

*INSS Insight* No. 1050, May 3, 2018

**Who Will Make the Decision?**

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In view of the escalation both in rhetoric and on the ground in Israel's northern and southern conflict areas, the question of who in Israel has the authority to declare war should be considered. The Knesset has recently amended the "Basic Law: The Government," with respect to "authority to declare war or conduct a significant military operation." It is doubtful whether legislation was needed to change this authority. Under the previous legislation, this authority was given to the government, but the new law grants the authority to the Ministerial Committee for National Security (the Security Cabinet). However, the final version of the law goes even further, and concludes: "Under extreme circumstances and for reasons that will be noted...the prime minister and the minister of defense are authorized to make the decision in a more restricted legal quorum." Such a law has almost no equivalent in Western democracies. It lacks the checks and balances essential to a democratic regime and is bound to undermine the principle that war is an act requiring maximum domestic and international legitimacy.

The reasons for restricting the forum that decides on whether to declare war focus on streamlining the decision-making process and preserving its secrecy. Judge (ret.) Eliyahu Winograd, who chaired the 2006 Commission of Inquiry into the Events of Military Engagement in Lebanon, expressed his opinion about the Israeli government's decision making process as follows: "Almost none of the conclusions of the final report of the Commission of Inquiry into the Events of Military Engagement in Lebanon were implemented by the government...the recommendations of the final report were not implemented, and lessons were not drawn." In his report on Operation Protective Edge (2014), the State Comptroller, considering the government's decision making processes about the Gaza Strip before and early in the operation, stated, "The cabinet's authorities, including the question of which issues fall under its purview, are not anchored in writing....Cabinet ministers do not know whether the cabinet is a decision-making body or an advisory one....In addition to failure to anchor the cabinet's authority, there is also no norm establishing the duty to provide the cabinet with information...[although] this information was essential for decision-making."

In December 2017, the Ministerial Commission on Legislation approved a bill sponsored by Minister of Justice Ayelet Shaked authorizing the government to delegate its authority to the Security Cabinet, which would then be able to decide on a military operation likely

to lead to escalation and then to war. The bill addressed two aspects: the nature of military action in our time and the government's mode of operation. The bill was based on a report by a committee headed by former National Security Council head Maj. Gen. (ret.) Yaakov Amidror, which included recommendations on the declaration of war. The reasons given for the bill stated that there was a lack of clarity concerning the government's authority, since Section 40(A) of the "Basic Law: The Government" states, "The state may only begin a war pursuant to a Government decision," while Section 40(B) of the same law states, "Nothing in the provisions of this section will prevent the adoption of military actions necessary for the defense of the state and public security." The committee believed that it is best that the government authorize the Security Cabinet in order to streamline the decision making processes and maintain secrecy before the campaign.

Since the First Lebanon War (1982), there were very few cases in which the Israeli government made orderly decisions out of a clear understanding that a large scale military conflict or potential for such a conflict was at stake. One example of such a decision is Operation Defensive Shield (2002), in which the government headed by Ariel Sharon ordered the IDF to retake control of the Palestinian cities in the West Bank. Another example is the decision by the government headed by Ehud Olmert to destroy the nuclear reactor in Syria (2007), which involved the possibility of escalation into a full scale military campaign. At the same time, in two events that did escalate into a large scale operation or a war, the Second Lebanon War (2006) and Operation Protective Edge, events unfolded like a snowball, and the government or the Security Cabinet approved measures incrementally, without officially declaring a major campaign until very advanced stages. The dynamic nature of the campaigns in recent decades has usually dictated policy through a series of tactical, rolling, and successive decisions that in retrospect generated a decision to go to war.

In the United States, the Congress is responsible for declarations of war, as Article 1, Section 8 of the Constitution states explicitly that it possesses the sole power "to declare war" and to make rules concerning captures on land and water. Legitimization by the people's representatives as a reflection of the entire people is required for such a critical act in the life of the nation. This does not mean that the American president, the commander in chief of the army, lacks extensive power to use force. The Vietnam War, for example, was the result of a presidential decision by Lyndon Johnson, who relied on a resolution of the Congress following the Gulf of Tonkin incident in 1964. This resolution authorized him to use military force, but did not constitute an official declaration of war.

A similar case occurred in Israel in 2006. The government approved Operation Density, an attack by the Israeli air force against Hezbollah's batteries of long range rockets,

without understanding where this was liable to lead. According to then-Deputy IDF Chief of Staff Maj. Gen. (res.) Moshe Kaplinsky, in the Second Lebanon War, "the first point in which we erred or failed as commanders was our inability to change the approach or the general mindset... the confrontation with Hezbollah was not a direct continuation of the ongoing operations we had carried out for the last six years in Judea and Samaria but was, rather, a war." When the government voted a year later on the attack against the Syrian nuclear reactor, it had already learned from experience, and took the trouble in a series of discussions to consider the consequences in depth.

Is legislation the proper way of changing the delegation of authority? Not necessarily, first because official declarations of war are becoming rarer, while events that escalate into a conflict have become more common. Second, the previous law allowed a decision to be taken on an essential military operation even without a decision by the entire government, and the Security Cabinet was authorized to make decisions on operations similar in character to those conducted by Israel in the Gaza Strip in the past decade. At the same time, because of the overall responsibility and the exercise of judgment required, especially when a large scale security event liable to spiral out of control and extend beyond the boundaries of the sector is involved, the decision should be brought before the entire government in a plenary session. Considerations of efficiency, rapidity of response, and even secrecy should not exclude in-depth judgment, an analysis of the information and the alternatives, acquisition of internal and external legitimacy, and the opportunity to consult with everyone who bears responsibility: the elected public officials serving as government ministers and of course the officeholders in the defense and political establishment.

It appears that the main power of the new law will lie in strengthening the element of accountability among the ministers in the Security Cabinet, because it clearly regulates its status as an entity with the authority to make decisions and carry them out – a kind of mini-government in an emergency. Once its legal status and authority is established, the ministers who are members can no longer argue that they did not know and were not informed, as occurred in the past, for example in the case of the terror tunnel threat in Operation Protective Edge. The law gives the Security Cabinet a great deal of authority, but in practice, almost no issue is put to a vote in the Security Cabinet in opposition to the prime minister's view. When the authority to decide is in the hands of two people (and one person if the prime minister is also the minister of defense, as was the case with David Ben Gurion, Levi Eshkol, Yitzhak Rabin, and Ehud Barak, for example), a decision is unlikely to be taken without the support of the heads of the security branches, as is proven by the history of the decision not taken (2010-2012) to attack in Iran.

In view of the new legislation, the Security Cabinet's work should be improved so that it will be fully familiar with the strategic matters on the agenda, instead of coming to a discussion of these issues like a fireman putting out fires. In addition, both for the sake of checks and balances and the prevention of an overconcentration of authority in the hands of individuals and so that more than two elected representatives of the people bear responsibility for cardinal policy measure such as war and peace, at least the entire Security Cabinet should participate in the decision. The tactical decisions can and should be made in restricted forums, but it is best for such a momentous decision as a declaration of war to be taken in a broad forum that bears the burden of the responsibility.

With the delegation of responsibility for such a fateful decision from the government to the Security Cabinet, let alone to only two senior government members, note should be taken of the sharp comment by the State Comptroller in his report on Operation Protective Edge: "Dismissing diplomatic alternatives without presenting them to the cabinet first prevented the ministers from properly discussing the advantages or risks involved in those alternatives." Everything that applies to the necessary assessment of the situation in the security sphere with respect to a military conflict also applies in the political and diplomatic sphere – including, for example, peace processes.