone while minimizing injuries among uninvolved parties, and the simultaneous use of non-lethal and lethal weapons to combat the phenomenon effectively.

In April 1996, during Operation Grapes of Wrath in Lebanon and in the July 1993 Operation Accountability, which similarly took place in Lebanon, we already implemented the lessons we had learned, carrying out massive and significant population evacuation using all the methods mentioned above. The objective was to remove the population out of those areas so

that we could successfully deploy our precise weapons, especially during aerial bombardments, and conduct special operations aimed at hitting the enemy without harming the uninvolved population. During the battles of Operation Defensive Shield, and later also in Bint Jbeil, Ayta ash-Shab, and elsewhere in Lebanon, in which I and my troops took part, we again noticed that the local population was abusing the civilians by turning them into its hostage. Take, for example, what happened at the Church of the Nativity in Bethlehem during Operation Defensive Shield. We tried to maneuver with our forces in a built-up area. The strategically important Church of the Nativity was seized by terrorist forces, which isolated it and turned it into a special theater that requires special treatment. In a holy site, you cannot use the same force you would use in other places, not even in a selective manner. That locus required different and special handling.

Similar phenomena took place in Bint Jbeil as well. Hizbollah used the local hospital as its headquarters. Throughout the war, there were serious deliberations on whether to attack it, break into it, or engage in fighting inside it. In the end, we did none of those things. We fought around the hospital, employing all sorts of stratagems to hit the enemy, and we ultimately did score some good hits. Bint Jbeil was conquered and the entire arena, including the Hizbollah brigade that was deployed there, was destroyed. The first time we entered the hospital was after the war. By the same token, we also refrained from attacking Shifa Hospital in the Gaza Strip, although the other side took shelter behind plenty of populated places, schools, kindergartens, and hospitals to fire on Division 91 during the Second Lebanon War. We, on the other hand, never directed fire at those places.

During the Second Lebanon War, Kafr Qana again became the venue where an unfortunate episode recurred similar to one of Operation Grapes of Wrath – and for the same reasons: The enemy used the civilian population as its human shield, hiding in the shelters inside the United Nations-sponsored refugee camps. As the commander who represented Israel, which is a democratic country, I did not authorize directing massive fire toward population centers except under my personal command and only on condition that we use very accurate weapons as part of a special operation. Without going into details or specifying the types of weapons, special technologies, or stratagems that we employed to get the enemy out of its cover so that we could attack it, these restrictions on the mode

of operation and the proviso that nothing be done unless it was under my personal command made military maneuvering very difficult. It is doubtful whether any other army or commander anywhere else in the world would consider imposing such limitations in similar circumstances.

As for the future, unfortunately we live in a world in which different solutions to fighting in built-up and densely populated areas are of supreme importance. Our progress here has been linear. As an operations commander, I look for solutions that manifest an exponential leap ahead, because, on the one hand, I must be effective in battle, but at the same time I am also the representative of a democratic country. As such, I have the obligation to observe the purity of arms and moral ethical standards. Thus, because I will not forgo the IDF spirit, I must look for a change in the warfare doctrine and methods and employ new technologies. All this will take time, but it is doable and certainly not impossible. If one examines our performance over the years, our technological, strategic, and tactical progress is patent: Ever since Operations Pillar of Defense and Cast Lead, through the Second Lebanon War and Operation Defensive Shield, we have utilized the most advanced hi-tech capabilities and implemented the IDF spirit and our combat doctrine more effectively.

We still have a long way to go, and we must also introduce changes: For example, we must look beyond normal logistics and seek special logistical solutions. I ask my logistics officers to avoid using trucks and convoys, which constitute easy targets for guerilla operations. I am looking for a sound logistical solution that proceeds like a well oiled machine, hoping to use this as a model for a solution that is applicable to the IDF. The IDF will surely continue to develop all the time with the aim of finding dynamically changing advanced operational solutions because our enemies are also learning and progressing. They are intelligent and have taken up positions in places that make it difficult for us to operate. We want to continue to be a leading and advanced country that cherishes its ethical standards and moral values. While we cannot forgo our security, we can likewise never give up on our values, for it is the values that ultimately determine the outcome.

Perceptions of “Self” versus “the Other” as a Religious Precept in Islamic *Sharia*

David Bukay

Alan Dershowitz and other legal scholars so astutely noted that the longstanding Palestinian and Hizbollah *modus operandi* manifests their three most consistent war crimes: 1) deliberate fire from civilian Palestinian areas; 2) premeditated fire on Israeli civilian territory; 3) use of children as human shields and for terrorist activities.

The problematic aspects enveloped in the challenge of waging warfare in densely populated areas have never been raised before and it is highly doubtful whether they will ever be raised in any Muslim Arab country living under the rule of the Islamic *sharia*. This is because from the Islamic perspective, this topic is both irrelevant and a non-issue. The reason for this is twofold: One is religious and cultural, while the other involves the perception of “self” in Islam. From the religious-cultural aspect, the issue of a just war as it is perceived in the West and the moral dilemmas that it raises simply do not exist in Islam. To Muslims, it is beyond doubt that Islam is correct, just, and ethical in every respect and always exemplifies supreme and absolute virtue.

Majid Khadduri¹ analyzed and explained this phenomenon brilliantly: Islam does not believe in “conquering” foreign territories; instead, there is only *futuht* – introducing the world to the light of Islam and delivering the infidels from the darkness in which they live. This is why the Muslim regimes have never expressed any remorse, or apologized for their past conquests or for their present violence, because this is a positive phenomenon designed to bring the light and give joy to the heretics. The Islamic Empire established following the imperialistic conquest of the area that stretched from East India to Spanish Andalusia was the outcome of

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the Arabization and Islamization of the indigenous natives. This is how the Middle East was mainly Pharaonic; Phoenician; Babilonian; Ugarit; Chaldean; Jewish, and Berber in North-Africa came under Islamic rule. Iran was Sassanid; Turkey, Afghanistan and Pakistan were Buddhist. Most of these peoples have perished, or come to extinction, like the Christians.

Furthermore, unlike the cultural and scientific approach in the West, which advocates skepticism, self-criticism, and even self-blame, these attitudes simply do not exist in the Islamic religious system. The faithful always avoid evil and always pursue absolute good.² Consequently, there is no room for moral or conscientious considerations in reference to heretics and there is no reason to feel empathy towards them.³ By its innate essence, Islam is globally superior. It therefore does not engage in self-criticism over the actions or behavior of a faithful Muslim, as it is the epitome of perfection.

By virtue of being absolute axioms, these Islamic notions are beyond proof. Islamic epistemology is clear and decisive: Good and evil do not exist in and of themselves; they are as Allah proclaimed them. Allah does not decree or prohibit certain behaviors or actions because they are good or evil; but the actions are good or evil because Allah defined them as such. This is the most supreme and exclusive value in Islam and it is the behavioral guideline of the faithful to follow.

The second explanation involves Islam's view of the "self" versus "the other." The Islamic view is absolutely clear and totally ethnocentric. Everything is perceived in unqualified terms of black and white. Islam divides the world in two: *Dar al-Islm* against *Dar al-Harb*, the good and just society versus the evil and impure society; absolute righteousness compare to ultimate evil; Heaven and Hell.

The operative expression of this juxtaposition becomes evident in the centrality of the *al-Walla' wal-Bara'* approach: the supreme and unqualified loyalty and love for Islam versus the absolute rejection, enmity, and hatred of the infidels. Senior Muslim clerics have ruled that this is the most important manifestation of the Islamic faith, second only to the belief in the unity of Allah (*tawhid*). Many verses in the Qur'an in this vein are in fact mandatory religious commandments for the believer.⁴ To be a loyal Muslim means to demonstrate absolute submissiveness and devotion to Allah⁵ that leads to a life of happiness and joy in this life and in the world

to come.⁶ To be an infidel means to lead a life of depravity, corruption, and misery in this world and be condemned to Hellfire in the world beyond.⁷

This is the source of the unconditional willingness to kill and die for Allah. The verses in the Qur'an assert that:

Anyone fighting for Allah, whether he dies or is victorious,
we will give him great rewards.⁸

They fight for the sake of Allah; they slay and are slain.⁹

Moreover, two verses in the Qur'an affirm that, beyond the luxurious life that the *shuhada'* will enjoy in paradise and the virgins that await them there, they shall enjoy eternal life on Allah's side:

Do not say to those who are killed for the sake of Allah are dead. Indeed, they are alive but you do not perceive it.¹⁰

Do not think that those who are killed for the sake of Allah are dead. No, they are alive alongside their Lord and have their provision by Him.¹¹

This is the basis for the win-win situation that is so profoundly characteristic of Islam. The Muslims justifiably defeat the infidels, as this is their destiny, and this emanates from the natural and proper world order. Therein lies the basis for the diametrically opposed attitude toward death in Islam as against the Western idea. In contrast with the Jewish or Christian faiths,¹² in Islam not only is man not made in God's image, but this very perception in fact constitutes *bida'h* – a pure and unadulterated heresy. Life is consequently not sacrosanct. This is why Muslim leaders, from Osama Bin Laden to Ayman al-Zawahiri and all others assert: We will defeat you and rule the world because you love and sanctify life, whereas we venerate death. The theological basis for this Islamic view can be found in the superlative descriptions of the luxurious life in Heaven in both the Qur'an and the *Hadith*.

This approach underlies Muslim fighters' motivation according to the *Hadith*:

Umar sent the Muslims to fight the infidels and said to them, "Wherever you go, tell the infidels: 'Our prophet commanded us to fight you until you accept Allah alone or pay us the *Jizyah* [poll tax Muslims levy of non-Muslims]. And our prophet told us that any one of us who dies in the war is a *Shahid* who will

go straight to paradise and live a life of happiness and fame, and those of us who survive will be your masters.'"¹³

That is why all acts of violence and terrorism require the authorization of a religious ruling (*fatwah*) to clear the way to paradise for the believers. Meanwhile, as they carry out these acts, the faithful must recite: "*Allahu Akbar*" (Allah is the greatest). This is the ultimate manifest proof that according to Islam, every such act is positively just and ethical, requiring no checks, doubts, and criticism, because its religious foundation can be found in the Qur'an and/or the *Hadith*.

Further validation can be found in the writings of the historian al-Tabari (838-923), one of the most reliable and august sources and an authoritative interpreter of the Qur'an:

The Arabs are the noblest people of all, with the finest pedigree. They are the most progressive and prominent people, and matchless in their actions. We fight others until everyone believes in Allah. He who believes in Allah and his messenger protect his life and secure his possessions from our wrath. As for the infidels, we will forever wage war on them for the sake of Allah. The killing of infidels is a trivial matter for us.¹⁴

Ibn Khaldoun (1332-1406), from the Maliki School, asserted that:

In the perception of the Muslim community, Jihad is a religious duty because of the universal nature of the mission of Islam and the obligation to convert everyone to Islam, whether through persuasion or by force. Islam is religiously obligated to attain sovereignty over all the nations.¹⁵

Ibn Taimiya (1263-1328), from the Hanbali School, defined this in similar terms in his commentary on verse 9:5, *Surat al-Tauba*:

Because warfare against the infidels is legal and legitimate, and because it is in essence jihad for the sake of Allah; because its goal is to demonstrate that Allah's destiny is to rule the world; and because Allah's word is of necessity categorically supreme, therefore all the Islamic Schools of Jurisprudence agree that it is an obligation to fight and kill those who stand in the way of Muslims operating to attain these goals.¹⁶

Ibn Kathir (1301-1373), one of the most authoritative and admired interpreters of the Qur'an, along with the al-Jalalayn interpretation, wrote this about verse 9:29:

It is therefore an obligation to call on all the nations of the world to accept Islam as the only legitimate religion. Regarding those who refuse to do so, or refuse to pay the *jizya*, it is decreed that they should be fought and killed.

A prime expression of Muslim thinking can be found in the words of the famed Saudi preacher, Bassam 'Alim:

As a follower of the only true religion in the world, I have the most legitimate right to invade others' territories in order to force the *sharia* upon them. History clearly shows that the Islamic *sharia* is the supreme and most just for all civilizations. This is the true meaning of jihad. We conduct *jihad* in order to free people from the darkest enslavement in which they live, and we strive to bring them into the light of Islam.

Only after one understands Islam's cosmic view can one begin to deal with the question of the status of civilians during wartime. Islam's four Schools of Jurisprudence (*Maliki, Shafi'i, Hanbali, and Hanifi*) explicitly aver that there is no hindrance to killing men, combatants, or civilians from among the heretics: all of them deserve to die. The precedent for this can be found in the Qur'an, which states that Prophet Muhammad never took men captive but would always slaughter them, in accordance with *Surat al-Anfal*:¹⁷ "It does not behoove the prophet that he should take captives, until he fights and conquers the territory."

As for women and children, there are two *Ahadith* that lend to understanding that Muhammad prohibited the killing of women and children.¹⁸ At the same time, those very sources also carry the following stipulation: "A believer asked Muhammad about the infidels whose community was attacked at night and the women and children were killed. The prophet replied: 'They were part of them.'"¹⁹ The phrase "they were part of them," implies that there is no difference between adults and children, and that it is permissible to kill them in the battleground. That is why Andalusian cleric and philosopher Ibn Hazm (994-1064), stated categorically: "It is incumbent upon Muslims to hate all infidels and not leave even one of them alive."²⁰

Hadith Tirmidh explains why it is not really necessary to kill women and children: It is in the Islamic interest to take them captive and convert them to Islam in order to enlarge the pool of fighters. To justify his view, Tirmidhi cites Muhammad's words: "There is no community of people in the world from which you cannot bring me Muslims. Best of all, I love that you bring me their wives and children and that you kill all the men."²¹

Ibn Rushd (1126-1198), a philosopher, legal expert, and physician from Cordoba, offered the following commentary on this quote:

As regards women and children, there is a consensus that they must not be killed, but this is holds true only if they are not in any way part of the infidels' war machine, and if, by keeping them alive, the intent is to bring them into Islam's fold. However, it is permissible to devastate a besieged city even if this implies killing its women and children. One is allowed to cut down the enemies' trees and raze their homes. All the legal schools of Islam share this view.²²

Ibn Rushd condensed the opinions of the four Schools of Jurisprudence regarding 9:29 in *Surat al-Taubah* into the following viewpoint: "Muslims are obligated to fight against infidels until they convert them to Islam or until they come under Islam's rule and coerced to pay the *jizya* through humiliation. If the infidels turn down both of these options, the Muslims must wage jihad against them."²³ This verse (9:29) constitutes the basis for the famous *Hadith*:

Muhammad said: "When you meet your enemies among the infidels, offer them three options, and whichever one they choose, make peace with them: Call on them to accept Islam. If they agree, make peace with them. If they refuse, call on them to come under the rule of Islam and pay the *jizya*. If they agree, make peace with them. If they refuse, wage a war of jihad on them and kill them for the sake of Allah."²⁴

According to Ibn Rushd, the Maliki School forbids the killing of women and children, but notes that in the absence of any other alternative, one must kill all of them. The Hanbali School stipulates that women and children are invaluable property for Islam and better therefore be taken captive and Islamized so as to broaden the reservoir of Muslims fighters and Islamic society. The Hanifi School prohibits only the killing of the elderly, arguing that Islam must spread and expand its pool of fighters,

which includes women and children. The Shafi'i school, observed in Egypt, Syria, and among the Palestinians, takes the most radical view of the laws of warfare, asserting that Muslims must fight against all the infidels and kill them, citing the Qur'an verses 2:193, 4:89, and 9:5.²⁵

This is the *sharia* general approach: It is permissible to kill men at all costs and from every aspect, regardless of whether they are civilians or soldiers – unless they convert to Islam. As for the ban on killing women and children, this depends on: 1) the interests of Islam and the situation on the battlefield; 2) whether the enemy society is indeed fighting against Islam; 3) the terms and circumstances as determined by the leaders of Islam. In his writings, in which he analyzed all aspects of the populations conquered by Islam, al-Mawardi (1058) summed up this matter succinctly.²⁶

The above thus explains the attitude towards the Jews and Israel. Islam was the first entity to raise anti-Semitism to the level of a methodical systematic science, both from the religious and racial aspect as well from the operational level (genocide and ethnic cleansing). Some 700 verses in the Islamic Scriptures make direct reference to the Jews: in Mecca – 1 percent (a positive tone); in Medina – 17 percent (a negative attitude); in the *Hadith* – 9 percent; in the *Sirah* – 12 percent. All in all it comprises 9 percent of the *sharia*.

So why must the Jews be condemned to annihilation?

- a. The Jews spurned Muhammad as the last of the prophets and chief among them. They therefore merit all of Allah's punishments and they should be condemned to Hellfire.²⁷
- b. The Jews are sinners and transgressors and have therefore forfeited their status as the chosen people,²⁸ and were punished twice with the destruction of their Temple.²⁹
- c. The Jews forged the Holy Scriptures. They do not believe in Allah's miracles and omens. They are evil incarnate, in particular since they have killed all the prophets.³⁰
- d. Because they desecrate the Sabbath and deny the miracles in the Tablets of the Covenant, they have turned into monkeys and pigs destined to suffer in Hellfire.³¹
- e. They are more wicked and despicable than all the wild beasts.³² Mice are a mutant transformation of the Jews.³³ In his book on animals, al-Jahith, dealt extensively with the Jews as wild beasts: He believes that the ants, mice, and lizards were all originally Jews.³⁴

f. Allah's curse on the Jews is eternal because they are Islam's worst enemies and must therefore be eradicated.³⁵

In a well-planned process grounded in the religious commandment on genocide and ethnic cleansing, and true to his word, Muhammad indeed banished and wiped out all the Jewish tribes (Banu al-Nadheer, Banu Qaynuqa', and Banu Quraytha) from the Arabian Peninsula, capturing the women and children and forcing them to embrace Islam. The eradication of the Jews in Khaybar in the year 628 and the pilfering of their possessions was a seminal event that bred the anti-Israel Palestinian song: "Khaybar, Khaybar, oh Jews; the army (or sword) of Muhammad shall yet return."

Several authentic *Ahadith* clarify this phenomenon:

When we were in the mosque, our prophet came to us and said: "Come, let us attack the Jews." He told them: "If you embrace Islam, you will be safe. You must realize that the entire planet belongs to Allah and His prophet, and I want to expel you from this land."³⁶

In his last moment of life, Allah's prophet said: "Allah will curse the Jews and Christians because they built their houses of prayer on the graves of their prophets."³⁷ Accordingly, Umar Bin al-Khatib heard Allah's prophet say: "I will expel the Jews and the Christians from this land and leave no one here but the Muslims."³⁸

From the religious perspective, this attitude toward the Jews has been exacerbated since the establishment of the State of Israel in 1948. The ideological-political assertion that the Jews are the most sordid, repulsive members of the human race; that they are the scum of the earth and destroyers of the universe; that the Jews are the mice of the world, leeches, snakes, and scorpions – all of this is part of the preaching and sermons delivered by the most high-ranking religious Islamic imams. This has been systematically reiterated by the Palestinian religious and political leadership in statements and cartoons published in the media, and it also appears in the official Palestinian schoolbooks.³⁹

Most of all, these comments repeat and stress that the Jews are descendants of monkeys and pigs. As they deliver the sermons in the mosques, the clerics quote this *Hadith* :

The Day of Judgment will not come, until the Muslims shall fight the Jews and kill them; and when the Jews will hide behind a tree or a rock, the tree and the rock will call out: "Oh

Muslims, oh, servants of Allah! A Jew is hiding behind me.
Come and kill him."⁴⁰

This is the religious foundation that justifies the cause of the total eradication of Israel and inflicting harm to its entire people without distinction. The Palestinians' goal is to demonize and dehumanize both Israel as a state and the Jews as a nation. They realize that they cannot win the war of annihilation and that even terrorism can at the most erode the Israeli nation's morale and eat away at its spirit. The goal is therefore to eliminate Israel by means of isolation and an international boycott through demonization and dehumanization. The Palestinians' model for this is South Africa, and hence their persistent invocation of the term "apartheid." It is imperative to emphasize the following point over and over again: The most central and critical phenomenon among the Palestinians is the fact that they rear generations on hatred and incitement toward Israel and the Jews. No change will be possible and no peace can be made as long as they continue to bring up the younger generations on sheer hatred and enmity toward Israel.

Ahmad Jabari, the terrorist who was killed at the onset of the campaign in Gaza in 2012, announced on a number of occasions that "the Jews who came to Palestine were invaders, murderers, thieves, and conquerors. It is therefore our obligation to kill each and every one of them."⁴¹ "We must sacrifice our souls for Allah until the Jewish mice scurry back to their holes. We must liberate all of Palestine... and its residents and this is a legitimate target."⁴²

Sheikh Hamid al- Bitawi, former mufti of Jerusalem and Palestine, noted that homicide bombings are anchored in several Islamic principles and are therefore lawful and just. Sheikh Akrima Sabri, the Grand Mufti of Jerusalem, has often said that homicide bombings are the ultimate sacrifice for Allah. Hizbollah leader Hassan Nasrallah has often cited the Qur'an in reference to the question of the Jews as a religion and a race, and declares: Jews are the descendants of monkeys and pigs; they are the killers of prophets and the most detestable and lewd people among all of humankind.

There is still another dimension to the analysis of this issue. Islamic *sharia* explicitly states that any land conquered by Islam is *waqf*. Islamic endowment and its irreversibly becomes consecrated property of Islam to the end of days that cannot ever be bargained over or returned. The

territories of Israel, conquered in 634, or Spain, conquered in 711, or India, conquered in stages from 712 on, are therefore all *waqf* land. Their liberation is an obligation incumbent upon all Muslims (*fard qifayah*) in order to facilitate the killing of all the infidels.

This is the basis for paragraph 11 of Hamas's charter, which says:

The Islamic Resistance Movement (Hamas) believes that the land of Palestine has been an Islamic *waqf* throughout the generations and will be such until the Day of Resurrection.... This is the status [of the land] in Islamic *sharia*, and it is similar to all lands conquered by Islam by force, and made thereby *waqf* lands upon their conquest for all generations of Muslims until the Day of Resurrection.

Only the sovereignty of the rule of Islam is legitimate. This is manifested in two articles of the Hamas charter:

Article 6: The Islamic Resistance Movement is a distinct Palestinian movement, which owes its loyalty to Allah, derives its way of life from Islam, and strives to raise the banner of Allah over every inch of Palestine. Only under the shadow of Islam could the members of all religions coexist in safety and security for their lives, properties, and rights.

Article 31: Under the shadow of Islam, it is possible for the members of the three religions, Islam, Christianity and Judaism, to coexist in safety and security.

A similar attitude was expressed by Ayat Allah Kamal, the Palestinian woman who attempted to carry out a homicide bombing in Israel. In response to a question by the British journalist, she said:⁴³

I sincerely believe and wish that the entire world would become Muslim; a world in which all of us – all human beings, the animals, the flowers, the plants, and the rocks – will live in peace, happiness, and harmony. Islam will bring peace to the flora and fauna, to the grass, and to the rocks. You could be able to remain a Jew, it does not matter at all – but only in a world that is entirely Muslim.

Indeed, the central focus of the Qur'an is on the absolute and burning hatred toward the infidels (*kuffar* or *Kafirun*). It is important to bear in mind that the Quran does not mention "non-believers" or "disbelievers," but only

infidels. In fact, 64 percent of the Qur'an, 81 percent of the *Sirah*, and 37 percent of the *Hadth* deal with them. All told, 60 percent of the *sharia* is devoted to the infidels: They are infected liars and accursed sinners who manifest evil;⁴⁴ the infidels are animals and beasts in league with Satan. It is therefore a believer's duty to chop off the heads of infidels,⁴⁵ inflict terror and violence upon them,⁴⁶ annihilate them,⁴⁷ burn them in the fires of Hell,⁴⁸ and crucify them.⁴⁹ Allah's curse be upon all infidels forever. There is no going back on this.⁵⁰

Hence also the centrality of the Islamic notion of *al-Wala' wal-Bara'*, which is expressed in the Islamic *Tawhd*, or the declaration of faith: "There is no God but Allah⁵¹ and Muhammad is his apostle."⁵² In other words, all other Gods are spurned and disdained, as they are the manifestation of heresy, which is punishable by death. Many verses in the Qur'an make it clear that no other Gods can be associated with Allah.⁵³ Obviously, then, the Muslim Allah cannot be the Judeo-Christian God.

In addition, the Islamic prayer of *Surat al-Fatihah* (1:5-7), which Muslims recite five times a day during their prayer, includes the following evocation: "Guide us to the straight path – the path of those upon whom You have bestowed favor, not of those who have evoked [Your] anger or of those who are gone astray." Qur'an commentator and renowned historian al-Tabari, and subsequently other Qur'an commentators, including the authoritative Ibn Kathir, assert that the reference to "those who have evoked [Your] anger" alludes to the Jews,⁵⁴ while the phrase "those who are gone astray [from the true path]" refers to the Christians.⁵⁵ In other words, in all of their five daily prayers, the Muslims dissociate themselves from the Jews and Christians, and assert that they are sinners.

Finally, this phenomenon is expressed in the Muslim perception of superiority over all infidels, evincing a manifest racist attitude:

- a. Muslims are the most sublime and preeminent exemplars of all the nations of the world. They represent the ideal society, the *ummah*, and are the model for the rest of humankind. Allah has elevated them to the highest level above all other peoples, to bestow upon them the luxurious life of paradise.⁵⁶
- b. Islam is an impeccable religious system, above and beyond all other faiths, because it includes the total and absolute wisdom of Allah, from the dawn of history to the end of time.⁵⁷ It is forbidden to question its perfection and superiority; it is forbidden to use logic to establish

its veracity; and it is forbidden to judge it by human values.⁵⁸ This is why Islam precludes freedom of choice and absolutely prohibits any internal criticism.⁵⁹

- c. It is Islam's destiny to subjugate the world until it becomes the sole legitimate regnant religion.⁶⁰ This is the natural world order. Heaven and earth would have collapsed if they were not controlled by Allah.⁶¹
- d. Muslims are therefore obligated to obliterate anyone who changes as much as a single letter in the Qur'an, because the words of Allah are the eternal perfection.⁶² Those who do not have absolute faith in Muhammad and his mission over all else deserve death, because Muhammad exemplified perfection and was the ultimate model for all humankind.⁶³

Taking part in jihad is thus the utmost recommended action for the Muslim believer:

Muhammad said: "No one who died and found virtue by Allah's side would want to come back to this world, even if he is promised the entire world and everything in it, except for the *shahid*, who, upon seeing the superiority of jihad, would want to come back to this world to be killed again and die as a *shahid* in the name of Allah."⁶⁴

Not one of those who entered paradise wants to return to the world, even if he receives all that this world has to offer, other than the *shahid*, who wants to come back to the world and become a *shahid* 10 more times for the sake of the honor that would be bestowed upon him.⁶⁵

Muhammad said: "Without a doubt, I would want to fight for Allah and be a *shahid*, to come back to life and be a *shahid* again and again and again."⁶⁶

This is the best phenomenon that can befall humanity, and it will come about thanks to Islam. It is therefore in humanity's best interests to rush to embrace Islam of its own free volition. Hence also the statement by King Abdullah of Saudi Arabia:⁶⁷

We have no need for democracy; we have no need for political parties; we do not need the West's human rights, and we do not need the West's freedom of expression. What we do absolutely need is the Qur'an. It governs our life perfectly. It is

the best legislation in the history of humankind. It expresses Allah's sublime words of and the absolute and eternal values.

In summary: The Islamic attitude toward "the other" stems from its perception of its own "self" as the manifestation of the absolute supremacy of Islam and the Muslims over the apostates, who are the epitome of evil. Everything is designed to promote Islam in a bid to reign over the world for the sake of Allah. This is the meaning and operation of Islam's just war.

Notes

- 1 Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins University Press, 1979).
- 2 3:110, 114, 132; 9:71, 112.
- 3 2:62; 41:30; 48:29.
- 4 2:257; 3:28; 3:31-2; 4:76; 4:89; 5:51; 5:54; 9:71; 24:2; 60:4.
- 5 4:59; 5:3; 22:77.
- 6 9:72; 48:17; 61:12.
- 7 See David Bukay, "Islam's Hatred of the Non-Muslim," *Middle East Quarterly* 20, no. 3 (2013): 11-20.
- 8 4:74.
- 9 9:111.
- 10 2:154.
- 11 3:169.
- 12 Genesis, 1:27.
- 13 *Sahih Muslim*, 19:4294.
- 14 Al-Tabari, *Ta'rikh al-Rusûl Wal-Muluk*, vol. 9 (Beirut: Dar al-Fikr, 1998), p. 69.
- 15 Ibn Khaldoun, *The Muqaddimah*, p. 183. Ahmad ibn Naqib al-Misri, *The Reliance of the Traveler* (Beltsville, Maryland: Amana, 1994), p. 602.
- 16 Muhammad Ibn Taimiya, *Majmu' al-Fatawa*, vol 28 (Jeddah: Kashul Shububat Production, 2005), 32.
- 17 8:67.
- 18 *Sahih Bukhari*, 4:52:257, 258; *Sahih Muslim*, 19: 4320; *Sunnan Abu Dawud*, 8: 2663.
- 19 *Sahih Bukhari*, 4:52:256; *Sahih Muslim*, 19:4321-4323.
- 20 sunnahonline.com/ilm/contemporary/0017.
- 21 *Hadith Tirmuhi*, vol. 7, p. 36.
- 22 Ibn Rushd, *Distinguished Jurist's Primer*, vol. 1 (Beirut: Dar al-Fikr, 1960), pp. 458, 460-61, 464, 604.
- 23 Ibid.
- 24 *Sahih Bukhari*, vol. 2, nos. 291-301.
- 25 Ibn Rushd, *Distinguished Jurist's Primer*, vol. 1, 458-59; al-Misri, *The Reliance of the Traveler*, o9.10, p. 603; o9.13, p. 604; o9.14, p. 604. On the Maliki School, see *al-Muwatta: The First Formulation of Islamic Law* (London: Kegan Paul,

- 1989), Book 21, *Ahdith* 8-10. Imam Nawawi: <http://hadith.al-islam.com/Display/Display.asp?Doc=1&Rec=4215>.
- 26 The *Laws of Islamic Governance* (London: Ta-Ha Publishers, 1996), pp. 143-45.
- 27 2:91, 108, 170; 4:46-7; 50, 153; 6:124; 17:90-3; 33:40; 61:6.
- 28 3:19; 45:17; 61:5.
- 29 17:2-8.
- 30 2:61, 75, 87-91, 100; 3:21, 112, 181; 4:46, 155; 5:62, 70; 6:146; 8:55-6; 43:48; 58:14; 61:5.
- 31 2:65; 4:47; 5:13, 60, 112, 115; 7:166; 62:65.
- 32 2:61; 3:112; 4:60; 98:6.
- 33 *Sahih Bukhari*, book 54, no. 524.
- 34 Al-Jahiz, *Kitab al-Hayawan* (Beirut: Dar al-Fikr, 1992).
- 35 4:52, 56; 5:60, 78, 80, 82; 22:17-19; 62:6-8.
- 36 *Sahih Bukhari*, 4:53:392.
- 37 *Sahih Bukhari*, 1:8:427, 2:23:472.
- 38 *Sahih Muslim*, 19:4366.
- 39 See the systematic dated coverage by Palestinian Media Watch at <http://palwatch.org>.
- 40 *Sahih Bukhari*, 4:56:791; 4:52:177; *Sahih Muslim*, 41:6981; 6982; 6983; 6984; 6985.
- 41 *Al-Jazeera*, July 3, 2006.
- 42 Hamas website, January 1, 2006.
- 43 *The Guardian*, February 7, 2005.
- 44 3:82; 4:48; 6:39; 9:28, 32, 69; 11:14; 14:4, 30; 18:57; 25:21; 35:8; 36:8-9; 39:23; 40:63; 45:23.
- 45 8:12; 47:4.
- 46 3:151; 8:12; 8:60; 33:26; 59:2.
- 47 2:191, 193; 4:91; 8:39; 9:5, 36, 111, 123; 66:9.
- 48 3:10, 131; 4:56, 91, 143; 152; 7:144; 9:17; 13:15, 33; 14:30; 16:28-9; 18:106; 21:98; 22:19-22; 33:64; 48:13; 61:11; 66:6; 98:6.
- 49 5:33.
- 50 9:30; 48:28.
- 51 3:62; 5:73; 20:8, 14, 97; 59:22.
- 52 Repeated in dozens of Qur'an verses.
- 53 2:22; 4:48; 4:116; 5:72; 6:19; 7:33; 7:173; 7:190; 13:33; 14:30; 16:3; 16:54; 30:33; 30:40; 31:13; 39:8.
- 54 2:61; 5:60.
- 55 4:44; 5:77.
- 56 3:110, 114, 132; 4:141; 5:3; 7:158; 9:71-2; 48:17; 61:12.
- 57 5:3; 9:33.
- 58 4:115; 5:72-3; 10:69-70; 29:68; 36:64-5.
- 59 33:36; 4:136.
- 60 4:141; 5:17; 7:158; 9:33, 123; 21:107; 30: 25-30; 63:8.
- 61 5:17; 10:68; 12:109; 21:22; 40:62; 46:33; 48:14.

62 6:115; 10:64; 30:30; 33:60-2.

63 2:99; 3:141; 4:115; 4:150-2; 5:17, 52, 72-3; 10:68-70; 13:33:4; 16:28-9; 29:68;
36:49-64.

64 *Sahih Bukhari*, vol. 4 no. 53; *Sahih Muslim*, 11:2013.

65 *Sahih Bukhari*, vol. 4 no. 72.

66 *Sahih Bukhari*, vol. 4 no. 216.

67 Lebanese television, August 27, 2008.

Purity of Arms and the Immunity of Non-Combatants: An Unconditional Prohibition

Noam Zohar

Ethics, particularly military ethics, the philosophy of the Halakhah (Jewish law), and Halakhic studies, recognize two views in distinguishing between combatants and noncombatants: the standard approach and the nonstandard approach. The standard approach tends to blur the distinction between combatants and noncombatants and lumps together the morally culpable and the guiltless. For reasons that are obvious to all, this division does not work. The nonstandard approach presents the opposite approach, drawing a clear line between combatants and noncombatants. I would like to present a third approach, which, in my opinion, is simpler and more rational in every way. Very often, discussions of guerilla warfare fail to note the critical discrepancy between that kind of warfare and terrorism. What the two have in common is that they are operated by irregular forces. The difference between them, however, is that according to its classical definition, guerilla warfare implies actions taken by irregular forces against combatants, whereas terrorism involves actions against noncombatants. However, in truth, even regular forces can engage in terrorist acts. In my opinion, the view that a state cannot engage in terrorism, meaning that no act that the state perpetrates can be called an act of terror simply by virtue of the fact that it is performed by the state, is somewhat dated. Clearly, countries like to raise that argument, but the notion of state-initiated terrorism is obviously not out of the ordinary, and is in fact quite straightforward. Guerilla warfare therefore constitutes one form of activity by irregular forces against combatants or an army, in effect, against a state or a state-sponsored force, whereas terrorism involves an intentional attack

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on civilians. There are further terms and conditions to define an operation as an act of terror, but this is the crux of the matter.

When this type of terrorism is discussed, it generates moral condemnation, and clearly the people who direct rockets at civilian population centers are considered terrorists. This is beyond doubt or discussion because they intentionally target a civilian noncombatant population. Our moral condemnation of terrorism was echoed by President George W. Bush when he declared war on terrorism after the 9/11 attacks in a statement that can be paraphrased as follows: "It makes no difference what your goal is, and no matter how justified it is; attacks on civilians are simply unlawful and proscribed. Regardless of how justified your cause is, and whether it was motivated by the desire to obtain national liberation, wage war against evil, or fight against imperialism – certain actions are simply not done." In essence, that which characterizes terrorism and that Bush tried to combat with the support of the world is what breeds the basic revulsion that decent people feel toward it. This is precisely the point: that unrelated to its goals, terrorism targets non-fighting civilians.

I agree that the end does not justify the means. I believe that in the enlightened world, and even in the semi-enlightened world, universal condemnation of terrorism is a sentiment that is very deeply ingrained in all human beings. Perhaps describing this feeling as "universal" is a bit exaggerated, but there is certainly vehement and very widespread denunciation of terrorism – and this is the core of the matter.

As Israelis, terrorism is, sadly, a familiar phenomenon. Our natural aversion from, and repudiation of, the terrorism from which we suffer from time to time, and the moral abhorrence we feel toward terrorism is the basis for our war against it. I therefore find it difficult to accept the argument that this attitude is based only on some kind of consensus. The moral distaste for terrorism, the absolute negation of the intentional use of offensive means against noncombatants, underlies the hallowed principle of the immunity of noncombatants. This is more than a convention; it is such an obvious and undisputed moral element that it renders all theories about it redundant.

What people often tend to hold against philosophy is that it seems to search for ever-finer distinctions and complex academic concepts. This is true. Philosophers do indeed delve into hair-splitting discussions. At times this seems to be a dreary undertaking, involving quibbling over

theoretical notions when matters are actually crystal clear, clearer than any other explanation we can come up with. The source of our abhorrence of terrorists derives from the fact that they intentionally target noncombatant civilians.

What needs to be explained is not the noncombatants' immunity. Of course noncombatants have immunity: that is beyond dispute. The question is why it is permissible to harm soldiers, who are sometimes called up to duty, who believe that their war is just, and who operate under pressure or coercion. Still, they are not holding a gun at this moment and are not directing fire at us. It is necessary to explain in very clear and unambiguous terms what justifies the killing of these soldiers.

The above-mentioned third approach, which I am presenting herein, claims that soldiers are not automatically morally culpable, but when they shoot at me, the justification for killing them becomes an act of self-defense. The problem is that this ostensibly vindicates only hitting a very small subgroup of soldiers, because most soldiers do not in fact engage in shooting. What then is the acceptable ratio between those who shoot and those who refrain from shooting? Is it 1:8, or maybe 1:10? This depends on the effectiveness of the military organization, and this factor can conceivably drive the ratio even higher, since most of the troops do not even cock their guns. Certainly international law, as well as elementary ethics, sanctions killing soldiers in general. This leads to the tough philosophical question of how to rationalize and explain the license to harm soldiers who are not shooting without extending this license to apply to harming all the people on the other side, including women and children.

There are answers to this quandary. Everyone acknowledges that wars, even asymmetrical wars, cannot be adequately characterized as a mass brawl or a squabble between 1,000, 2,000, or even 1 million people on the one side against several thousands or millions on the other side. They are not a duel multiplied by a large factor. War and warfare are interactions between groups and organizations, and the same exact characterization of an army's actions – not as the sum total of its individual members' actions but as the collective operation of an organized entity – is critical for the understanding and the moral-ethical perception of the phenomenon of war and warfare. Therefore, in the case of regular armies, anyone who belongs to a fighting organization, or in short, anyone who wears a uniform, is part of that organization. He enables it to function; he is the one who returns

the fire at those who shoot first, and this makes him part of the threat. It is therefore permissible and legitimate to take action against him in self-defense. Obviously, the act of self-defense, when carried out by soldiers, is more than just an act of protecting their own personal lives; it is an act taken in defense of the collective as part of the defense of the sovereign existence of the nation that they are protecting.

In short, this is the essence and epitome of the dilemma. What needs justification is not the question of the immunity of noncombatants, but rather the question, why not be a pacifist? This is a very serious question. Why is it permissible to kill the enemy's soldiers in war even though on an individual basis, none of the troops are culpable, or any more culpable than the politicians or the civilians on the other side? The dilemma concerns not the personal moral guilt of a certain individual. The challenge, therefore, is to explain how we can justify the injuring of soldiers. Surely the soldiers themselves understand this problematic issue. If, in a scenario that currently sounds surreal, war breaks out between Israel and Syria, when an Israeli soldier shoots at the Syrian soldier, he will not think of himself as a murderer. The Syrian soldier who fires at the Israeli will likewise not consider the Israeli soldier as a killer. Soldiers worldwide understand very well that fighting against each other is part of the deal.

By contrast, soldiers from any side who intentionally attack civilians are terrorists. It is impossible to reconcile the solidarity with, and the deep moral condemnation of, abhorrent terrorism – a sentiment that is shared by the entire Israeli population, by President George W. Bush, and many others in the world – without, in the same breath, also endorsing the absolute prohibition on attacking the foe's noncombatants. These are the two sides of the same coin. If we want to loosen the reins and forego the prohibition on harming noncombatants, a ban widely referred to in Israel as “the purity of arms” or morality in warfare, we must by the same token also relax our condemnation of, and revulsion toward, terrorism. If we rightfully denounce terrorism because of its heinous support for the dastardly belief that the end justifies the means, and when those means involve killing noncombatants, then we ourselves must also clearly adhere to the prohibition on harming noncombatants. In fact, the chapter on “the purity of arms” in the IDF's ethical code, known as *The IDF Spirit*, explicitly states that IDF soldiers are not allowed to use their weapons or apply force against noncombatants.

When we talk about noncombatants in the context of combat in a densely-populated area, we refer to fighting against guerilla fighters. In the Israeli context, we have been fighting against both guerillas and, very often, also against terrorists. The Israeli government and the media, which refer to the perpetrators as *mehablim* (literally, terrorists or “ruiners”), thus obscure the distinction by calling both those who operate locally or on a limited scale and exclusively against IDF soldiers, as well as those who plant bombs, *mehablim* – as was the case with the Netanya Park Hotel attack at the Passover Seder in 2002, when 30 civilians were killed and 140 others were injured. This fudges and confuses the public discourse. We have been dealing with guerilla fighters who are fighting against our soldiers, and with terrorists. Very often these are the same people, but this is not always the case.

When they fight against noncombatants, they target civilians. This makes them terrorists. In this context, the question of who is a combatant is tricky, especially as they do not wear uniforms, although, clearly, and for a variety of reasons, it is unrealistic to demand that they wear them. Yet whom do we define as combatants or as noncombatants on the other side? Here Israel seems to have set a precedent in drawing a distinction between “involved” and “uninvolved” parties. In other words, although it is impossible to establish a fighter’s specific rank, and since he does not always wear a uniform or carry the soldier’s ID associating him with any fighting body, nonetheless he is *de facto* an involved party. He either prepares bombs or orders the fighters to fire missiles at civilians or soldiers. That certainly makes him involved. In this sense, the conceptual and operational differentiation is decidedly called for, as these are not combatants who fit the same category as regular army personnel, but combatants who can instead be seen as “involved” parties. Amending this definition was absolutely necessary, but it requires some fine-tuning to facilitate a precise definition. Ultimately, we will have a distinction between involved and uninvolved parties that from the moral-ethical aspect will be completely congruent with the classic distinction that we must continue to endorse and that *The IDF Spirit* continues to uphold to this very day, namely the distinction between combatants and noncombatants, between involved and uninvolved parties. As for harming uninvolved parties or parties that had not been defined as involved, the prohibition on harming noncombatants, civilians, or innocent victims as per their common

definition – though not in the moral sense, but in the traditional sense that is commonly acceptable in such cases – applies as always.

To recap: What warrants justification is the harming of combatants, or involved parties. The ban on harming civilians, uninvolved parties, or non-combatants is the alpha and omega of “Thou shalt not kill.” No special rationalization for that is necessary. Hence our loathing of terrorists for systematically and intentionally violating that prohibition. There is no need for any intricate philosophical debate, consensual theory, or any other theory to rationalize these sentiments. What we need is to define the group of combatants or the members of the involved party as a group that has forfeited its immunity, and as one against which we are entitled, indeed, are obligated to, act. In this sense, the Biblical proscription against killing is universal. The Mishnaic sages said: “Beloved is man, that he was created in His image” [Avot Tractate 3:14], and “If anyone saves a single life, it is as if he saved a whole world” [Sanhedrin 4:5]. The equal value of every human being as such, and the fact that all humans are all included in the commandment “Thou shalt not kill,” plus the fact that that very same unconditional immunity applies to noncombatants, remains firmly in effect. Yet this immunity excludes someone who becomes a combatant, an involved party, or a member of an organization that uses force and constitutes a threat, against whom one has the license to act.

We have thus far discussed intentional and deliberate injuries. The required amendment of the “purity of arms” section ought to say that we shall not use force to harm noncombatants or uninvolved parties. Yet what about the collateral damage and unintended harm? In recent years, a heated debate has been held all over the world, and certainly in Israel, concerning the balance between the safety and wellbeing of our soldiers versus the safety of the other side’s civilians. Plainly, the safest way for our soldiers to protect themselves is not to get embroiled in such situations in the first place. Thus, when soldiers join a justified military operation, they must a priori take into account the certain risk that is involved in carrying out that just and necessary mission. They thus jeopardize both their own lives and, if they observe the rules of “purity of arms,” they are also susceptible to causing incidental and unintentional harm to the civilian population, particularly when that fighting takes place in densely populated areas. In this context, the question is not the one that has sometimes been raised, i.e., whether the troops must risk their own lives to save other civilians’ lives,

but the more direct one, which asks whether soldiers are allowed to put civilians in danger to save their own lives. The proper prism through which this debate should be examined should be that of course the operation itself endangers everyone – the soldiers, the other side’s combatants, and the involved parties on the other side – but this is not really a moral quandary. This is something we rightfully want to undertake. The problem, however, is that this compromises both our own soldiers as well as the civilians on the other side. The ethical question, therefore, should be: What is the appropriate balance between the two? To argue that the soldiers must disregard their own wellbeing and safety and ignore those of their forces as they endeavor to do everything they can not to endanger the other side’s civilians is clearly just as irrational as the opposite: to claim that soldiers may engage in something that endangers the other side’s civilians in order to maximize their own safety and achieve a state of supposedly zero risks to themselves. The proper balance between the two is the quintessential question.

Justice in Asymmetric Wars of Independence

Yitzhak Benbaji

The principle of “civilian immunity” is the basic tenet of the code known as *jus in bello*, or “justness in war.” This code, which instructs soldiers about right and wrong in war, prohibits the infliction of intentional harm on civilians and civil society in wartime, even in circumstances in which directly harming them could prove significantly advantageous from the military point of view. As is well known, in asymmetric wars of independence, this principle becomes especially problematic because such wars involve parties with large and clear military disparities, where the weaker party’s combatants blend in the civilian population. In such wars, there is no frontline and there are no uniforms.

Philosophers and jurists take an interest in the rules of engagement that apply to the stronger side. The question that usually interests us is how to honor the principle of distinguishing between civilians and soldiers when the enemy soldiers do not wear a uniform and often take shelter within or behind the civilian population – if such a distinction is at all possible to begin with. Yet I would like to address different questions: What measures is the weaker party permitted to use to achieve its objectives when it is at a serious military disadvantage? Is taking shelter among the civilian population a violation of the principle of civilian immunity? Is it forbidden to strike civilians and civil society under any circumstances, even though the stronger party is permitted to cause collateral damage to civilians?

In order to address these questions, allow me to begin with an analysis of the ethical status of the law that grants civilians immunity from intentional harm in conventional (symmetrical) wars.

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Two answers are commonly given to the question of why, in wars between standing armies, the intentional killing of civilians is prohibited, while collateral damage to civilians (as well as the direct and intentional killing of soldiers) is permitted. According to the standard interpretation of this tenet, the deliberate killing of civilians is unacceptable because civilians as such do not bear responsibility for the crime of aggression or the injustices that an unjustified war causes. Intentional harm to human beings who have done nothing by virtue of which they forfeit the right to life is forbidden, even in circumstances that necessitate this for achieving the just cause of the war (such as self-defense, national liberation, and the like). In other words, this is prohibited even under conditions in which it is permissible and even appropriate to go to war, even if under these circumstances, the killing of civilians is indispensable for the achievement of a just victory. According to the standard interpretation, the end does not justify the means.

However, the standard interpretation does not stand up to criticism – and for a number of reasons. First of all, soldiers who are fighting a defensive war are fulfilling their right to defend themselves, their families, and their homeland. Their war is justified in every respect and renders them innocent of all crimes. But then, why should it be permissible to kill these soldiers although it is forbidden to kill civilians? Secondly, a soldier who belongs to an army that is fighting an unjust war does not automatically become responsible for the wrongs that were committed by the army of which he is fighting member. A soldier who takes action to end hostilities or a soldier whose job is to minimize injury to enemy civilians to the extent that this is possible certainly does not augment the injustices caused by his army. Furthermore, the average soldier is in any case only marginally responsible for the wrongs inflicted by his army. On the one hand, the standard interpretation does not explain why civilians as such are entitled to protection against direct attacks. Civilians can be just as responsible for unjust wars, and sometimes even more than the soldiers who actually partake in the fighting. All one needs to do is just think about the statesmen whose policies drive or prolong unjust wars, or the civilians who support and hail these politicians, or the officials in the Ministries of Defense and Finance, who deal with the civilian and financial aspects of the war.

The alternative interpretation of the rule of civilian immunity is a contractual interpretation. The prohibition on killing civilians in wars emanates from the fact that it is one facet of an arrangement between countries and it is based on moral ethics. The logic behind this interpretation is almost the opposite of the logic that underlies the standard interpretation. According to this interpretation, the effectiveness of the arrangement that immunizes civilians actually stems from the fact that it ignores the facts inasmuch as personal responsibility and moral culpability are concerned. "Justness in war" attaches to all the soldiers' equal rights and obligations regardless of the justness or legitimacy of their war or their responsibility for the injustice that they are causing. "Civilian immunity" is a different and complementary aspect of this "egalitarian" arrangement: The civilians enjoy the umbrella immunity from direct attack in general, irrespective of the extent of their support for the war or their responsibility for its outbreak or progression. According to this view, "justness in war" entails rights and obligations on the basis of collective affiliation (with the army or with the non-military population). Consequently, the deliberate killing of civilians during war is morally reprehensible simply because it involves a violation of a convention with a binding moral force. More importantly, it is unacceptable even if it affects civilians who are responsible for the wrongs against which the just party is fighting. The moral validity of such an arrangement emanates from its effectiveness, its fairness, and the high level of compliance with it.

These interpretations vary in their attitude toward the basis of the justification for the ban on harming civilians. While the first interpretation infers the moral force of "civilian immunity" from norms that underlie the moral responsibility of individuals, according to the standard interpretation, nothing that the civilians have done will justify the forfeiture of their right to life. Therefore, harming them deliberately is prohibited under almost any conditions. The logic behind the second, or contractual, interpretation supports almost the contrary view. According to this interpretation, the effectiveness of the arrangement that grants immunity to civilians actually stems from its ignoring such aspects as personal responsibility and moral culpability.

Why, then, do decent and upright countries sign an agreement that grants immunity to all civilians as one? The simple answer is that countries headed by a rational political leadership want to end conflicts with no

losses, and the mutual acceptance of the principle of “civilian immunity” is a particularly simple straightforward means to achieve this. The objective behind the distinction between soldiers and civilians is to minimize harm to innocent parties. An arrangement whose purpose is this will offer the civilians immunity from a direct attack even if they are responsible for the evils against which the justified party is fighting. This is because in most cases, those who fight an unjustified war believe that they are in the right, and consequently perceive certain civilians on the opposite side as responsible for the injustice that should rightfully be opposed. Thus, the license to harm civilians who are morally responsible for some sort of injustice will lead to injuries to civilians who are responsible for engaging in a justified war.

Even Michael Walzer’s rich list of arguments condemning deliberate attacks on civilians has a clear contractual foundation. Thus, for example, an article he co-authored with Avishai Margalit argues that “war between states must not be a total war between nations and peoples and must not be a war of annihilation. It must be limited to the fighting forces onlyThe decisive element for limiting the range of the fighting is a demarcation of the clear line between combatants and non-combatants. This is the sole relevant moral distinction to which all parties must agree” (“This is Not How to Conduct a Just War,” *Haaretz*, April 8, 2009). It seems that what Walzer and Margalit are proposing here is a contractual distinction, because those to whom they refer as civilians are only presumed to be above suspicion, although most likely they are not truly blameless. This presumption emanates from the acceptance of rules of engagement, which mandate the a priori presumption of the innocence of civilians.

Assuming that the contractual interpretation is correct, it can be argued that even if the arrangement that immunizes civilians against direct and deliberate harm is appropriate and equitable in the context of symmetrical warfare, at least in the context of certain wars of independence it lacks moral validity. If the discrepancies between the forces do not give the party fighting for its political independence any chance to achieve a military victory, then the contractual interpretation implies that in such wars, an arrangement based on “civilian immunity” has no moral validity. It systematically discriminates against the weaker party and/or perpetuates unfair disparities between the stronger side and the weaker side.

To understand this, let us once again examine the principle of “civilian immunity.” Its overt aspect demands that the parties avoid deliberate harm to civilians and the civilian population. However, this rule also has additional aspects, which are more covert. Firstly, it obliges soldiers to wear a uniform and carry their weapons openly to clearly distinguish them from civilians. The obligation that derives from this rule prohibits the use of civilians as combatants without first mobilizing them because the very distinction between soldiers and civilians would otherwise be nullified. Finally, the contractual interpretation attributes importance to the distinction between direct and deliberate injury to civilians and foreseen indirect injury that is nevertheless unintentional. As mentioned above, civilian immunity tolerates indirect, predictable, but unintentional injury to civilians or civilian targets if it is mandatory for the attainment of a legitimate military goal of sufficient importance. This license is of critical importance because since the weapons used in modern warfare are very powerful, the rule that protects the civilian population from indirect, projected, or inadvertent injury will prevent the army from using those weapons and will thus seriously hamper its ability to attack military targets and achieve the just victory.

The contention that the distinction between civilians and soldiers in war discriminates against nations fighting for their national independence addresses the three components of “civilian immunity.” Firstly, it is easy to imagine situations in which the combatants’ obligation to wear a uniform would make it very difficult for the freedom fighters (those of them who abide by this rule) to effectively camouflage themselves. In such cases, the rule of “civilian immunity” significantly limits the freedom of movement and freedom of action of the party that is militarily inferior: If it obeys this rule, it will become a sitting duck, thereby in fact paving the way for its own defeat. Secondly, consider the license to indirectly harm civilians, which should presumably offset the restrictions resulting from the prohibition on harming them directly. Again, it is easy to envision situations in which, from the weaker party’s perspective, this license becomes meaningless because that party has neither the ability nor the means to strike at military targets. Thirdly, imagine situations in which the weaker party will under no circumstances be able to hit military targets but still has some prospect of hitting civilian targets. Accepting the rule that grants civilians immunity from direct attacks would obliterate even this

small potential. While the likelihood that the weaker side could defeat a sovereign country with a regular army is not great under any regime that regulates the fighting, if harming civilians is prohibited, the weaker side's chances become virtually nil, whereas if the prohibition does not apply or if it is ambiguous, this chance increases, even if it still remains very small. As an example, the citizens of an occupying country normally enjoy economic prosperity, where their sense of security and stability constitutes one of the foundations underlying its success. Rules of engagement that undermine this feeling can greatly weaken the stronger side in the conflict and inherently increase the weaker side's chances of achieving victory or pressing for a compromise and a change. In such situations, the prohibition on attacking civilians actually quashes the weaker side's chances of gaining victory, as the balance of power is in any case plainly in favor of the stronger side.

Under certain circumstances, freedom fighters are entitled to disrupt life in the occupying country in order to purposefully undermine support for the occupation through intentional harm to the civilian and public space in which its life is run. In extreme conditions, they are permitted to blow up government institutions and bridges, and devastate main roadways. This, of course, is a violation of the rule of "civilian immunity," but it is permitted because this rule is rendered inapplicable in circumstances of extreme inequality in the balance of power. Nevertheless, in military conflicts, the freedom fighters must treat the civilians as if they were innocent of any personal responsibility for the injustice that they have caused. This rule also underlies the code that I call "justness in asymmetric warfare" because it is beneficial for the weaker party and does not systematically discriminate against it. Therefore, even in conditions in which the weaker party is permitted to harm the civilian population, the citizens of the occupying country are "generally presumed innocent" and, as such, the freedom fighters must not knowingly harm their bodies or property with malice aforethought. "Justness in asymmetric warfare" thus differentiates between damage to civilian infrastructures that belong to the public, and deliberate harm to the civilian population. Most of all, whereas the freedom fighters may target a public building, they are not entitled to target the employees who work in that building.

This solution relies on two fine distinctions: the first is the distinction between the civilian population and the individuals in it; and the second

is the distinction between harming the civilian population and a direct and deliberate strike that targets them. The civilian population does not consist of a random collection of individuals; it is a structured entity that has, inter alia, a public domain in which its civil life is conducted. That public domain is made up of institutions that have evolved in that society over generations and was shaped by means of complex interrelationships, as well as the relations that have developed between them and the civilians in that society. The institutional relationships that make up the public domain are governed by the *ius positum* (or positive law) and by informal social norms.

The rule of “civilian immunity” does not merely strive to prevent direct harm to civilians (some of whom, as noted, bear direct responsibility for the injustice of the war), but also to protect civil society and the public domain in which life is conducted. The principle of “civilian immunity” can thus be violated in two separate ways: by inflicting premeditated injury upon the civilians or by intentionally harming the public domain in which its life is conducted. In other words, such community institutions as government offices, telecom services, schools, and universities, the stock market, traffic arteries, public transportation, and the like can be targeted without thereby deliberately or directly causing harm to any individual citizen. Of course, any attack on the community *de facto* spells injury to the individuals who form that society, but this does not constitute the deliberate intention to harm one specific person or another. The direct object of the attack is the population itself as a whole, whereas the individuals who are part of it are only an indirect target. It would be reasonable to assume that the harm brought upon the civilian population will erode its support for an ongoing occupation. The knowledge that the long arm of the freedom fighters could harm the occupation’s public civilian domain could cause substantial damage to the government and its various institutions, as well as to the economy and the social services. I will refer to this stipulation as part of the asymmetrical terms that wars of independence could entail.

The term “justness in asymmetric war” means that in those cases in which civilian immunity is invalid, freedom fighters may cause direct harm to the civilian population, but they must make extreme efforts and do their best to avoid causing direct harm to the individual members of that society. The freedom fighters’ legitimate goal is to harm the civilian population. However, they must not advance this goal by means of directly

and deliberately targeting civilians. Their violence must be directed at government institutions, business centers, and major traffic arteries. In other words, while the population and its institutions are legitimate targets, the individuals that make up that society are not. The freedom fighters must make a conscious effort and even take a real personal risk not to harm the lives or (private) property of civilians. Therefore, in asymmetrical conditions, the weaker side is not governed by the rules of “civilian immunity.” In other words, it is not bound by the distinction between a military target (which is legitimate) and a civilian target (which, in a symmetric war, is considered illegitimate). Nonetheless, it is constrained by the more elementary rule to recognize and honor the “presumption of innocence.”

Warfare in Densely Populated Areas: Identification, Discrimination, and Deterrence

Thomas E. Ayres

As a military lawyer who served in Iraq and Afghanistan, I participated in operations that are different from those conducted by the Israeli Defense Forces (IDF). There is, however, one similarity – the necessity to handle asymmetric warfare in urban areas.

When referring to asymmetric warfare, I speak of individuals who do not wear uniforms or follow the laws of armed conflict, but have the type of weapons and technology that until recently, due to the high cost and difficulty of maintaining, belonged only to states. These individuals have the advantage of achieving big strategic impacts for a very small outlay through multiple casualties, media use, and so on.

The world has become much more urbanized. Under the laws of armed conflict, urban areas are not to be used as a base of operations, but this is certainly not adhered to by those we fight against. There is, therefore, a need to root them out from populated areas, which has to be done in ways that abide International Humanitarian Law (IHL). As President Obama said, when we adhere to international standards, we strengthen those who do and isolate those who do not.¹

The United States tries to abide by the laws of armed conflict, although this goal has not always been fully met. As Winston Churchill said, the United States always finds the correct solution but only after exhausting all other options first. And, indeed, the United States receives much criticism regarding its mistakes, but it also learns from this criticism and constantly

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tries to improve its operations. Some of this criticism asserts that with the development of asymmetrical warfare and urban combat, the United States should change its view on warfare and use a different paradigm, and I disagree with this criticism. IHL was formulated following World War II, at a time when the forms of warfare used were similar to those of the asymmetric warfare we deal with today, like guerilla warfare, saboteurs, spies, and piracy.

The fundamental principle of the law of armed conflict is that it is based upon obligations. Soldiers are actors, and when in war, they continue fighting until there is victory or no victory even when faced with unknown odds. In that sense, soldiers are irrational actors, which means obligations should be placed upon them, and that's what the law of armed conflict achieves.

The human rights law bases its rationale on the rights of those who are being fought against. When the police deal with their country's citizens, force is considered the very last resort and must be proportionate. If a criminal fights a police officer, the latter must respond proportionately and cannot merely pull out a weapon and shoot the criminal.

The United States is a huge proponent of human rights everywhere but it is not a proponent of the human rights law. Instead, the law of armed conflict is the paradigm by which the United States understands and conducts its activities. The United States attempts to set clear obligations for its soldiers, but it is not always successful in doing so. Nevertheless, when attempting to understand or think about these problems, the law of armed conflict is the right paradigm to use, as opposed to that of the human rights law. The following three examples will demonstrate my point further.

Suicide bombers, for example, are irrational actors – they try to blow themselves up when in close proximity to military or civilian targets. This poses an extreme difficulty for military people, as they cannot discern or identify who the suicide bombers are. In Iraq, there was an instance where an improvised explosive device (IED) was detected on the highway. Checkpoints were quickly put up and marked by lights and wires, and the soldiers stopped traffic to protect the civilian population. At a certain point, a truck sped towards the IED and did not stop even after the soldiers shot in the air in warning. The driver was eventually shot by the soldiers. After the matter was investigated, it was discovered that the driver was a Hungarian contractor. Intoxicated at the time, he had been driving with earphones

on and could not understand or hear the warning shots. A civilian was, therefore, killed on the battlefield due to the operations of those who do not abide by the law of armed conflict and planted the IED in the first place.

Learning happens over time, though, and the soldiers learned to put up signs next to checkpoints. They also realized that some civilians do not react quickly enough. The implementation of lessons learned results in warnings and procedures so that innocent civilians will be deterred. But those whose aim it is to kill the soldiers will never be deterred, and in fact, they will always come up with new tactics to prevent the soldiers from stopping the insurgency. In the case of the truck, the soldiers had a split second to decide whether they were going to shoot – if they did not shoot and the driver was a suicide bomber, he would have exploded, but if they did shoot, they could kill an innocent civilian, who did not see the warning signs. Killing a civilian is clearly a bad action on its own merit, but it also turns the civilian's family, tribe, or clan, into the military's blood enemies for life – a win-win situation for the insurgents. The soldier who is going through the calculus of response, however, must be concerned with minimizing civilian casualties (i.e., the military necessities and obligations) and not with the truck driver's rights.

Another example is that of a sniper inside a building. The soldiers cannot decipher which window the fire is coming from, but they also cannot spray the building indiscriminately and put civilians in danger. Instead, they have to identify the target first to minimize the potential for civilian casualties and then decide whether the fire received is effective fire, putting civilians in danger, or whether the sniper is merely a "matador," waving a red flag in an attempt to get the soldiers to incur civilian casualties, lose hearts and minds, and win more enemies. The factor of winning the hearts and minds of the civilian population is very important in this calculus as well, but probably also stands in contrast to the situation in Israel, where at times the feeling is that hearts and minds could not be won. But even when hearts and minds cannot be won, there is a calculus about making enemies for generations by activities.

If the soldiers determine that the building is empty aside for the sniper, they can use typical military tactics – one squad can fire to cover for another squad that can move towards the sniper and use thousands of rounds to engage him. Under human rights law, this would not be considered a proportionate response as it is not the least amount of force that can be used,

but under International Humanitarian Law the soldiers' response makes sense. Colombian soldiers, for example, were held to their own human rights law standards within their country and were indicted for responding to snipers in similar situations. Soldiers who are fighting irrational actors, however, cannot engage in a fair fight or use a proportionate response – they need to engage in a quick and violent combat, where there is a winner and a loser, and where the sniper is killed, preferably without any military casualties. IHL allows for that, whereas human rights law may not.

The final example is of an insurgent shooting a rocket. Early on in Afghanistan, the insurgents rocketed small American fire bases in very creative and ingenious ways. One of those ways involved placing a frozen, cut off water bottle inside a rocket, which would balance the weighted pieces of metal during the night. When the sun came out and melted the ice, it would cause the pieces of metal to touch, completing the circuit, and igniting the rocket that would bomb the American bases at around 10 A.M. One night, the squad we sent out to find the insurgents responsible for these rockets called the base and reported seeing three or four guys digging in the ravine from which the base was fired on previously. The squad asked for permission to engage, but the commander at the base inquired if there were weapons spotted on the people's backs. When the squad responded that they could not see, the commander asked that they try to get closer, but still no weapons were detected. As the commander repeated his request that the squad get closer and closer, he acted according to the rationale that the people digging could be civilians, who may be receiving pay or are being forced to dig, and he did not want the squad to kill them and gain more enemies, instead of winning hearts and minds. The commander could have also thought that the people digging could be captured and perhaps provide intelligence even though the necessary intelligence would not come from foot soldiers but from the next level of leadership. Nevertheless, the squad continued getting closer and eventually the people digging fired two shots, killing Sergeant Steven Checkow, a 21 year-old from Brooklyn, NY, who was a beloved son and brother. At that point, we had 4,000 US casualties in Iraq and 3,000 in Afghanistan.

Even in this situation, International Humanitarian Law continues to be the right framework to use because the rocket aimed at the base will not go off for hours. In Israel, the same calculus of military necessity would

perhaps not work, as many times the ones being targeted are civilians and not soldiers.

What is, then, the military necessity? How does one establish the potential for civilian casualties, which demands the soldier fulfills his obligation under that military necessity? And what is the calculus of determining the proportionality? It is not easy to decipher, as it was not easy for that commander to deal with the knowledge that he made the decision to get closer, which later killed one of his soldiers. That is a tough position for anybody to be in. But the proper paradigm, provided by International Humanitarian Law, allows us to consider these problems.

Note

- 1 President Barack Obama, "Remarks by the President at the Acceptance of the Nobel Peace Prize," Oslo, December 10, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>.

The Developing Concept of the Civilian Element in Warfare

Guy Stoltz

The following is the testimony of an officer from the First Lebanon War: "Encountering civilians in combat is not a new phenomenon; they are always around. Yet you have to know how to fight when civilians are present on the battleground. It is truly a tough dilemma." Another example: An old man found himself trapped on the battleground as soldiers were running around him, firing their weapons and trying to carry out their mission.

In previous wars, we witnessed similar incidents where the civilian population was caught in the war arena. At the same time, when we look back at the most recent wars, and when we look ahead in anticipation of future conflicts, we can see the changes. First of all, we are increasingly engaged in fighting in densely populated areas like the Gaza Strip, where construction leaves little space between the houses, which is also experienced in Tel Aviv and other cities. As such, we have to fight in an environment in which the civilian population makes up the majority of those present. Furthermore, the enemy has shifted its fighting methods and now exploits the civilian population as human shields. This marks a change and poses a challenge. Today we must deal with the conflict between defeating the enemy in a densely populated area and allowing that population to pursue its normal daily life.

At the same time, a new player has entered the scene: the media. The media's presence on the battlefield was not so prominent before, yet it now plays a major role. As has often been the case, it can take a tactical event and turn it into a strategic problem and a challenge by merely presenting it this way.

Lieutenant Colonel Guy Stoltz, head of the desk on the civilian element in warfare, Coordination of Government Activities in the Territories

How does the need to deal with the enemy's civilian population affect the military decision the commander wants to achieve? How does it affect the degree of legitimacy of the IDF and Israel to engage in warfare, and how does it impact on the operational time span, or the amount of time the army has to complete its mission? Sometimes the media's presence can even halt the operation.

This new situation presents many diverse challenges to the IDF. It must distinguish between the civilian population and the involved party, namely the enemy; it must deal with the civilian population's movements within the combat zone; and it must detect and identify civilian and humanitarian distress situations and find a solution for them. This solution may vary depending on the duration of the fighting; there is a huge difference between fighting that takes one day, or combat that stretches over a full week or month. The IDF must also coordinate the activities of international agencies; it must contain civilian events on the tactical level quickly, comprehensively, and cognitively; and it must refute rumors and fraudulent reports. Moreover, all of these missions are only some of the many challenges we face today.

A brief survey of the latest wars and military campaigns illustrates the dilemma between dealing with the civilian population and defeating the enemy, and the effect this dilemma has on the operation's legitimacy. In Operation Defensive Shield in 2002, we performed well on the operational level, but not as well when handling the civilian population. We failed to support it. Let me cite some examples from the tactical perspective: An ambulance was heading toward the hospital when it came across a tank on the outskirts of town. In order to establish what kind of ambulance it was, the IDF tank swerved its turret. The ambulance, noticing the gun, automatically turned back. Five minutes later, the radio and TV carried a report claiming the IDF was disrupting the evacuation of the wounded to the hospital. This kind of incident exemplifies the tactical significance of an event associated with the civilian population, and how it affects the legitimacy of the military operation. In another example: One of the infantry battalions decided to deploy its frontline command post inside a local bank. From the operational perspective, this was extremely important, but the media immediately reported the IDF was robbing banks. We can, therefore, see that these are manifestations of delegitimization – exhibited also in movies such as *Jenin, Jenin* and the tales about alleged massacres

and other deeds that never actually occurred. But how can you prove your contention that these were only fabrications or misinterpretations? Without people who can prove otherwise, whatever we say will remain irrelevant.

The quandary assumed a different dimension in the 2006 Second Lebanon War, because having special officers to handle the population was still not part of the campaign. Let us take Kafr Qana as an example: I believe when the army is engaged in combat and is ordered to halt its fire for 24 or 48 hours in order to enable wounded civilians to receive treatment and allow supply convoys to come in, it should do so at once, even if this exposes the soldiers to danger and puts our divisions and battalions at a disadvantage, because we did something that should not have been done and it is necessary to freeze the situation.

By Operation Cast Lead (December 2008-January 2009), the progress we had made in that respect was already clearly noticeable. The question of the legitimacy was presented impartially and fairly. The IDF was far more cognizant of the issue and knew how to deal with it. Yoav Galant, then GOC of the Southern Command, made sure that officers entrusted with the job of supporting the local population – a role that was assigned then for the first time – were sent in together with the combat troops. Not all our actions were executed optimally, and there were incidents showing lack of coordination on the ground, where uninvolved civilians were hurt. This was war and such things happen in war. Yet even then, there were cases in which we failed to deal with civilians properly during combat – as Richard Goldstone ultimately highlighted in the United Nations report (although subsequent testimonies and evidence proved a very large number of the cases he cited were not true). We were obviously unable to counter his contentions at the right time and in the right place.

Operation Cast Lead was, in a way, the straw that broke the General Staff Command's back. After that campaign, the understanding was we should adopt a different *modus operandi*. Then-Chief of Staff Gabi Ashkenazi said the very discussion of the warfare affects the degree of its legitimacy; that it becomes part of the forces' mission; and on the tactical level, it should be handled on the battalion level and upwards. In Operation Pillar of Defense (November 2012), how the civilian population was handled featured prominently in the commanders' set of considerations on the strategic and the tactical level alike, even though there was no ground

invasion. This topic was part of the military thinking and the calculations in that campaign. The examples of IDF activity from that operation clearly demonstrate that other armies in the world would not necessarily take such precautions in the midst of fighting: More than 100 officers who were tasked with caring for humanitarian issues and worked on various levels. There were 43 cases of cooperation and operational coordination with the International Red Cross and the United Nations; during the campaign 54 new sensitive sites were identified and food supplies sent there, 18 of them civilian shelters (with a total of 10,000 people); 127 supply trucks entered the Gaza Strip; and 186 patients and their escorts were given exit permits to leave the Gaza Strip. These examples show that the IDF took pains to separate the solution to the population's needs from the mission of attacking the enemy.

Today we understand that apart from ethical values, which is an indisputably important factor, and from knowing how to carry out the mission properly, which always has primary importance, there are other factors to consider during fighting as well. All this has led us to a new kind of thinking involving making special efforts on the civilian humanitarian level during warfare even as the IDF engages in other efforts of combat, intelligence collection, and logistics.

The civilian humanitarian effort during battle has three components: the operational factor, namely, how to avoid injuring uninvolved parties or destroying what should not be destroyed; the humanitarian aspect, which involves assigning professional officers to handle the civilian population, i.e., to identify the distress and needs of the civilian population and provide solutions; and the cognitive/public diplomacy dimension. For example, if a picture taken of one of the enemy squads being attacked, which originally showed the launcher next to the bodies of the squad members, is eventually doctored by the media to show the same scene but without the launcher, the impression is these were civilian casualties. From this perspective, this is a battle over every detail in every event aimed at avoiding further reports like the Goldstone Report.

Today we know how to define and implement the operational, humanitarian, and cognitive elements, and we know what tools are available to us in this endeavor. We have created a combat doctrine employing professional terminology, as well as new concepts as "sensitive sites," or "sites that must be avoided," which include hospitals, facilities run

by international organizations and those organizations' headquarters, or population centers. In Operation Pillar of Defense, for example, we marked population centers and relayed to our forces information about sites they must avoid. Moreover, the concept of a "humanitarian axis," which is the road used by international organizations and the local population for humanitarian needs, was also newly created, as was the "humanitarian time slot," which is the period of time which we deliberately hold our fire to give the locals a hiatus to move around safely for humanitarian reasons.

Apart from the combat doctrine, we also trained and qualified an array of civilian population officers assigned to the tactical battalions. These officers, whether reservists or standing army personnel, undergo training in special courses, including classes on international law and on ways to cooperate with international organizations, dealing with the media's influence (including what needs to be documented and photographed), and the main subject: the civilian population in warfare. This covers the concerns of the civilian population during combat and the problems it faces, as well as the means to detect its distress and solve these problems during warfare.

Nowadays, the Coordinator of Government Activities in the Territories is in charge of this issue in the Palestinian theater. Another new important element is the Center for Coordination with International Organizations and Public Relations, which engages in cooperation and joint work with international organizations such as the International Red Cross and the United Nations.

Thus, if another conflict breaks out, by now we have honed our professional know-how in dealing with the civilian population during warfare. We will do everything we can to draw a distinction between involved and uninvolved parties so as to be able to meet the challenge of handling the civilian population concurrently while carrying out our forces' mission. Our professionalism and our values are at stake, while the objective continues: to score victory and remember all the while that we are human beings.

Armed Conflict and Terrorism: Identification of Military Objectives

Laurie Blank

In the last 10-12 years, much discussion in the policy and academic communities has been dedicated to the challenges of fighting enemies who purposely hide among civilians. Problems of identifying the enemy and how to treat him if captured have been debated, while military objectives have been defined.

Building on these definitions from different perspectives, I would like to, firstly, examine some of the challenges of identifying objects as either military or civilian in the course of conflicts with non-state groups in densely populated areas. Secondly, I would like to bring the challenges posed by the conduct of terrorist groups to light, analyze how the law could deal with these groups, and how the international community should utilize the law to deal with the challenges presented.

And indeed, one of the most fundamental principles of the law governing armed conflict is the principle of distinction. The prohibition on attacking civilian objects is carried out by the distinction between civilian and military objects. The problem of distinction, however, is rooted in the fact that nowadays hospitals, mosques, churches, schools, and the like are used for military purposes without any communication. The idea is obviously to obfuscate and make it difficult for the other side to figure out what is going on and identify the targets marked. These objects are naturally located in close proximity to civilian populations, which adds to the complication. We can examine the purpose of targeting objects through the military doctrine, which then helps to delve into the legal perspective by analyzing the way we understand the law.

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In the US, targeting is generally defined as “the process of applying combat power to achieve desired objectives within the overall operational plan by destroying, disabling, degrading, or harassing enemy capabilities.” One has to, therefore, be able to identify what the objective is in going after a particular target – whether it is to minimize the enemy’s ability or make it impossible for him to use something or access supplies, which would affect his ability to fight.

The definition of a military objective has two components. A military objective is something that makes an effective contribution to military actions because of its nature, location, use, or purpose. And its total or partial destruction, capture, or neutralization offers a definite military advantage. When in doubt, one has to presume that the object targeted is civilian. But world media influences how we think about the types of objects that state forces are targeting in the course of conflicts with non-state actors by describing them in vague and unclear ways. For example, in its efforts to combat the PKK, Turkey targeted obvious military targets, such as anti-aircraft defenses, but also vaguer targets, described as rebel positions or facilities harboring the PKK, which later in that same news story were also described as villages. In Mali, the French were said to target the oblique Islamic targets, which I assume were not mosques but what were they? In Sri Lanka’s 20-plus year conflict, the LTTE had a naval base in the north of the country that was described as a terrorist stronghold and a rebel-held town, and while the naval base is a defined place, a terrorist stronghold is not. We therefore must be more specific and flesh out the legal definition.

To just briefly look at some of the definition’s components, any object directly used by armed forces is inherently military and can easily be listed: weapons, equipment, staff headquarters, fortifications, depots, communications centers, and so on. The ICRC created a list in 1956 of things like broadcast facilities, which could be used for communications purposes, industries for the manufacture of armaments, and other supplies of a military nature that are essential to the conduct of war, like engineering factories, chemical factories, war ministries, and the like.

The idea of military nature, however, is difficult to define specifically when referring to the types of conflicts that involve non-state groups in densely populated areas. These groups are not states and do not necessarily have a governing apparatus. One of the major questions that is regularly

debated in regards to non-state groups and does not necessarily have a clear answer is how to distinguish or assess the relationship between the armed force components and the group's political or social service components. Naturally, the answer to this question is partially dependent on the perspective of the person asking it. It may be a bit broad to assume that everything connected with the enemy's group automatically qualifies as a military target.

Another serious matter is that of legitimacy concerns and the civilians that would be affected by the action. When, for example, infrastructures like transportation or communications networks are targeted to prevent the other side from fighting well, what would the consequences be for civilians, not just in terms of the actual damage made to the local population, but also in terms of winning the civilians' hearts and minds and understanding how they view the action. Legitimacy is very important to consider, especially when the fighting takes place against a group that is located in another state. What would be the operational impact on the civilians who are not initially involved in the fighting, or perhaps do not even remotely support the other group, but just happen to live in the same place where the group has decided to launch its operations?

The law must do a better job of enforcing the obligation to protect civilians in the course of armed conflicts with regard to questions about the types of objects that are used in military operations in densely populated areas. As seen in the media and in this conference, there are a lot of questions about the use of civilian objects like buildings and structures for military purposes. This is, of course, the opposite side of questioning what objects are inherently military and understanding the definition of military objectives.

Another component of the definition of military objective is that it is something that is used for military purposes. When enemy forces, for example, occupy a school and use it as their headquarters or as a place to launch attacks from even though it is inherently civilian, it becomes military and can be targeted. But the occupation of a civilian object in itself and its transformation into a military object is a violation of international law, which prohibits the use of protected objects such as hospitals and cultural or religious properties for military purposes. And yet, this occupation happens all the time and there is insufficient condemnation of this practice, perhaps because there are so many other violations of

international law, so many atrocities going on in conflicts around the world that seem significantly more grave, like those in Syria or Darfur, or the statistics of 10,000 rapes per day in the Congo. So when one uses a hospital as headquarters, it seems much less important to condemn. However, the failure to condemn this action results in the continuation of this practice, which endangers the civilian population. There are patients in that hospital, wounded fighters from both sides, who deserve the protection of international law. Sometimes it isn't a hospital or a mosque, but another type of civilian object like a residential building, a school, or a nursing home. When these objects are used by one side for military purposes, the entire civilian population is in greater danger because it is much harder to carry out the fundamental obligation of protecting civilians during the course of armed conflict.

I would argue then that the failure to condemn the use of civilian objects as military objects sufficiently facilitates that behavior and incentivizes those who do to continue to do so. On a tactical level, using civilian objects as military ones is done to prevent the other side from fulfilling its mission and having to make a very difficult choice of either to refrain from attacking the target that is posing a threat, or to attack the target and place civilians in great danger. The broader strategic effect of this is to cause a great deal of civilian casualties, which are then used to accuse the other side of war crimes and diminish the support given to its war effort. When the United States entered Afghanistan, the number of civilian casualties caused by air strikes on legitimate targets was certainly greater than the American forces expected or desired. This method was used as an attempt to diminish American support and political will to carry out the conflict, as it was argued that US forces were committing war crimes. Another example is that of Israel, where every day questions of international legitimacy are raised. Militants, non-state groups, and terrorist groups manipulate civilians for their own military purposes, and are, to a certain extent, successful at creating an effect.

There is a provision of international law that prohibits locating military objectives in densely populated areas. International law also prohibits using civilians to protect military objectives. And yet, this practice is rarely mentioned in international reports or commissions of inquiry, and the failure to condemn it has a great effect on enabling it to continue. From the operational perspective of the forces fighting against those using civilian

objects as military ones this is obviously extremely problematic, and it certainly affects the law itself. We need to make sure that all aspects of the law are being enforced as effectively as possible, even if they seem to be less dramatic or attention-grabbing than the genocide in Darfur or Rwanda. These smaller atrocities have consequences both operationally and in terms of the human consequences of war.

Challenges Posed by International Law in the Context of Urban Warfare

Insights from Operation Pillar of Defense

Dan Efroni

A lively debate in international legal circles has taken place in recent years regarding urban warfare. Many diverse arguments have been raised regarding the relevance and applicability of the laws of armed conflict to asymmetrical warfare, low intensity warfare, or warfare in densely populated areas – all different labels for the complex situation Israel has faced on its southern and northern borders for many years.

The spectrum of these contentions ranges from the assertion that the current laws of armed conflict (*jus in bello*) do not adequately address situations of armed conflict between states committed to rules of international law and terrorist organizations, which not only blatantly and intentionally violate the laws of armed conflict, but also cynically abuse the other side's commitment to those laws by conducting their operations from among, and under the cover of, their own civilian populations, including by exploiting them as human shields. At the other end of the spectrum is the view that the current laws of armed conflict permit the use of disproportionate force, and that this should be restrained by introducing legal principles drawn from the international law of human rights, with a particular emphasis on the right to life.

I do not intend herein to discuss these varying opinions in any more depth. Rather, my point of departure is the assumption that the laws of armed conflict, as they currently exist, are the laws that apply and bind the

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Israel Defense Forces (IDF), and that the IDF consistently acts according to these laws.

Thus, the IDF closely adheres to the four fundamental principles of the laws of armed conflict: *military necessity* – permitting the use of force as long as it is in order to achieve a military objective; *distinction* – requiring the distinction between combatants and military targets, which may be attacked, versus civilians and civilian objects, which may not be intentionally attacked, and to the extent possible, should not be harmed during the hostilities; *proportionality* – which acknowledges the possibility that civilians and civilian objects may be harmed (as collateral damage), as long as the expected collateral damage is not excessive in relation to the concrete and direct military advantage anticipated from the attack; and *humanity* – which provides the obligation to avoid actions that are liable to cause superfluous injury or unnecessary suffering. The effects of the hostilities on the civilian population should be minimized as much as possible.

These principles, reflected in the Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), from 1977, constitute customary international law. Even prior to 1977, and certainly today, the IDF saw and sees these principles as obligatory (even though statements or opinions to the contrary have been voiced from time to time, they do not reflect the position of the Military Advocate General's Corps or the IDF).

It is well understood that the security situation in the Gaza Strip and in Lebanon is highly complex and intricate. The complexity inherent in urban warfare can be seen in the numerous videos uploaded to the internet by the IDF Spokesman's Unit, which clearly demonstrate the import of fighting in densely populated areas, where the adversary carries out its hostile activities from within residential areas while concealing itself behind the civilian population.

All this notwithstanding, the IDF has contended with, and will continue to contend with, the conflicts in the north and the south in accordance with the four principles mentioned above. To do so, we invest considerable efforts and resources, to the extent that our colleagues overseas have criticized us for implementing precautionary measures that exceed the requirements of international law, and risk forming opinions that such practices are customary law or accepted practice, thereby raising the threshold of the required precautionary measures by other states. Two prominent examples

for this are the early warnings transmitted by phone and the “knock on the roof” procedure, as well as the Supreme Court’s ruling that prohibits the so-called “neighbor procedure.” We are aware of this criticism, but the IDF will continue to make every effort to limit its attacks solely to combatants and legitimate military targets. The 2006 Second Lebanon War, the operation in Gaza of 2008-2009, and Operation Pillar of Defense in 2012 proved to the civilian population in the Gaza Strip and in Lebanon that, in contrast to the Hamas and Hizbollah terrorist organizations, the IDF employs force in accordance with the aforementioned principles and is incredibly strict with its adherence to the principles of distinction and proportionality. To the best of my knowledge, the IDF’s efforts and achievements in this regard during Operation Pillar of Defense were unprecedented.

Nonetheless, the operational reality in these sectors remains complex. The terrorist organizations that we face have not been resting on their laurels. They study past events, learn lessons, and reinforce their defenses under the umbrella of the civilian population. It is therefore important to deliver the message to the residents of Lebanon and the Gaza Strip and every international agency involved in the welfare of these populations that the IDF has high quality intelligence and that it makes optimal use of it. However, intelligence alone cannot negate the possibility that civilians located near military targets may be harmed, and there is no guarantee that all future operations will be conducted in the manner of Operation Pillar of Defense. We repeatedly call on these civilians to stay away from terrorist activity and to keep their distance from buildings where missile launchers are located. The IDF will continue to observe the laws of armed conflict but it cannot ensure that collateral damage, which we always seek to minimize, will consistently remain as low as it was during Operation Pillar of Defense.

Consequently, one of the key challenges that we as legal advisors dealing with warfare face involves examining the suitability of the laws of armed conflict and the basic principles outlined above in light of the complex reality that the IDF faces. To demonstrate the nature of these challenges, one may consider a concept that is closely related to international law and the laws of armed conflict, and which has a significant influence on the behavior of states in the international arena in general and on their conduct in armed conflict in particular; namely, the concept of legitimacy. There are some who believe that legitimacy and international law are one and

the same. After all, abiding by international law would seem to bolster legitimacy, while contravening international law results in the opposite: delegitimization. But the two are not always in full accord. A clearly legal action by any interpretation may still be viewed by international public opinion as illegitimate and even serve to delegitimize the entire military operation, whereas an unlawful action may be viewed as legitimate (or at least not illegitimate, despite its unlawfulness). In contrast with international law, which may not be an exact science but is still a clearly defined and acknowledged legal discipline, “legitimacy” reflects shifting opinions and international relations. It is not rooted in tradition, it is not founded on deep moral or ethical grounds, and it can easily be swayed by media or other influences. The solutions legitimacy offers to various situations are often simple and in coherence with international law, but sometimes they are not. This is particularly true when the hostilities do not take place on the classical battlefield on the basis of which the laws of armed conflict were compiled, but on the battlefield of asymmetric warfare, in densely populated urban settings.

Some examples: International law requires that the principle of distinction also be applied to the densely populated urban battlefield, even where it is almost virtually impossible to implement. In the world of legitimacy, the attitude toward property differs from the attitude toward human life. Thus, damage to a civilian building, which may be prohibited by international law and which, in some cases, may turn into a war crime, will not necessarily be viewed as illegitimate.

On the other hand, when we examine the implementation of the principle of proportionality in the same urban battlefield, the standard that legitimacy sets is much higher when compared with that of international law. The laws of armed conflict acknowledge the possibility of harm to civilians as collateral damage resulting from a legitimate attack. The commander is required to avoid carrying out an attack only if he reaches the conclusion that the expected collateral damage would be excessive in relation to the concrete and direct military advantage anticipated from the attack. The principle of proportionality is not a mathematical rule. International law does not provide formulas to calculate the appropriate ratio between the expected collateral damage and the anticipated military advantage. The question of whether an attack conforms with the principle of proportionality is left solely to the discretion of the commander, who

reaches his decision on the basis of the information available to him at the time.

Experience has shown that, in the realm of legitimacy, the tolerance level for collateral damage – and particularly the extent and nature of such damage – is infinitely lower than the tolerance level for collateral damage set by international law. Thus, for example, an attack on a building in which, according to corroborated intelligence information, a terrorist commander is said to be hiding, will be viewed as lawful by international law even if it transpires that the terrorist commander had escaped from the building a few moments before the attack, which also incidentally caused the death of five children. The relevant terrorist organization, it may be assumed, would not miss the opportunity to use the attack so as to erode the IDF's legitimacy in continuing the military action and would broadcast images of those harmed in the attack.

In the context of urban warfare, the gap between what international law sanctions and what the legitimacy standard permits has grown wider, as evidenced in the Gaza Operation of 2008-2009 and in Operation Pillar of Defense. Tens of lawful attacks under international law, where each resulted in minimal and certainly not disproportionate collateral damage, could in total cause aggregate collateral damage to numerous uninvolved civilians. With no doubt this is a regrettable and tragic outcome, but by no means constitutes an unlawful outcome. This also applies for the attacks on the numerous mosques that served as terrorist bases and weapons caches, which, under international law, were completely lawful. In both of these cases, the high number of civilians harmed and the damage to numerous mosques occurred in the course of a campaign waged in full accordance with the laws of armed conflict; yet it was still liable to be perceived as illegitimate.

As noted above, the IDF acts in accordance with the laws of armed conflict – however, considerations of legitimacy that have crept into the international discourse now present new and additional challenges.

The most fundamental challenge is to refute the contention that legitimacy and international law are one and the same, that is, to counter the view that what international public opinion considers as legitimate is necessarily lawful, and that what such opinion considers as illegitimate is necessarily unlawful. This is an unfounded belief. International law is, as described above, a grounded and binding legal discipline, whereas

legitimacy is the product of public relations or political interests, and sometimes the relations between political powers. As a result, not every action considered “legitimate” when performed by other state militaries will necessarily be deemed legitimate when undertaken by the IDF.

Notwithstanding and despite the implied censure, it would clearly be wrong and undesirable to ignore considerations of legitimacy. The IDF should operate on the basis of the saying “don’t just be right; be smart.” This was certainly the way the IDF’s commanders operated in Operation Pillar of Defense. During that campaign, the IDF encountered many situations in which the laws of armed conflict provided extensive latitude in action, including the option of using greater force in order to achieve a greater operational outcome. However, the commanders preferred to act differently and to show greater restraint.

All of the above has generated two subsequent challenges that derive from the discrepancy between international law and legitimacy:

The first is minimizing the gap between what international law permits and what is prohibited in the legitimacy realm. We must exhaust every available channel in order to explain that the correct way to deal with terrorist organizations operating from behind the civilian population is to fight them with the entire range of tools provided by international law. Imposing restrictions based on legitimacy considerations rather than considerations of law is liable to result in damage which is twofold: On the one hand, it could erode the fundamental principles of international law; and, on the other hand, it could extend the length of hostilities and cause unnecessary harm and suffering. Thus, for example, if legitimacy considerations lead to a preference for a ground operation over an aerial operation, the potential for damage to property and people will become exponentially greater (as was evident in Operation Pillar of Defense, compared to the Gaza Operation of 2008-2009.) Moreover, if the idea that any action leading to collateral damage is illegitimate gains traction, it will serve, and indeed already does serve, as an incentive for terrorist organizations to continue to violate international law by further intertwining its operations within the civilian population and using civilians as human shields.

The second challenge concerns the gap between what international law prohibits but is nonetheless permitted according to legitimacy considerations. As mentioned above, the IDF ensures that all of its activities are carried out in accordance with international law, and refrains

from carrying out unlawful actions, even where they may not be viewed as illegitimate. The temptation exists, but we will continue to reject it. Nonetheless, and in consideration of the significance we place on the need to minimize harm to persons (IDF forces, the Israeli civilian population, and the civilian population of the adversary, all to the same degree), it behooves us to constantly examine and question the accepted interpretation of the laws of armed conflict and the practices that have been adopted over the years. On the basis of the moral principles that grant supremacy to human life over the value of property, which already underlie the laws of armed conflict, we must find ways that will be compatible with the fundamental principles of international law but will also provide effective methods for combating terrorists who take shelter behind civilians – while minimizing, or even completely preventing, collateral damage. In the same vein, we should question, from a legal and factual standpoint, the requisite level of incrimination required to determine an object, masqueraded as a civilian object, as a legitimate military target. Another question involves the weight that should be afforded to the possibility that a certain attack could accelerate the end of the campaign and consequently prevent further and unnecessary harm on both sides, when assessing the proportionality of such an attack. These are significant questions that we must examine carefully and thoroughly.

Carrying out hostilities in a densely populated urban setting against a terrorist organization that views our reverence toward international law as a weakness is, first of all, a complex operational challenge that the IDF's commanders and soldiers consistently meet with significant success, as evidenced in Operation Pillar of Defense. The legal front, which requires, *inter alia*, the development of operational legal tools, is a means of support, whose goal is to allow the IDF to achieve its mission of defeating the adversary, and, at the same time, minimize the damage and suffering caused to the civilian population. The challenges of legitimacy are a part of this legal front – in which we will continue to operate in full accordance with, and with sincere commitment to, the principles of international law.

The Challenges of Military Operations in Densely Populated Areas: An Australian Perspective

Mark Evans

As an operational and tactical commander responsible for the conduct of military operations in complex situations, my focus has been drawn to the relationship between the military and the civilian population. The conduct of military operations in cities and towns is particularly difficult due to the complexities of modern warfare that are always diverse, problematic, and full of errors, imperfections, and contradictions. Success, then, can only be achieved by comprehending the nature of war and characteristics of modern military operations, which is fundamental to managing the complex environment of operations and finding the right balance in dealing with the adversary, the civilian population, and the many other protagonists in the battle space. I would like to provide a doctrinal response to the challenge of conducting military operations in densely populated areas and my own personal perspective as a military commander of the Australian force.

Background

There is a perennial debate regarding war's nature and characteristics. Clausewitz was right in the sense that the nation state paradigm, on which he based his theory of war, is unlikely to change in the near future. While we have seen the proliferation of non-state actors, nationhood remains an attractive aspiration for many.

The nature of war remains unchanged. Clausewitz identified the relationship that exists between governments, civilian populations,

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and military forces, and recognized that despite the emergence of new technologies, war is fundamentally about the human condition and is a political act concerning the clash between human wills. Hobbesian in its nature, war is brutal, violent, and hideous, embraces the soldier, senator, and citizen alike, and entangles the fortunes of nation states, military forces, and civilian populations. The possibility of a conflict occurring between military forces alone with no consideration given to the civilian populations is, therefore, unlikely.

Modern military operations are different from operations conducted in the past in the sense that they have gained a broader application than that of war alone. Military forces nowadays must be prepared to pursue national objectives and win the nation's wars expeditiously, effectively, and efficiently. Given the security challenges and complexities nation states are facing, military forces are now also expected to have a role in a broader campaign that includes the period of normalcy, which operational planners refer to as Phase Zero. Along with other arms of government, the military forces shape the environment, engage with the local population, and hedge against warlike operations.

The Character of Modern Military Operations

Influenced by a world of continual change, the character of modern military operations has transformed as well. Population growth, diminution of natural resources, enlargement of the wealth-poverty gap, climate change, the popularization of social media usage and its impact on "people power," exponential advances in technology, increasing world urbanization, and changes in the international political and social framework, including the proliferation of non-state actors, have all influenced modern military operations tremendously.

While military operations have always been complicated for the military commander, changes in the environment create emerging complexities also for military forces. Brigadier Kitson, a distinguished British military commander and operational expert, coined the term "low intensity operations" to describe the character of post World War II operations that were deemed less than war fighting but more than constabulary operations, like those in Malaysia, Kenya, Yemen, and Northern Ireland. The phrase "operations other than war" grew from that. From trends emerging in the 1990s, General Krulak of the United States Marine Corps used the term

“Three Block War” to describe a new military operation, where military forces were required to simultaneously conduct conventional war fighting, peacekeeping operations, and humanitarian assistance within the space of three city blocks.

Some military theorists believe we are currently moving into the fourth generation of warfare, which is characterized by loose and ill-defined networks of the adversary, who becomes more powerful through information technology. This adversary is focused on the erosion of political will rather than on creating damage to the military forces that deal with him. Under these new conditions, military forces are required to show patience and restraint, unlike in past operations that demanded their ruthless pursuit of the adversary’s destruction.

Conducting military operations in populated areas is not a new phenomenon. Since war began, one military objective has been to control cities and ports and subjugate civilian populations. The hub, however, for future military operations is likely to be in densely populated civilian concentrations. As nations continue to urbanize, the adversary migrates to cities, where he cannot be as easily located, watched, or targeted. Military operations in densely populated areas will, therefore, be characterized by a ubiquitous scrutiny of journalists and international lawyers.

Each week, one million people migrate from rural areas to cities, where half of the world’s population currently lives. These cities are fragile, house a clash of civilizations from the mega wealthy to the ultra poor, and integrate agrarian, industrial, and high technology ages. They are the center points of political power, hubs of information, markets of transnational crime, and breeding grounds for terrorism. In the urban labyrinth of buildings, streets, tunnels, and sewer systems, the civilian population lives side by side with belligerents, non-state actors, terrorists, and criminals.

Military forces can reduce their footprints in cities by leveraging off their information technologies standoff capabilities, or by immersing in the environment and applying a human centric approach. Operating in cities provides the military force with the opportunity to become part of the environment instead of treating it as a threat and place emphasis on smart soldiers rather than on smart weapons.

Gauging from historical performance, the adversary attempts to neutralize the military’s strengths, amplify its weaknesses, and use the civilian population to his advantage. Within the city, the adversary is not

as likely to be accountable for his actions and needs to achieve less to be successful. He is, therefore, less disciplined and attentive to the laws of war. Militarily, the adversary endeavors to diminish the military force's standoff capabilities, attempts to draw the force into a game of attrition, and lets time degrade the force's moral legitimacy.

The military force may be ethically, culturally, and religiously different than the civilian population, and consequently must avoid the arrogance of believing it understands the local population. In Northern Ireland, I operated as a part of the British Forces in an environment where the force and civilian population shared the same language, watched the same television channels, worshipped the same God, practiced the same religion, and had the same ethnicity. We did not, however, understand the Irish as we did not share their history, tribal tribulations, or social nuances, and lacked the finesse and understanding of the situation to be tactically successful. While we operated in Northern Ireland for months, the local population and the adversary lived there all their lives, and when our force finally left the area, the local population merely saw a new force, which came in to start another cycle of searches, lift operations, and patrols. And if it is difficult when the differences between the soldiers and civilians are small, how much more difficult is it for the military force when the void is wider, like in the case of the Westerners in Afghanistan. The complexity of human networks can only be understood through long-term knowledge of their environments, which the force needs to invest time in understanding.

Leveraging off indigenous and human intelligence capabilities is vital, and can be done by using the civilian population's desire to return to normalcy. Although the civilian population is unlikely to be completely acquiescent to the military force, when provided with normalcy, they can be influenced to support the force. If the military force desires to win the hearts and minds of the civilian population, it must engage them as much as possible. The media is an important domain in that respect, as even in the poorest neighborhoods of the poorest cities, people receive information from blogs, televisions, radios, iPhones, Facebook, and Twitter. The media, then, has the ability to communicate, inform, educate, persuade, and provide hope for the general population.

The Australian Doctrinal Response

Australian military campaign experience since the early 1990s reinforces much of what has been said about the character of modern military operations. Australian forces have deployed in that time to Somalia, Cambodia, Bougainville, East Timor, the Solomon Islands, Iraq, and Afghanistan. Our operations in population centers, such as Baidoa, Dili, Baghdad, Nasariyah, Tarin Kot, and Kandahar taught me that difficult environments present new complexities and require a less kinetic response.

The most valuable lesson learned by these instances has been the necessity of the military force to interact with the civilian population. While the Australian military force possesses superior firepower, mobility, and surveillance capabilities, the adversary has the advantages of surprise, population support, and time. Thus, our definition of success changed from destroying the enemy to securing the population.

We reviewed our military doctrine of *adaptive campaigning* through the lenses of complex physical, human, and informational environments. Based on the premise that military operations are only one aspect of a larger governmental campaign, we learned that our doctrine must also focus on conflict resolution and involve political, social, and economic strands.

The Australian army's doctrine identifies operations in complex environments as being a blend of different ambiguous and non-linear undertakings. Our military force engages with NGOs, the media, foreign intelligence services, irregular auxiliaries, police forces, possibly neutral forces, and various adversarial elements ranging from quasi-regular forces to militias, terrorists, and criminals.

The Australian doctrine changed to include more of the quality of the Australian soldier and human centric lines of operation. It recognizes the need for operations to be conducted inside the complex terrain, with a focus on scalable close combat capabilities. The distinction between low, medium, and high intensity operations is no longer seen as relevant because there is no transition from one to the other. Instead, focus is placed on close combat capabilities, such as engaging the adversary while developing a relationship with the civilian population, and enabling influence to win back a degree of normality.

Consequently, the military force requires an array of lethal and non-lethal capabilities. In addition, it needs the support of equipment and

technologies to enhance the protection of the force and population and the opportunity to engage with civilians as effectively as with the adversary.

The *adaptive campaign approach* sees the military operation as part of an integrated whole of government effort to resolve conflicts. The military operation influences and shapes the perceptions, allegiances, and actions of the civilian population. Our approach also believes in enabling peaceful political discourse and supporting the quick return to Phase Zero. The military is allowed to operate within a joint interagency task command that includes five interwoven and population centric lines of operation – maintaining and utilizing a joint close combat capability, population protection, public information, public support, and indigenous capacity building.

Our success is predicted on adaptive action through knowledge. At the operational and tactical levels, it is vital to understand the environment and all aspects of the complex terrain, identify changes to systems when they occur, and correct or adapt to them before the adversary realizes them. The operational environment is seen as one of competitive learning with a continuous adaptive cycle of act, sense, decide, and adapt.

It is important to reinforce Mission Command through the methodology of command and control. Quick and robust decision making needs to occur at the appropriate level, which is difficult when our technologies actually enable centralized control of operations – what our soldiers refer to as the 12,000-mile screwdriver. Our decision making structures should be tighter and less hierarchical, and empower strategic corporals.

Given that the military force and the civilians are inseparable, our doctrine has provided a sound response to complex military operations by emphasizing the following:

- a. Needing a coherent whole of government approach that applies a cyclic campaign methodology, with no beginning, middle, or end, always hedging and shaping to remain in or return to normalcy.
- b. Establishing joint interagency command and control frameworks to coordinate the inputs of multiple agencies and maximize the effects of non-kinetic and kinetic options.
- c. Reinforcing Mission Command and empowering junior leadership.
- d. Applying adaptive and flexible tactics that put the consideration of the civilian population in the forefront. It is about seeing the engagement with the civilian population as critical to operational success. Lines of

operation are based on close combat capability, population protection, information and support, and indigenous capacity building.

- e. Encouraging a learning culture of adaptation, education, and training.
- f. Enhancing human intelligence, force and population protection, and a scalable mix of kinetic and non-kinetic capabilities.

A Personal Perspective

A doctrine plays an important function for the military forces, as it sets out the basic tenets for operations. It is, however, the quality of the force, underpinned by national character, ethos, values, education, training, and discipline code, that sets the standards for the operation, as well as its success or failure.

Accentuating the Human Factors

According to the Australian perspective, we are largely cosmopolitan, democratic, liberal, well-educated, and technologically adept. Our forces operate well in the complex terrain of the 21st century. Considering that the human factor is the key to success or failure in today's military operations, there is a need to reinforce the following:

- a. Selecting and developing operational commanders
- b. Understanding the law of armed conflict and rules of engagement
- c. Adopting an eastern approach to time
- d. Disciplining the force
- e. Emphasizing junior leaders
- f. Setting the quality of the combat arms, particularly the infantry
- g. Training in populated areas

Selecting and Developing Operational Commanders

A military operational commander should be able to turn new complexities into advantages. This type of commander must be pragmatic, educated, smart, adaptable, comfortable with ambiguity, and versed in the rules and laws of war. He should also be tough and resilient, and possess moral courage, broader perspectives, and good communication skills. In addition, he should feel comfortable in a coalition and interagency environment, be mentally agile and dexterous, and able to get along with others. Finally, he needs to be humble and have a good sense of humor.

The selection of operational commanders should therefore be well-thought of, as they continually face the challenge to align the strategic and tactical intents with the operational ones. Some tactical commanders are comfortable with traditional roles and tasks but find it difficult to understand the strategic objectives and translate them into tactical actions. The danger with that is that actions on the ground are then misaligned with their strategic intent. The commanders of some of the battle groups in Afghanistan, for example, were trained and structured for warfighting but could not make the mental leap and understand that their core task there was not to kill insurgents.

Understanding the Laws of Armed Conflict and Rules of Engagement

In regards to the Laws of Armed Conflict (LOAC), simplicity is preferred over complexity. The combatant-civilian paradigm, however, presents new trends and complexities, such as the difficulty of identifying the combatants within the civilian population. Distinction and proportionality need as much lucidity as we can articulate, and therefore the combatant-civilian paradigm needs to be under constant review.

The LOAC's success or failure is determined in their application. In that sense, the laws are only effective if the combatants are committed to them and have a high ethical base within their force that is supported by professional ethos, values, and a robust, effective, and open military discipline with an intrinsic justice system. One of the major international issues is the vigorous pursuit and prosecution of politicians, soldiers, and non-state actors, who fail to adhere to the principles of distinction and proportionality and commit war crimes.

Rules of Engagement (ROE), then, need the full attention of military commanders, and not just that of lawyers or staff officers. Commanders must understand these rules, and visualize and operationalize them in order to communicate their meaning to their soldiers, the civilians, and the adversary. As a commander, I saw one of my key responsibilities as maintaining a balance between the ROE and the protection of the force and population, while still reducing the adversary's advantages.

Flexibility is, hence, necessary for this approach to succeed. The doctrine of "shoot to kill" in land battles, for example, does not calculate warning shots that could prevent civilian casualties. Too many non-combatants who moved around the operational area in Iraq and Afghanistan were shot

because they failed to heed or understand warnings. In these instances, warning shots would have perhaps provided them with a moment for comprehension. Because it took too long to adapt to protect the civilian population, our legitimacy eroded, and we were often too slow to introduce new operating procedures and capabilities.

The organizational dexterity and adaptability must be constructed better so we can retain lessons learned at a faster pace. The hard lessons learned in Iraq regarding escalation of force were transferred to the battles in Afghanistan a very slow pace. The need for scalable capabilities short of lethal is fundamental to the new environment, as well.

International laws, rules, and conventions must be fundamental and underpin the way operations are conducted with weight given to the protection of the population. My experience from Northern Ireland, Timor, and the Middle East reinforces for me that if we blur the lines or caveat because a particular circumstance suits our own needs, we start to resemble that enemy we are fighting against and debase the very principles we fight for.

Time: Adopting an Eastern Approach

In recent conflicts, I was struck by the imperative of time and how differently our Western military forces viewed it versus the Eastern adversary. As Westerners, we have an instinctive need for action, and are strategically, operationally, and tactically harnessed to the need for quick victories. We want to change the status quo, and are driven by political cycles, budgets, the media, and public opinion.

The Eastern adversary, however, thinks in terms of seasons, years, and generations. In many ways, he could be content with the status quo, at least in the short to mid term, and can use our impetuosity to his ends. While we find it important to secure a particular objective or kill a particular target tonight, the adversary does not care if the Improvised Explosive Device (IED) he has laid on the route to the patrol base hit its target today, tomorrow, or next week.

This perception of time works against us sometimes. One night the Australian Special Forces in Southern Afghanistan were involved in a raid aimed to capture or kill an insurgent commander, who was believed to have been at a certain house. It was a well-planned and rehearsed operation with what appeared to be robust intelligence, but the insurgent

had unfortunately decamped, and the operation was completed early, some time before the helicopters were due to arrive. Eager to achieve a positive outcome, the commander was disappointed and, along with his force, decided to try another house in the time they had available. Clearance had not been obtained, time was beginning to compress, and intelligence was less robust, but the raid went ahead. Inadvertently, a number of civilians were killed, no insurgent was captured, and this small activity turned into a disaster. If we had been more circumspect instead of hostages to time and the need to achieve quick results, we would have captured the insurgent eventually and certainly not ended up with civilian casualties.

Our Western approach can thus have catastrophic results with strategic and political consequences. Unnecessary high military and civilian casualty rates or incorrect targets being neutralized have a deleterious impact on the campaign and start to consume the force. Does it really matter if we do not capture a particular target today as long as we do capture him eventually? We should choose the time of events instead of getting drawn into actions that are, in fact, reactions. It is crucial, then, that we re-evaluate our concept of time and adopt a fresh look at priorities and what constitutes military success in a campaign paradigm.

Discipline of the Force

In Timor, my brigade's tactical accomplishments were highly lauded by the Australian community, the fledgling Timorese Government, and the United Nations. All of that great work by about 4,000 highly professional troops was almost undone by the ill discipline of a few soldiers and their relationship with the civil community. Even though the incidents were relatively minor and did not hurt civilians, like drinking or trespassing, the media were willing to create a storm and our good reputation was in danger of being sullied.

Generally, an indigenous population will be accepting of a tough force as long as it is also empathetic and highly professional, but it will also quickly become hostile to perceived ill discipline. These communities have long memories, as can be concluded by the German army's conduct in Belgian towns during WWI or the events of Bloody Sunday in Derry, Northern Ireland. Hence, a disciplined force is a critical part of the mission's success and is based on its junior leader's strength, morality, quality, and common sense. Consequently, it is extremely importance to

provide junior Non-Commissioned Officers (NCOs) and young officers with high quality leadership courses that emphasize military discipline, cultural awareness, LOAC, and ethics.

Emphasis on the Junior Leader

Along with NCOs, young officer corporals and sergeants are responsible for the standards of the operation and determine its tactical success. In many ways they are the guardians of the tactical force's character and values.

These junior officers need to be physically and morally courageous, empathetic with the civilian population, able to leverage the support provided by other agencies, and able to see the concept of minimum force being more than the application of maximum force for a minimum period of time. As they identify the nexus between tactical actions and strategic outcomes, junior officers need to lead troops to emulate the style of a "mailed fist in a velvet glove" and apply their training in a principle based way rather than through rote and dogma.

It is often the lack of junior leadership that is the cause of tactical failures. Training our junior leaders and investing in them is fundamental, as they are the instruments we use to win the hearts and minds of the non-combatant and defeat the adversary.

Importance of the Quality of the Combat Arms

In this new operating space, the infantry is the most important task force on the battlefield due to its participation in close combats and the relationship it forms with the civilian population. The infantry soldier maintains the relationship between the military force and the population, determines the level of this relationship, and the influence the force will have on the civilians as well. These soldiers must also intuitively understand, however, that the military benefit of searches, prolonged vehicle checkpoints, and seemingly arbitrary checks of fighting aged males may outweigh the adverse reaction of the civilian population as it is trying to claw itself back to normalcy.

In modern warfare, the task of the infantry soldier has become more intricate. While other force tasks need smart and capable soldiers, I believe it is especially important for the combat arms – and particularly the infantry – to have high quality people, who are above average in intellect, possess

good communication skills, see the bigger picture, feel empathetic towards the local population, and understand that their interaction with them is critical to long term success. While toughness of body and mind should be focused against the adversary, empathy should be developed towards the civilian population, as they are not adjuncts of the adversary.

In essence, conflicts are about the human condition and are fought by human beings. In order to meet the challenges of operations conducted in urban sprawl, we need to ensure that our force is more agile in its thinking than any adversary and to combine the intelligence of our soldiers with a principle based approach.

Tier One Special Forces play an important role against the adversary by their nature of operation from securing bases to their focus on killing and capturing. This type of operation, however, has drawn them away from the civilian population and caused them to lack a real understanding of the local community, attained only by a battle group living within the community. Commanders need to ensure that a correct balance is placed on special operations vis-à-vis residential operations of the conventional battle group.

Training for Operations in Populated Areas

Undoubtedly, our training for complex warfighting needs to be comprehensive, rigorous, and realistic in its simulations' venues and the players representing the adversary, non-government actors, and civilian population. The way in which the individual soldier and the force comprehend LOAC, ROE, and ethical underpinnings should constantly be validated in order to ensure the tactical training remains relevant to the changing environment.

Conclusion

As the world becomes increasingly urbanized, it is inevitable that Western forces will engage their adversaries where there are non-combatant civilians. Battles in unpopulated areas, such as those in El Alamein in the Libyan Desert during World War II, will become less likely.

It is less clearly known how to handle the challenge of operations that have numerous facets and components, such as peacekeeping, combating an adversary, humanitarian assistance, disaster relief, and the like. All of these operations may be occurring simultaneously, bringing new

challenges for the force to deal with and revealing its limitations. It will require us to look differently at what is considered success at the tactical and operational levels. Furthermore, it will demand we use a longer-term comprehensive campaign approach in military operations that strive to remain in Phase Zero for much of the time and build up capital with the civilian population.

Operations in densely populated areas need a whole of government approach and clear strategic objectives that can be communicated consistently all the way down to the soldiers on the ground. Thought should be given to the utilization of a joint interagency model of command and control at the operational level at least, which would leverage off all the capabilities of soft and hard power in a coherent way.

The military force needs to be well trained both collectively and individually with ethos and values. It must demonstrate dexterity, flexibility, and agility in its decision making processes and also leverage off technology to maximum benefit without enslaving to it, as human interaction is extremely important in these complex environments.

The most important need, however, is to invest in the soldiers' education and training, as it promises they will be well-prepared for the new style of conflict. Nowadays, the corporals are strategic corporals, who need the wherewithal to work inside the city and attack the adversary's center of gravity, while maximizing the relationship with the civilian population.

Force protection becomes intricately linked to population protection, considering the combat force engages with the civilian population and forms close and personal relationships with it. The quality of tactical success becomes more important as our forces face cunning street fighters and are dependent on the closeness they have with the adversary (and with the civilian community by extension). This high level of tactical competence should also be linked with the quality of compassion for a defeated adversary and the empathy for a suffering community.

Finally, those who win the hearts and minds of civilians, both at home and in other countries, win the war. This is the reason as to why highly ethical fighting of professional and disciplined forces that comply with LOAC and understand the complex environment in which they operate is so important.

Concluding Remarks

Amos Yadlin

Allow me to present a hypothetical operational scenario for which the intelligence, though not complete, is quite precise and reliable. A hospital in Beirut has a multi-story parking structure on which Hizbollah placed a launcher with missiles. Our intelligence reports that chemical weapons are being brought to the launcher, and also that the ground floor of the parking structure houses a nursing school. Hizbollah's political leader Hassan Nasrallah is the only one who can give the order to arm the missile and fire it. If this type of missile falls on Tel Aviv, it would cause anywhere from 100 to 500 deaths. Should planes be sent to take out the launcher then, or to take out the political leader? Given that there is a nursing school in the parking structure's ground floor, is any action taken unlawful based on international humanitarian law? And can we strike according to the law of armed conflict? Does one let the residents of Tel Aviv live with this risk, or does one risk the lives of nurses in Beirut? What is clear is that there is no simple choice and that every option is potentially tragic.

This is precisely the kind of dilemma we face in our war on Hizbollah. It has nothing to do with the urban setting but instead it relates to the difficult dilemmas of asymmetrical warfare and norms, as well as to rules of engagement.

There is no asymmetry, however, in weapons or technology – Hizbollah is the only terrorist organization in the world that is armed with ballistic missiles, and in fact, it recently launched a fairly sophisticated UAV into Israeli airspace. The asymmetry in warheads is also shrinking. The only asymmetry that is not disappearing – and may, in fact, be growing – is the asymmetry of norms, rules, and morality, which one side abides by and the other side does not, while firing exclusively at civilians without

Major General (ret.) Amos Yadlin, Director of INSS

any consideration as to military necessity, proportionality, or distinction between combatants and non-combatants. This is the true asymmetry we have to tackle, and it presents us with excruciatingly tough dilemmas.

In this conference, our speakers dealt with all the perspectives on the situation: from that of the fighter, to the various ethical dilemmas. All of them showed just how complex the dilemmas are.

If in my example above I would have added that Israel has the best anti-missile defense system in the world, the only such system in existence with a 90 percent interception rate, I imagine it would have changed the calculus. In other words, it's necessary to examine every case in its context and see what the best defense for our citizens really is, while examining every way to reduce the harm done to the other side's innocent civilians.

Some claim that our starting point is mistaken and that those who support an air strike in the example above are wrong. I would like to draw your attention to a line from the movie *The Gatekeepers* in which a former head of the Israel Security Agency (ISA) said something that shocked me, "There's no morality in a one-ton bomb." This is a mistaken statement, as I firmly believe that there is morality in fighting terrorism. I myself headed a very large team of soldiers and professors of ethics and law for two long years, and together we examined case studies and wrote papers until we were able to formulate rules for ethical fighting against terror based on logic and common sense.

The advocate general of the Israeli Defense Forces (IDF) raised the interesting consideration of legitimacy. According to his claim, some people would assert that it is unlawful for us to strike missiles in the example above because we should first ensure the nurses will not be harmed. They would say that it might be better to, for example, strike at the decision maker or use a very small bomb to take out the Hizbollah missile without reaching the lower level and harming the nurses, and indeed we have many ways of ensuring a minimum of collateral damage. But if, God forbid, we fail to avoid collateral damage, which is always a possibility, Hizbollah would show pictures of dead nurses and Israel's legitimacy would suffer. The advocate general mentioned an important point that must be noted – sometimes things turn out badly from the point of view of legitimacy while they still meet the standards of international law and ethics.

I would like to commend the IDF, which in the last decade has fought a few battles against terrorist organizations. The first battle was against

Palestinian terrorist organizations launched by Yasir Arafat and required six whole years for the IDF to win. Terrorism, in this case, was defeated in both dimensions of capabilities and intentions. In terms of capabilities, the IDF and the ISA created a situation in which most of the terrorist cells lost so much of their operational level that they were unable to complete their mission. Thanks to that, the State of Israel is currently able to continue growing without having its important strategic parameters affected as was the case in 2000-2005. In addition, the IDF defeated the terrorist organizations' intentions, which is evident in the words of the Palestinian Authority's president, who declares in every platform and every language – Hebrew, English, and Arabic – that terrorism is bad for the Palestinians and is against their best interests. And that is the full victory against terrorism.

Following a long, continuous operation, the IDF also scored victories against two other terrorist organizations – Hizbollah and Hamas – without damaging their capabilities. Hizbollah is the government in Beirut and Hamas is the government in Gaza. These victories are so profound that neither organization is currently firing on Israel's civilians. Although political science experts will tell you terrorist organizations cannot be deterred, we managed to get to a point of deterrence against these two organizations, which is evident in the fact that they have the capabilities to harm us but are not doing so. This could be linked to the transformation of terrorist organizations from non-state entities to semi-state organizations, and is truly an interesting phenomenon.

Although the IDF has to fight with all the constraints mentioned by the advocate general and all the ethical and legal constraints discussed in this conference, it has defeated terrorist organizations. This means that we do not have to choose between losing to terrorism and acting in illegitimate or unethical ways. We can operate legitimately and ethically, and still defeat terrorism.

Call for Papers

The Institute for National Security Studies (INSS) at Tel Aviv University invites submission of articles for publication in *Military and Strategic Affairs*, a refereed journal published three times a year in English and Hebrew and edited by Gabi Siboni, Director of the Military and Strategic Affairs Program and Cyber Security Program at INSS.

Articles may relate to the following issues:

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Submitted articles should not exceed 6000 words (including citations and footnotes), and should include an abstract of 120 words and a list of up to 10 keywords. Only original material that has not appeared in another publication or is under consideration for publication elsewhere may be submitted. Previous issues of the journal may be accessed on the INSS site at: <http://www.inss.org.il/>.

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