

The Army and Society Forum

MORALITY, ETHICS AND LAW IN WARTIME





The Israel Defense Forces



The Israel Democracy  
Institute

# Morality, Ethics and Law in Wartime

A symposium held on 13 January 2003  
at The Israel Democracy Institute

Summary by Baruch Nevo and Yael Shur

The Army and Society Forum

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## **Preface\***

The sixth session of The Army and Society Forum that was held in the winter of 2003 dealt with issues relating to morality, ethics and law in times of war. Participating in this gathering were senior officers of the IDF, headed by the chief of staff, the senior fellows and research staff of The Israel Democracy Institute, researchers from the world of academia, and various public figures.

This volume summarizes the discussions that took place at the conference, which was held two years after the outbreak of the Israeli-Palestinian conflict, a conference at which a variety of opinions and perspectives were expressed. The book is based on the participants' remarks as well as on background material that had been prepared and distributed to the participants prior to the symposium.

Before presenting the symposium itself, we offer a summary of events relating to the topic at hand during a mere two-month period. The purpose is to convey to the reader the spirit of the times during which the sixth session of The Army and Society Forum took place. The events are quoted as they appeared in the Israeli press.

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\* Our thanks to Dr. Michael Gross of the Department of International Relations of Haifa University for his assistance in clarifying concepts in the realm of ethics and morality, and to Lieutenant Colonel Hadas Ben Eliahu and Major Yehudit Scherr of the IDF Behavioral Sciences Department for their enlightening comments on earlier versions of our summary.

## **Israeli Press Coverage of the Current Conflict\***

### **March 1, 2003**

The IDF neutralized a 100-kilogram charge that was placed near the separation fence between the Katif bloc and Khan Yunis. This was an underbelly explosive aimed at damaging armored vehicles moving through the area, and was activated by a trip wire. While the soldiers were neutralizing the device, a specific warning was received of suspicious figures in the area, and the soldiers opened fire on them. Although no hit was acknowledged, the Palestinians claim that four Palestinians, including an 11-year-old girl, were injured in the shooting.

### **March 4, 2003**

IDF forces conducted a widespread military action in the al-Bureij refugee camp. As a result of the action, eight Palestinians were killed, among them Noha al-Makadme, who was nine months pregnant, and a 13-year-old boy. Another thirty people were injured. IDF forces entered the camp, searched for weapons, arrested fugitives and destroyed terrorists' houses. The Palestinians activated seven explosive devices against the forces, including an underbelly device weighing 100 kilograms; dozens of grenades were thrown and there was heavy use of small-arms fire. During the action, members of the Taha family—a father and his five children—were also arrested on suspicion of belonging to Hamas.

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\* These items were culled from articles appearing in the archives of daily newspaper sites on the Internet: <http://www.ynet.co.il/>; <http://images.maariv.co.il/>. They do not cover all of the events that took place and were reported on during this period of time.

**March 5, 2003**

Terrorist bombing on the No. 37 bus in Haifa. The bus, which was carrying a large number of pupils, exploded as it was loading passengers at the bus stop on Moriah Blvd. Fifteen people were killed and fifty-five were wounded in the attack.

**March 5, 2003**

Two officers from the Border Police were injured during action in Jenin. In the morning, a patrol came up to a café in central Jenin, which was used as a meeting place for Islamic Jihad activists in the city. The Israeli fighters identified a "wanted" man and called to him to stop. In response, the man drew out his gun and fired at them, and two officers from the force received light to moderate injuries. The soldiers arrested the fugitive, who was lightly wounded, together with six other Palestinians who were seated at the café. Following the arrest, a young Palestinian threw a Molotov cocktail at the soldiers. They returned fire, and as a result a 16-year-old youth was killed and five Palestinians were wounded. In the wake of the incident, the IDF ordered a curfew on Jenin.

**March 5, 2003**

Near the settlement of Netzarim, located in the middle of the Gaza Strip, a 75-year-old Palestinian man was killed. The soldiers identified the man as he was riding a donkey in a zone that was restricted for Palestinian traffic, fired on him and killed him. Gaza Division Commander, Brigadier General Gadi Shamni, ordered an inquiry to clarify the circumstances of the event.

**March 8, 2003**

An Israeli couple, Rabbi Eliyahu and Dinah Horowitz, were killed in their home in Kiryat Arba by Hamas terrorists. The terrorists entered through the fence on Friday evening while Kiryat Arba residents were just finishing their Shabbat dinner. The couple was murdered in their home after the terrorists wounded other residents they had encountered on their way.

**March 11, 2003**

The IDF announced that following its inquiry, it was not responsible for the death of the pregnant woman nor for the deaths of eight other Palestinians (on March 4, 2003). The investigation showed that the house in which the woman was located had collapsed as a result of the explosion of a bomb placed in an adjacent building by a Palestinian. Regarding the other eight fatalities, the IDF announced that there had been no tank activity near the area and that the Palestinians had been killed as a result of an explosion of another bomb with nails and metal fragments that had been planted nearby.

**March 13, 2003**

Two [Israeli] security guards working for a private security company were shot and killed by fire from an IDF helicopter gunship manned by IDF soldiers from an elite unit who mistakenly took them for terrorists.

**March 16, 2003**

Rachel Corrie, a 23-year-old peace activist from the International Solidarity Movement, was crushed to death by an IDF bulldozer while she was acting as a human shield

to prevent the demolition of Palestinian homes in Rafiah. She was one of four left-wing activists who had been in Gaza for months in order to demonstrate against IDF house demolitions. According to her friends, the bulldozer driver could not have avoided seeing Rachel as she sat on the ground. According to the IDF, the activist was sitting behind a hillock of dirt, which prevented the bulldozer driver from seeing her.

### **March 19, 2003**

Ali Alan, a high-level Hamas fugitive in the Judea area responsible for numerous terrorist attacks and the deaths of forty-eight Israelis, was killed. The incident occurred by chance, when an IDF force went out to arrest another Hamas fugitive and identified a suspicious figure attempting to escape. An IDF soldier was killed in the ensuing battle.

### **March 19, 2003**

A resident of Mevo Dotan, Zion Boshirian, was killed while driving home. A terrorist hiding in ambush on the side of the road near the village of Nazlat Zeid shot him from close range. Boshirian managed to fire off several rounds before he died.

### **April 8, 2003**

An IDF helicopter gunship killed Sa'id al-Arbid while he was driving in his car in the heart of the Gaza Strip. Al-Arbid was involved in dozens of attacks against Israelis in the Territories and throughout the country. Among others, he was involved in the kidnapping of the late Corporal Nahshon Wachsman, and the fatal attack on the No. 5 bus in

Tel Aviv nine years ago, in which twenty-one people were killed. He was assistant to Muhammed Deif, commander of the military wing of the Hamas, who was seriously wounded by the IDF about six months ago. One of Arbid's senior aides was also killed in the shooting. The Palestinians reported that more than forty-eight people were wounded in this action including, they claim, twenty children.

### **April 15, 2003**

A serious terrorist attack was prevented at Beit Berl College thanks to a secretary's alertness. The secretary noticed a suspicious bag, and when she looked inside she saw wires and a cellular telephone. Realizing that this was dangerous, she called the security officers and kept people away. The police cordoned off the area and carried out a controlled explosion of the device, which weighed three kilograms.

### **April 15, 2003**

An 18-year-old terrorist penetrated the Karni terminal and killed a forklift driver from Sderot and an Israeli Arab truck driver from East Jerusalem. Eight other Israelis were injured, one of them moderately. The checkpoint includes eight screening cells, through which merchandise is transferred from Israel to the Gaza Strip and vice versa. The cells are separated from the Palestinian side of the blockade by a high wall, which has several automatic doors. The IDF believes that the terrorist managed to get through from the Palestinian side of the compound due to a lapse by members of the Palestinian Security Force. Following the attack, the minister of transport ordered the crossing closed for several days.

**April 17, 2003**

Security forces destroyed six suicide bombs that had been planned for detonation over the Passover holiday. Following a tip received relating to plans by Islamic Jihad to carry out a suicide attack in the Sharon region, a curfew was imposed on the city of Tulkarem. Paratroops operating in the city arrested a 30-year-old Palestinian woman who was supposed to smuggle an explosive belt into Israel and pass it to a suicide bomber. Several hours later, three more members of the terrorist cell involved in planning the attack were also arrested. During operations in the city a Palestinian youth who had thrown a Molotov cocktail at soldiers was killed, and two wanted men who were behind plans to carry out a suicide bombing during the holiday were arrested. On the holiday eve, due to fears of attack, a full closure was imposed on Judea, Samaria, the Gaza Strip and the Jordan Valley, and Palestinians were prohibited from entering Israel. A maritime closure of Gaza was also put into place, and fishermen were forbidden to go to sea.

**April 18, 2003**

The IDF completed a program to carry out a series of goodwill gestures aimed at aiding the new Palestinian Prime Minister, Abu Mazen. The gestures, focused during the first phase on the Gaza Strip, entailed: withdrawal from several positions, lifting the siege and ending the cantoning of the Gaza Strip. At the same time, the IDF agreed to reduce operational activities that were not essential to fighting terrorism, and agreed to consider releasing prisoners who had no "blood on their hands."

**April 18, 2003**

Towards dawn, IDF forces arrested two female activists from the Popular Front Movement: one who recruited female suicide bombers and the second, a terrorist who had agreed to carry out a suicide bombing inside Israel. Several hours later, a paratrooper force discovered the suitcase-bomb.

**April 18, 2003**

Two leftist activists from the Ta'ayush Movement were lightly injured by a volley of gunfire issued by a Jewish settler from the Ma'on Farm outpost in the southern Hebron hills. The activists clashed with the settlers there in order to protest damage caused to Palestinians and the establishment of outposts in general. The shooter was detained for questioning.

**April 18, 2003**

Four Border Patrol soldiers were held for questioning on suspicion that they threw a Palestinian youth from a moving car, causing his death.

**April 20, 2003**

The late Sergeant Lior Ziv, age nineteen, a photographer with the IDF spokesperson's office, was killed before dawn while documenting an operation aimed at locating and exploding four tunnels used to smuggle arms between Egypt and Palestinian territory. During the operation, additional soldiers were wounded. The Palestinians reported five people killed and dozens wounded.

**April 21, 2003**

Eight police officers from the Border Patrol brigade in Hebron were held for questioning by the police Investigations Department on suspicion that they had stolen money from houses they were searching, thrown stun grenades and tear gas grenades at innocent residents, smashed windows, punctured tires, and more. According to the complaints, all the actions were carried out in the Hebron area, and most came a few days after the attack on Jews walking to prayers in Hebron, an attack in which four soldiers from that same brigade had been killed.

**April 30, 2003**

Three people were killed and over sixty injured when a suicide bomber blew himself up in front of Mike's Place on the Tel Aviv promenade. At the time of the attack, the pub—located near the American Embassy and known as a tourist spot—was filled to capacity. Witnesses related that in this attack as well, the security guard at the door stopped the terrorist from entering the pub, and thereby prevented an even greater disaster.

## **Characteristics of the Present Conflict between Israel and the Palestinians**

### **HISTORICAL BACKGROUND ("THE FORMATIVE PERIOD")**

Questions of what is permissible and what is prohibited during wartime do not belong only to the present. Incidents posing moral dilemmas took place even before the establishment of the State, in its early years, and they continue to do so today. Cited below are several examples of formative events from which, over the years, our awareness regarding ethics and the purity of arms has been forged. Prior to the State, we can mention the explosion in the King David Hotel in Jerusalem. In 1946, a group of IZL [Irgun Z'va'i Leumi—a right-wing Jewish group opposing the British Mandate] fighters blew up the southern wing of the hotel by smuggling seven booby-trapped milk containers into the hotel basement. Warnings had been sent to several groups, but ninety-one British, Jewish and Arab soldiers and civilians were killed. In an incident during fighting in the Arab village of Sasa in February 1948, a Palmach [underground Jewish troops—precursor of the IDF] division sent to the village blew up dozens of homes with their residents still inside.

The Deir Yassin incident occurred just before the War of Independence. During the early morning hours of April 9, 1948, a joint platoon of IZL and Lehi [Lohamei Herut Yisrael—an offshoot of the IZL] fighters attacked the Arab village of Deir Yassin. During the fighting dozens of homes were blown up and scores of villagers were shot.

In the incident known as the Qibya action, which took place during the night of October 14, 1953, a combined force consisting of Unit 101 and paratroopers was sent out to avenge the murder in Yehud of a mother and her two children two days previously. About forty-five houses were blown up, some of them with their residents still inside. More than sixty people were killed, including women and children.

From what we have described above, it appears that warfare during these early years was characterized by specific actions that were aimed at well-defined targets, including those considered to be civilian. Fighting has been influenced by the myths relating to the most prominent battle traditions of the units, which described daring operations on one hand and non-compliance with clear military boundaries on the other. The Establishment response to incidents of this type was typically official denial, while placing the blame on rebellious extremists.

After the establishment of the State, most of the fighting that took place was between armies, what is termed "classic warfare." Such was the case during the wars in 1956, 1967 and 1973. Among the more prominent incidents occurring between these wars, we should mention the Kafr Qasem incident. At the end of October 1956, on the eve of the Sinai Campaign, a decision was made to change the curfew hours for villages in the Triangle (a group of Arab villages that remained within Israel's borders after the 1948 armistice agreements, including Kfar Kassem). Notice of the change imposed on the villages reached the village mukhtar [village chief] about half an hour before the curfew went into

effect. Despite the mukhtar's warning that some 400 workers located outside the village had no way of knowing about the new curfew time, infantry soldiers opened fire on them as they returned to the village. Forty-three people were killed, including women and children.

In February 1973, two Israeli fighter jets downed a Libyan civilian aircraft which had penetrated Israeli air space by mistake. The fear was that the plane intended to damage the military base in Refidim or Beersheva, or to photograph military targets. Israeli Phantom jets ordered the plane to land in Refidim. The pilot ignored the request, flew westward and began heading towards Egypt. Despite its movement toward Egypt, and although it was clear that it posed no danger, the Phantoms shot the plane down. As a result, 106 Libyan civilians and crew were killed and six were injured.

## **DIFFERENCES BETWEEN CLASSIC WARFARE AND THE CURRENT CONFLICT**

Israel is in the midst of a new era in terms of the concept of war, both from the global perspective of international terrorism and from the local perspective of the current conflict between Israel and the Palestinians. In the current conflict, Israel is presented with challenges that no country or army in the world has ever had to face. From dealing with primarily conventional warfare, Israel has passed into a combat reality with unique characteristics:

1. There are no clear and recognized geographical boundaries between the two sides. This is an armed struggle that is being conducted in the midst of the civilian population, and any spot can become the front line.
2. The conflict is not bound by time. The struggle is long and ongoing, and its termination is unknown.
3. The customary distinction between combatants and civilians has become extremely blurred, especially among the Palestinians, but among Israelis as well (for example, security alert squads in the settlements or civilians who block suicide bombers with their bodies). This exchange of identities between civilians and combatants often occurs at dizzying speed. For example, is a child who throws a stone at a demonstration a combatant? What about an Israeli who damages Palestinian property? The confusion between civilian and combatant is also expressed through the identity of the wounded. While in conventional warfare it is obvious to all sides that regardless of the war's justification everyone is committed to avoiding injury to civilians and only combatants may be injured, in the current conflict the vast majority of the dead and wounded are civilians.
4. It is difficult to talk about absolute victory over the enemy, because this conceptual structure no longer relates to physical concepts: conquering a given piece of territory, damaging part of the enemy forces, wiping out divisions, etc. The concepts used to describe achievement in this type of combat are more fluid: "reducing the scope of the terrorism", "preventing terrorist attacks", "decline in the number of injured", "achieving a reasonable level of personal security", etc.

5. In contrast with large-scale war, where the operational and ethical decisions are made primarily at the supreme command echelon, in the current conflict decisions are made in real time by the sergeant and the company commander. In other words, a great deal of power rests in the hands of individuals and small groups. Moreover, individual civilians and small groups of citizens on both sides of the conflict can have a greater impact on the potential for igniting a situation.
6. The present conflict is subject to continuous, intensive media attention, and is conducted, therefore, in front of the entire world. A military action can end in success on a practical, physical level, but be considered a media-political failure.
7. To a great extent, the goal of the present conflict is to damage the moral and social resilience of the other side in order to undermine its basic values and weaken its confidence in the justness of its path and the proper way of achieving its goals. In other words, some of the objectives of the current fighting (on both sides) are psychological and sociological in nature.
8. It appears that the blurring of traditional distinctions is rooted in the fact that the Palestinians have no clear rules of engagement that they are willing to accept, and as far as they are concerned any target and any means becomes legitimate. They attach no importance to human life, including their own, and they purposely shoot and blow themselves up among children, women and the elderly.
9. In contrast to classic warfare, for which international judicial and ethical codes have been developed, the present conflict is being conducted without any such framework, as will be described at length below.

## **THE ISSUE OF NARRATIVE**

One of the problems underlying the present struggle between Israel and the Palestinians is the issue of diagnosis. Disagreement regarding "the story" is also reflected in the name. The Palestinians refer to this war as the "Al-Aksa Intifada." In Israel, there are those who call it "warfare" or a "confrontation", "armed struggle", "war against terror", "defensive war", etc.

The issue of narrative is a complex one because it touches on the roots of the conflict. There are those who perceive the war as a fight for the very survival and existence of the State of Israel, while others perceive the actions of the Palestinians as a war of independence of a conquered people who are using guerilla warfare as a means of liberating themselves from the yoke of occupation. Others describe the narrative not as a regular war-like struggle for territory, but as a battle of survival between cultures and civilizations.

This lack of consensus leads us to an inherent controversy on the question of defining strategic objectives. Why are the soldiers being sent out to fight? What are the objectives that Israel must define for the present conflict and that the army must carry out?

Disagreement also raises several moral questions: What are the means? What is moral and what isn't moral? Are curfews, closures and targeted killings proportionate, balanced responses? It appears that the lack of clarity regarding the greater objectives makes it harder to clarify the means for achieving them.

Different narratives lead to differing perspectives not only regarding the nature of the conflict itself, but also regarding the manner of its solution: how do we define victory in this war? It seems that the definition of the objective towards which the IDF is presently working is to reduce to a "reasonable" level the level of violence and injury to which Israeli civilians are exposed.

Based on the above, there is a question with regard to participation in, and responsibility for, articulating the narrative and objectives of the conflict. Does the responsibility for participation and influence fall to the intellectuals, the political echelon or to the army itself?

## **THE INTERFACE BETWEEN THE ARMY AND THE POLITICAL ECHELON**

### **The Traditional Distinction**

Traditionally, the military domain and the political domain are considered two essentially different spheres of activity, with different ethical standards.

According to the classical perception, the political echelon is responsible for defining long-term political goals. In the context of the present struggle, it must conduct a strategic and balanced examination of all of the aspects and developments that such a conflict can produce, both good and bad, in terms that are not necessarily military. It is the political echelon that can, in the final analysis, bring an end to the conflict. By the very nature of its role, the political echelon must work on long-term objectives

and concentrate on the long-term impact of its present actions.

In contrast, the military echelon is immediately responsible for protecting and defending the safety and sense of security of Israel's residents and soldiers, whether within Israel proper or in the Territories, whether by preventing terrorist attacks (a terrorist who is supposed to leave from Jenin, a car bomb expected to head out for Megiddo), or by reducing their number to the smallest possible minimum.

According to the traditional approach, the IDF is expected to translate the political goals into military solutions that are, for the most part, tactical, implemented on a day-to-day basis, and measurable. Based on this definition we find that short-term considerations are given preference in the army over long-term concerns.

### **Maintaining the Distinction between the Political and Military Echelons in the Reality of the Current Conflict**

There are those who will argue the importance of maintaining the separation between the military and political echelons and making them even more distinct, because if such a distinction is not maintained then civilian political norms are liable to find their way into the military and affect its impartial professionalism; or vice versa—military ways of thinking are liable to spill over into politics, which would jeopardize our democratic foundations.

In reality, it is hard to maintain a dichotomous separation between

the two, because every military action will have a political aspect and every political decision will have military consequences. This topic becomes even more important given the reality of the current conflict, in light of the unique characteristics described above. Nevertheless, we must remember that at the end of the day, the morality and norms of the political echelon and the military echelon are supposed to possess the same content and quality. It seems that conducting a dialogue between the military domain and the political domain, while concomitantly defining the military obligation towards the political echelon and vice versa, may help preserve the desired criteria.

#### **The Political Echelon's Obligations towards the IDF**

1. Defining long-term objectives of the warfare, providing political direction from which the IDF commanders can infer tactical military assignments.
2. Studying the big picture, weighing all the options for dealing with the present and various influences on the long-term.
3. Providing the State's internal and external backing for the actions carried out by the military at its request and on its behalf.
4. Taking steps to protect the IDF from physical and ethical decline.

#### **The IDF's Obligations towards the Political Echelon**

This obligation can be described in general as "raising the alarm" to alert the political echelon in relation to the various aspects of implementing the objectives they have defined for the military echelon. Thus, for example:

1. Informing and warning the political echelon in the event the IDF reaches the conclusion that fighting in the Territories is jeopardizing, or will jeopardize in the future, human rights, ethics and morality. For example, an operational plan presented for approval by the political echelon must include an IDF assessment regarding anticipated harm to the civilian population.
2. In the event the military echelon reaches the conclusion that its short-term activities are hurting its long-term ability to deal with the situation (either because it cannot preserve its moral criteria, or because its soldiers are becoming exhausted, or because of the long-term negative effect on the Palestinian population), it must inform the political echelon.
3. Similarly, if the military echelon feels that meeting the objectives that were defined is beyond its capabilities or its means (in terms of budget, manpower, maximizing regular forces and combat reserves, etc.), it must notify the political echelon.

### **THE INTERFACE BETWEEN THE ARMY, SOCIETY AND THE POLITICAL ECHELON**

It would seem that the relationship between society and the political and military echelons regarding the current conflict is characterized by a certain degree of asymmetry:

1. The public, in general, is not sufficiently aware of the facts regarding the struggle because of the lack of transparency and the censoring of most of the information coming from the media. On many occasions, the military establishment does not share with the public the moral and ethical dilemmas it faces.

2. Since civilian society in general is not exposed to all of the dilemmas, nor to the pace and significance of the events in which the IDF takes part, its representatives are prevented in certain cases from criticizing the army. On the other hand, we can also point to society's tendency towards distrust of the army, which also originates with this same lack of information.
3. Unfortunately, it seems that the military reality of the current conflict has disposed of the natural civilian hegemony: society, and its academics, philosophers and jurists, could not imagine murderous attacks such as those that have taken place; the tools for coping with these have therefore not yet been devised. The military stands alone, to a certain extent, in the face of this reality.

In spite of the above, there is no total alienation between society, the military and the political echelon: representatives of society (reserve soldiers from all levels of the civilian population) are greatly involved in the conflict itself, which gives society a different perspective on its perception of the conflict.

### **The Role of Civilian Society**

In this complex reality, Israeli society should not leave the army and the political echelon to cope with the situation alone. Society (representatives from academia and the media, philosophers and jurists, and the general public) must actively participate in formulating the narrative while making an impact on the political echelon and the military. In this context, civilian society has several roles to play:

1. Working together with the army to formulate a moral infrastructure that would instruct the army how to behave. Civilian society must create—together with the army and the political echelon—a kind of "moral compass" that will help in navigating the dilemmas that arise.
2. Society must assume, together with the political echelon, responsibility for the day after the fighting, and ensure that long-term considerations are not sacrificed in favor of short-term concerns.
3. Society must also act as an analytical body that brings unusual incidents to the attention of the public and holds discussions about them. In this sense, bodies such as "B'Tselem" and "Amnesty International" (see, for example, the summary of the Amnesty Report—Appendix D) can play a positive role.
4. At the same time, society must be a source of encouragement for the army that acts in its service. One of the sources of the army's strength is the faith of the Israeli public.

## **Morality, Ethics and Law**

There is a certain degree of ambiguity regarding the terms "morality," "ethics" and "law," and the differences between them.

**Morality:** The accepted principles and standards that guide a person towards right and wrong behavior in society.

**Ethics:** The science of ethics, also known as the philosophy of morality, systematically deals with concepts of correct and incorrect behavior.

It would appear that the distinction between these two concepts is somewhat vague. There are those who claim that morality refers to the first-order beliefs and practices about good and evil, while ethics is the second-order, reflective consideration of our moral beliefs and practices. Use of the term ethics is widespread, particularly within the context of group behavior codes, such as medical ethics, ethics in academic research, and military ethics.

**Law:** A system of rules defined by the governing authority for the proper management of society and the behavior of its members. The governing authority (whether democratic or not) requires, for the most part, a certain degree of influence over its citizens. In a democratic country, the legislative authority determines the system of legal rules. This system of laws must:

- A. Be public
- B. Enable fair-minded practices

- C. Not discriminate between cases (that is, identical cases must be judged identically)

It is essential that these laws do not violate basic moral principles, such as the right of an innocent person to life, the right to maintain a body's integrity, etc.

The distinction between law and ethics and morality is that not all the rules of ethics and morality are laws. Rules become part of the legal system when they are defined by the governing authority.

Moral principles and rules are derived from ethics. Ethical principles often represent ideal behavioral situations that may be, but aren't necessarily, related to the law. These ideal behavioral situations enable a person to maximize his full potential and reach an ideal state of existence. The law strives only towards an orderly existence and does not include all types of ethical principles (it constitutes a step towards the assimilation of ethical perspectives). Ethical principles have an impact on good behavior (such as honesty, contributing to others, courage) or on interpersonal relationships (unfaithfulness, friendliness) but they do not influence the social order and are not usually part of the law. There may be laws that influence the social order, but they are morally arbitrary (driving on the correct side of the road, stopping at a red light, etc.).

As our discussion continues, a distinct difference between the above terms may not always be maintained.

## **MORAL AND ETHICAL DILEMMAS**

Given that the conflict in which the IDF currently finds itself has a different quality than conventional warfare, the question is whether the ethical considerations that guide the IDF must be changed.

History teaches us that the ability of a defensive democracy to survive depends on both its military and operational capability to defend its residents, and its moral resilience. National moral resilience relies on rationalizing going to war and justifying the means.

It seems that the dilemmas with which the IDF is presently struggling are both theoretical dilemmas that derive from the nature of the conflict, and concrete and immediate dilemmas with which every single soldier must cope.

### **Morality: Absolute? Dynamic? Context-Related?**

Do moral considerations change according to the nature of the conflict? For example, if a mega-attack is carried out against Israel and hundreds or even thousands of innocent Israelis are killed, should Israel continue to play by the rules of the game in confronting the perpetrators?

At the level of the soldier manning a road block, should we expect a soldier who has already encountered booby-trapped objects and ambulances to continue to behave with courtesy and patience towards ambulance drivers or other people with

objects when they pass through the road block again?

Does increased and unbridled violence by one side legitimize an escalation by the other side? Theoretically, Israel has moral, ethical and legal imperatives that are practically unrelated to the behavior of the other side.

But practically speaking, we have noticed deterioration, escalation, extremism. In other words, what seemed very serious a few months ago or two years ago seems less serious today, less shocking. Sometimes it seems as if Israelis have developed a certain "emotional insensitivity" when it comes to suicide bombings (for example), and a "moral immunity" with regard to serious injury inflicted on innocent Palestinians by the IDF.

**Punishment and Warning: Are These Morally Legitimate Motivations?**

In the kind of warfare Israel is currently facing, is it possible to refer not only to prevention, but also to retribution? In other words, are some of the IDF's activities carried out not only to prevent attacks, but also to repay the Palestinians "an eye for an eye?" There have been those who would argue that the pursuit spanning so many years of the perpetrators of the Munich massacre [of Israeli athletes at the 1972 Olympics] is a clear example of retribution, and that such pursuit and the killing of terrorists without constraints of time and circumstance contains an important cautionary element: terrorists know that Israel's "long arm" can catch up with them anytime, anywhere.

### **Type of Weapon and Proportionality**

The IDF often has to deal with questions regarding the types of weapon being used in its various activities. To ensure a direct and effective hit on a target often entails significant collateral damage. On the other hand, using other means that are less destructive reduces the probability of hitting the target. There is a kind of trade-off: the more powerful the military action, the greater the chance of its success but also the greater the chance of harming innocent people. Moral uncertainty of this type arose when planning the operation to eliminate Muhammed Deif: shooting in the heart of an urban area requires lighter weapons so as not to cause collateral damage. The result was that Muhammed Deif was injured but not killed. Days later, he was back planning terrorist acts.

Is it right to constantly examine whether our actions are in proportion, while the regimes around us (Syria and Jordan, for example) have used, and continue to use, tremendous power beyond all proportion to put down uprisings and secure, as a result, relative quiet?

### **Harming Terrorists without the Benefit of a Trial**

Often, the IDF has to decide whether—without putting him on trial—to harm a terrorist who has been classified as a "ticking bomb," that is, a terrorist regarding whom there is intelligence linking him to a future terrorist attack. On one hand, there is an ethical rule stating that no one may be harmed without standing trial. On the other hand, there is the criterion of protecting Israelis at all costs ("He who rises up to kill you, you shall arise to kill him

first"). Between these two extremes is the approach that harming someone without benefit of trial is permitted only when there is no alternative of arresting him with reasonable risk to our troops.

### **Clash of Values**

The reality of combat leads to tension between the ethical values that regulate warfare: tension between completing the mission and protecting human life; between taking advantage of the necessary operational victory and the desire to avoid hurting innocent people. For example, carefully maintaining a curfew is liable to prevent a sick, elderly Palestinian from crossing a roadblock. But such a delay at the roadblock could cost the old man his life. The tension becomes worse at crucial decision-making points, where decisions are made under the most difficult of wartime conditions.

### **Non-Physical Harm to Civilians: Causing Difficulties for the Civilian Population**

A by-product of the current fighting is the harm to the Palestinian civilian population, harm which isn't necessarily manifest as killing or wounding. For example: closures, dividing cities, curfews, damage to the electricity and water systems, etc. The IDF has proven more than once that preventing people from traveling along the roads, for example, impairs communication between Palestinian cities, and the result is a secondary security by-product: damage to the "food chain" of preparing a terror attack (the sequence of stages involved in preparing the attack, including recruiting the suicide bomber, preparing the explosive belt, collecting information, etc.) The indirect result of this type of

action is further hardship for the local civilian population whose movement is restricted, causing severe humanitarian distress.

### **Are Moral Values Subject to Dispute?**

Towards whom is the IDF's primary moral obligation, and who pays the price when it fails to carry out its mission? There may be cases where a curfew that was lifted in Nablus, for example, for the purpose of relieving some of the hardship on the Palestinian civilians living there, allowed a suicide bomber to reach a central bus station in Israeli territory and blow himself up. In such a case, ethical relief for one side leads to severe injury for the other side.

### **Limits to Support for Fighters**

Another moral dilemma deals with the support that Israel, as a country and a society, gives its commanders and soldiers sent into battle who, at some crucial moment in the heat of battle, injure someone innocent in a situation that might not have had any other possible outcome (for example, returning fire from Giló towards Beit Jala and encountering an innocent bystander in the shooting). On the other hand, how do you treat soldiers who regularly and deliberately harass Palestinians at roadblocks? Do they also deserve our backing?

### **Who Should Decide on Morality and Moral Principles? What Procedure Should Be Used to Make Moral Decisions?**

This is a kind of super-dilemma. Should the army write its own moral code? Is society obligated to do so? Should commanders or soldiers be allowed to voice their considerations regarding the

assimilation of moral principles? Who should assess the moral considerations regarding individual actions? The commanders? An advisory body?

What process should be used to make moral decisions? When an assassination is approved, is it necessary to obtain the approval of the chief of staff, the defense minister and the prime minister? Is morality judged on the basis of the decision-making process or the outcomes?

Despite the struggle facing the IDF in light of the dilemmas described, it seems that a discussion of such issues is critical so that the IDF and society can cope morally with the current conflict. Since the IDF is a body that thinks and makes an impact, the ethical and moral norms it employs will be felt throughout Israeli society.

## **LEGAL DILEMMAS**

The changes to the modern battlefield (which is characterized by low-intensity fighting)—the demand for military transparency, and public and international understanding—have led to legal involvement never previously experienced in military campaigns. Since the outbreak of these events, the legal arena has become another front in this conflict, joining the military, political and media fronts.

1. The fighting is constantly being accompanied by legal advice.
2. Sometimes the courts criticize the fighting while it is taking

- place (for example, during the battle in Jenin in Operation Defensive Shield).
3. Fighting also takes place in the legal arena: attempts are made to confront the IDF using legal means by submitting appeals to the Supreme Court (for example, those that accuse the IDF of massacre or war crimes).
  4. International criminal law, which will be discussed in greater detail later on, is a new arena in which the IDF will have to contend.

### **Defining the Situation**

One of the dilemmas that arose when the current conflict began was its definition in legal terms. The military advocate general has had to deal with questions such as: Could this situation be compared with the first Intifada? Is the IDF doing police work? Is the IDF "fighting" or is it "at war," and so on. Ultimately the advocate general defined the situation as "an armed conflict" and two years after the outbreak of the conflict the Supreme Court also defined it as such, in the Ajuri incident: "Since September, serious fighting has been going on in the area of Judea and Samaria; this is not police work, this is an armed conflict."

The legal definition is important because many legal implications derive from it. Armed conflict is subject to a series of special rules in international law. Based on this definition we can talk about issues such as policies for using force, rules of engagement, policies for interrogation and placing someone on trial, and the question of jurisdiction.

### **Duality in the Work of the Military Advocate General**

The work carried out by the military advocate general involves a certain duality: enforcing the law, on one hand, by virtue of his acting as jurist in the public service; and legal counsel on the other, by virtue of his being a military officer acting in a task-oriented system, where command and hierarchy are its life's blood. This duality certainly has an impact on all of its work and interactions with the command echelon. This situation would perhaps be simpler if all the decisions were examined and approved by the Supreme Court or the attorney general. But in reality, for most of the decisions made by the military advocate general, he serves as the court of last resort: the decision to order or not to order an inquiry by the Military Police, a change in the rules for opening fire, the legality of attacking a particular target (is the bomb really "ticking"; are alternative means available, etc.). The duality becomes even sharper during the fighting in general, and when battling terrorism in particular. In this context, we often hear the argument that including jurists in the process is liable to undermine the hierarchy of the military command because the jurist is liable to veto the decisions made at the highest command levels.

### **Legal Issues**

An important and serious legal issue that relates to the public legal infrastructure in Israel, is the justiciability of operational and combat activities carried out by the army: How deeply can the legal system delve into the range of considerations and influence the decision-making process even before the decisions are made?

The question of justiciability becomes even more pressing in light of the situation in which appeals touch on the army's most patently operational matters. What happens when legal appeals are submitted while the battle is still raging, criticizing in real time what the IDF is doing; for example, targeted killings, arrests during combat, demolition of houses, the "neighbor procedure" (in which IDF soldiers use innocent civilians as human shields) and so on? Thus, for example, the Supreme Court issued a temporary restraining order regarding the removal of bodies from Jenin during the height of the fighting. Similarly, during the negotiations that were underway with the terrorists who were hiding out at the Church of the Nativity in Bethlehem, the Court was asked to order the army to provide food and enable bodies to be removed from the site.

The Court determined that when claims of human rights violation and the harming of innocents are made, and when security measures and basic combat methods are questioned, the Court states its opinion based on the fundamental belief that the actions taking place fall within the framework of the law, and in the conviction that fighting under restrictions of the rule of law can lead, in the final analysis, to an army that is morally and ethically stronger.

The question of justiciability or the question of eligibility for appeal to the Supreme Court presently is predicated on the prior planning of military actions.

### **Court Intervention in the "Neighbor Procedure"**

The "neighbor procedure" is a procedure by which IDF soldiers use civilians as human shields (such as demanding that they walk in front of a military unit) and for other military purposes, such as getting fugitives to come out of hiding. This procedure was widely used by the IDF until the Supreme Court ordered it stopped. The IDF claims that as a result of their inability to employ this procedure, they are less able to differentiate between an innocent civilian and someone they want to arrest, and as a result arresting fugitives becomes more difficult and there is greater risk of harming innocent civilians.

### **Policies Regarding Interrogation and Standing Trial**

During the first Intifada (1987-1993), a Military Police inquiry was undertaken in the case of each Palestinian death. The position of the military legal system at that time was clear cut, reflected in trials such as the Golani trial, the Givati trial and others. Those in favor of this strict legal position claim that it served as a "wake-up call" that made soldiers more aware and had a significant deterrent effect. Those opposed argue that it led to absurd situations in which commanders were afraid to carry out operations for fear that an incident would bring possible investigation and prosecution in its wake.

With the outbreak of the latest events, and because of the special nature of the confrontation (particularly the high number of incidents and victims), the possibility was raised of basing decisions on the command-level inquiry as providing the initial response regarding an incident. It was proposed that the legal

bodies order a criminal investigation only in unusual cases, under the Military Justice Law, while other cases would not be investigated by the Military Police. There are those who claim that the message of this approach is that the death of an innocent Palestinian does not warrant an investigation, indictment or conviction. Others shy away from the use of the command-level inquiry, claiming that under certain circumstances it may be used as a tool to cover up information and that therefore an investigation must be conducted, even if it isn't a legal investigation, by an extra-military body.

### **Ranking Legal Situations**

It appears that the complexity of the present confrontation prevents us from looking at harm to innocent Palestinian civilians in a single, uniform, manner. We must differentiate between several possible situations, which will be explained below using concrete examples:

**Situation A:** A volley of bullets is fired on a soldier from a house window. The soldier returns fire, accurately and in proportion to the incident, towards the source of the shooting. Next to the terrorist who fired the shots stands a child who is killed by the soldier's fire.

Incident inquiry: The soldier in all probability acted as was expected of him, from both a legal and professional aspect.

**Situation B:** A soldier is standing at a road block. A Palestinian approaches in a way that appears suspicious to the soldier,

and he suddenly removes an object from his bag. The soldier believes it is a gun, grenade or bomb. He opens fire in the direction of the suspect. It turns out the suspect was removing a sandwich from his bag.

Incident inquiry: The soldier committed a professional error in assessing the situation, but probably did not contravene the law. By the same token he could have made the opposite mistake, by not firing when he should have done so.

**Situation C:** A soldier has clear orders that he should not open fire for the purpose of frightening people. The soldier becomes involved in a situation where he knowingly decides to disobey orders and fires in order to frighten people. As a result of his shots, a Palestinian is killed.

Incident inquiry: Although the soldier did not intend to kill the Palestinian, he acted knowingly and without any real reason, against orders. Such an act certainly pushes this incident into the legal sphere.

**Situation D:** Injury/abuse by a soldier of a Palestinian without any operational consideration.

Incident inquiry: This is a deliberate injury and the soldier should be judged harshly.

Scores of incidents such as these take place on a weekly basis. The great difficulty is, naturally, distinguishing between professional error and intent.

## **INTERNATIONAL LAW**

The world is presently reformulating its international legal norms and the International Criminal Court is a manifestation of this. In a discussion of law during wartime we cannot ignore the international dimension, since Israel is part of the international community. Sometimes it seems as if Israel has the dubious privilege of being the country that renewed and precipitated the issue of terrorism in modern international law.

### **Characteristics of International Law**

1. Sources: The most important source regarding international law is precedent. Thus, if sufficient influential countries perform a certain act over time, it becomes binding. Another source is international charter (such as the Geneva Convention; see Appendix E). An international charter does not automatically obligate every country in the world: there are charters that obligate only the countries that have decided to join that particular charter. While in some legal systems written articles serve only as background material, in international law articles sometimes serve as an authoritative source.
2. In international law, a country may do anything it is not prohibited from doing.
3. International law deals primarily with the "big picture" and doesn't go into the little details.
4. Many spheres are not covered by international law.
5. By its very nature, international law works slowly. It does not adapt itself to the pace at which events take place. Until a problem becomes a global problem, the law doesn't change.

Thus, for example, those interpreting international law still operate in terms of the image of World War II.

6. International law is conservative since it was the result of a forum with many participants, each with his own approach and opinion. It tends towards interpretation and consensus rather than revolutionary change of all the rules.
7. International law is not absolute. There are spheres in which it is vague, but even in spheres where it is unequivocal there may sometimes be several legal jurisdictions that apply equally (for example, two different definitions of prisoners: one from the Third Geneva Convention of 1949, and the other from the Protocol of 1977).

It appears that international law is currently characterized by two different trends. On one hand, something new, different and powerful is taking place. In various countries around the world, there is a genuine "craving" to apply international law, whether through a framework of universal authority (see below), or via the International Criminal Court in the Hague. On the other hand, there are certain spheres—terrorism, for example—that are not governed by international law and are still judged in comparison with conventional warfare.

### **Israel and International Law**

Since the outbreak of the current conflict, Israel has been subject to severe legal criticism from the international community.

The main reason for this censure is the wide international perception that regards Israel as committing war crimes in the

territories it occupies, while the behavior of the Palestinians is perceived as a defensive war against Israeli acts of aggression. This point of view leads to hatred and resentment towards Israel. Israel is one of the few countries in the world presently coping with terrorism, while there is no international law against terrorism. To date, terrorism has not been defined as an international crime, and no distinction has been made between terrorism, guerilla tactics, and fighting for independence. There are several international charters dealing with the taking of hostages, hijacking airplanes, placing bombs on aircraft, and financing terrorist activities, but not with the crime itself. The current global perception is that so long as there is no international law that defines what terrorism is and how to deal with it, and so long as there is no accepted practice, terrorism must be handled on the basis of classic military perceptions, which means war crimes as defined in 1945 and 1949, which had to do with wars between countries and between armies.

It would appear that since September 11, 2001, there is a belief that the issue of terrorism must be addressed anew. It is likely that the more countries around the world are exposed to terrorism, the greater will be the tendency to establish a new, more appropriate international legal framework.

### **The International Criminal Court in The Hague**

**Background:** The idea to establish a permanent international court was born following the Second World War, in light of Nazi war crimes. Supporters of the idea met in 1953 under the sponsorship of the United Nations, in order to establish an

institution that would reflect and properly express their willingness to fight such crimes. The young country of Israel also supported the establishment of a court and sent its own legal delegates to the conference. Realization of the concept was delayed for forty years (the period of the Cold War), and discussions were renewed during the 1990s in light of the atrocities that had been perpetrated in Yugoslavia, Rwanda, and other places.

The International Criminal Court is an apolitical legal body, and the United Nations resolved to establish it in 1998, with the agreement of most of the world's countries, including Israel. From that time to the present, sixty-six countries have ratified their participation. The court is slated to begin functioning as of July 2003 in The Hague. Israel has yet to ratify its participation.

**The primary innovations** in establishing such an institution are the permanent basis upon which it is rooted, and its global jurisdiction. This is in contrast with courts in Yugoslavia and Rwanda, which were temporary and limited to those geographic regions. Thus, it will have the authority to judge heads of state, as well as soldiers and lower-ranking commanders. The court will make its judgments in real time.

**The legal basis** for the International Criminal Court is the international criminal code, formulated in Rome in 1998, as part of a document known as **The Rome Statute** (the founding declaration for the International Criminal Court; see Appendix F). The Rome Statute defines the jurisdictional authority of the criminal court, including injustices of genocide, crimes against

humanity and war crimes that were committed after July 1, 2002. The court can issue international arrest warrants against those suspected of committing those crimes, and anyone convicted of committing such crimes will be imprisoned by the court.

**Structure:** The court will consist of eighteen judges serving terms of nine years. The judges will be selected through secret ballot at a gathering of the member countries, with at least a two-thirds majority. Candidates will be only those entitled, based on their abilities, to serve in the highest courts in their own countries. The prosecutor, who has broad authority to initiate and conduct investigations, will also be chosen through secret ballot.

**Restrictions:** The authority of the court shall apply only to member countries (unless an appeal is submitted by the UN Security Council), and its authority shall not be retroactive. The court is not supposed to replace national courts of justice or to supercede them, rather to serve as a final resort in the case where a country—when a citizen of that country has committed a crime, or a crime has been committed within its borders—is prevented from holding legal proceedings.

**Member nations:** Sixty-six countries are members of the International Criminal Court. Among these are countries of the European Union, African nations, and nations from Central and South America.

An important group of countries has withheld ratification: the United States, Russia and China. The American opposition

stems from its extensive involvement in conflict resolution, involvement that exposes its public officials in the government to lawsuits and makes them targets for political conflict. Israel is also delaying the ratification process until it clarifies how the court will operate and the nature of its discussions and decisions. Israel's hesitancy derives from the inclusion of the settlements in the war crimes section of the court's criminal code (a section that was added to its constitution under pressure from Arab countries), and based on another paragraph dealing with "the transfer of populations to occupied territory." Furthermore, Israel fears abuse of the court's authority against its politicians, officers and members of its security forces, as well as the politicization of the court and attempts to turn the court from a legal tool into a tool for political advantage.

Refusal to join the charter and the limitations the court has imposed upon itself still do not provide absolute protection for non-member countries. The Rome Statute grants the right of appeal to the court to member countries, and to other countries on an ad hoc basis. Furthermore, the UN Security Council has the right to petition the court, and through this it will be possible to bring suit even against citizens from non-member countries.

Even now there are already preliminary initiatives for suits against Israeli soldiers. The issue at hand is the cost Israel is liable to pay for an incident, such as the killing of [the terrorist] Sallah Shehade.

### **Universal Legal Authority**

One more development within international law, besides the establishment of the Court in The Hague, is the increase in international enforcement in general, on the basis of the universal authority that countries adopt for themselves through internal legislation. By virtue of such authority, countries that consider themselves to be enlightened from a legal perspective, for example, Belgium, Italy, Spain, England, etc., assume "universal" jurisdictional authority towards individuals in other countries, even if they did not commit a crime against that country or its citizens.

Israel has also established universal jurisdictional authority for itself, although it is quite limited and focuses on genocide, trials against the Nazis and their assistants, and trafficking in dangerous drugs.

There are those who see the increased usage by certain countries of universal jurisdictional authority as posing a greater danger to IDF officers than the International Criminal Court. According to this authority, IDF officers and members of the security forces can be accused of war crimes the moment they leave the country, or from the moment they enter a country that has assumed such authority.

### **Dilemmas and How to Cope with Them**

The result of the above discussion is that in preparation for the current changes in international law, Israel must begin to face questions and dilemmas that are far from simple. Should Israel

think of the danger of universal authority and the threat of the International Criminal Court as just one more in a series of risks, or is it a different type of risk altogether? How can we explain to soldiers and commanders the dangers of standing trial inherent in carrying out an operation without turning the operation into something arbitrary and illogical? Can we go on assuring our fighters when they march into battle that we will do everything it takes in order to save them, both from the International Criminal Court and from countries which have assumed such universal jurisdiction?

It will take a bit more time before we can clarify the extent of this new risk and how to prepare for it. Nevertheless, legal and military bodies in Israel have begun designing scenarios and defenses. For example: Israel may be forced to reveal intelligence information to the court. Exposure of such information will require monitoring the decision-making process of a targeted killing, for example, so as to furnish proof that no crime was committed and that the IDF acted according to logic, on the basis of various considerations.

One of the practical possibilities for dealing with the problem is to create a strong, internal legal and moral system that will be evaluated by the entire world. This is because international law states that there is no "double jeopardy," in other words, if the legal system of a particular country has stated a reasonable opinion regarding a certain matter, the person cannot be brought to trial a second time before the international tribunal.

In addition, there is, of course, the preventive solution of not having senior officers, members of the security forces and political figures leave the country, but this is not a serious way to address the issue.

The proactive approach would be to have Israel try to lead an international campaign that would reshape traditional ways of thinking about the war on terrorism. Perhaps the world should hear about the moral and ethical dilemmas that IDF officers must face on a daily basis.

## **The Impact of the Present Conflict: Psychological, Ethical and Moral Aspects**

### **THE POSSIBLE EFFECT OF SOLDIER BURN-OUT**

#### **Potential Psychological Aspects**

For more than two years IDF soldiers have been in constant battle in Palestinian cities, and they are fighting most hours of the day (except for training periods and the shortest possible leaves). There is a substantial element of burn-out.

The fear for the lives of the soldiers and their comrades, the constant state of alert and fatigue, the constant friction with the Palestinian population, and the difficult images to which they are exposed are all likely to take their toll physically, morally and psychologically. We will attempt to look at the possible psychological effects on soldiers who are in constant confrontation with a civilian population.

The psychological impact of the current confrontation on soldiers who are in daily contact with civilian populations has not been researched empirically, and therefore we can only speculate. The importance of these effects is, of course, secondary to the physical danger to which these soldiers are exposed daily, and in relation to legal and ethical issues. Nevertheless, the potential psychological effects cannot be ignored, if only because of their long-term nature.

Since no empirical research has been conducted, the only possible

way to relate to this in the meantime is through theoretical conclusions. Based on what we know from theoretical models and laboratory studies in the field of social and developmental psychology, and psychology of the personality, we can speak of the following effects:

- **Demonization of the other side:** The effect of cognitive dissonance: "Since I am hitting him, and since I don't usually go around hitting innocent people, the conclusion is that he is evil, inferior, scheming."
- **Hatred of Arabs:** The effect of cognitive dissonance: "Since I am hitting him, and since I don't usually go around hitting innocent people, this is a sign that I hate him."
- **Projection:** "If you give the Arabs the opportunity, they will do to us what we have done to them, only much worse."
- **Not taking responsibility:** Commanders issue "moral" orders because this is what is demanded of them by the chief of staff or the military advocate general, even though they know that it is impossible to carry out those orders perfectly under specific military conditions.
- **Moral insensitivity:** Moral insensitivity caused by an ever-increasing number of unusual events: looting, abuse, humiliations, vandalism, and killing of innocents.
- **Assimilating behavioral norms:** Violence is becoming a legitimate means for achieving ends, not only in military situations but in civilian life as well, following the release of civilians from the army.
- **Political polarization:** Daily service in the Territories creates an internal need to take a political stand regarding our rights to the Land of Israel, negotiations with the

Palestinians, our attitude towards the settlers, etc.

- **Alienation between the soldier and his family:** The soldier cannot share a large portion of his world with his family because of secrecy and because of a sense of shame. As a result, there is alienation and isolation.

### **Moral Deterioration**

Deadening of the senses does not belong exclusively to soldiers. The longer the conflict continues, and the more the terror escalates, we are witness to a process wherein sensitivity and moral criteria are damaged, not only among the IDF as a fighting body, but among the individual citizens of Israeli society.

As the surrounding reality changes, it seems that the IDF's response to new threats becomes tougher. If five years ago, "prolonged curfew" was perceived as a serious action, today it is seen as the necessary minimum for coping with the situation. The attitude of the civilian population towards these actions has also changed gradually, from criticism to a kind of non-responsiveness, and even acceptance.

### **Severe Damage to the Palestinian Population**

During the past two years, the Palestinian civilian population has been under almost constant curfew. Their people are suffering because they have been unable to go out on a regular basis to work and school, and to meet basic needs, such as food, water, etc.

The Palestinian population has become more and more bitter

and has developed a hatred of Israelis, not necessarily because of Israel's policy of targeted killing, but because of their daily encounter with soldiers, and their relationship with them.

**Short-Term Concerns vs. Long-Term Considerations**

It appears that the uncertainty between short-term and long-term considerations is the primary concern when discussing the costs. The question that must be asked is according to what time frame are considerations being made, because short-term considerations, which naturally demand a firmer attitude, will lead to completely different results from long-term considerations. For example: Killing a senior terrorist is likely to help prevent an immediate attack, but at the same time may cause an increase in hatred and a rise in potential suicide bombers in the future.

## **Coping Mechanisms**

Now that we have surveyed the dilemmas and the impact of the current conflict on the army and society, we should examine means for coping with the situation.

### **A. SETTING OF POLICY BY THE POLITICAL ECHELON**

The political echelon is charged with the role of defining for the military echelon a general policy and clear objectives for performance of its missions. Defining such a policy will make it easier for the army to establish moral rules and to defend them when faced with changing situations that cannot be anticipated or defined ahead of time.

### **B. AN ORGANIZED DECISION-MAKING PROCESS**

It appears that each decision dealing with deliberate harm to the Palestinians must be made by the political echelon and the most senior commanders, in an organized and cautious process that is also attended by representatives of the military advocate general and the IDF spokesperson. If we take, as an example, the decision-making process in the case of a targeted killing, the target and the reasons for his elimination should be presented. The action will be approved only if it can be proven that the target is planning an attack ("a ticking bomb"), is an essential part of the terrorist network, that hurting him will lead to even greater damage to the terrorist network, or that there is no option of arresting him instead of killing him. Furthermore,

there should also be a discussion regarding the type of weapons to be used and possible collateral damage that is likely to be caused. The presenters of the plan must prove that they have taken all necessary steps to prevent collateral damage in terms of operational planning, and it would be a good idea to have the chief of staff issue contingencies for the operation.

### **C. PROMOTING AN OPEN DIALOGUE ON THE MORAL DILEMMAS**

The army is presently struggling with dilemmas that have no simple solution. Since moral codes and behavior patterns can change through dialogue, debate, and exchange of opinions, perhaps the army would benefit from sharing the moral dilemmas it must face with the media, the political echelon, academic representatives, and with army officers from other Western countries. Such a dialogue would strengthen democracy because it would prove that the moral codes are not dictated and inflexible, but learned from the moral behavior of society.

### **D. OPERATIONAL INQUIRY**

An inquiry is an operational, educational and professional tool, whose purpose is to recreate accurately what happened during an incident, draw conclusions, and correct errors if necessary. The operational inquiry is based on a unit culture of telling the truth and admitting errors, mistakes, etc.

First and foremost, the aim of the inquiry is to learn.

Nevertheless, if as a result of the inquiry there is a suspicion of an alleged criminal action, it may be followed up with a legal procedure.

Recently the IDF has decided that for each innocent Palestinian civilian who is accidentally killed, a military inquiry will be conducted within seventy-two hours, all along the chain of command. This inquiry reaches the chief of staff, who must discuss it within three weeks. Through this decision, the IDF is expressing the importance that it attaches to clarifying the truth and to human life, no matter who the person may be.

More than once a conflict has arisen between exposing inquiries and maintaining their confidentiality. On one hand, exposure is likely to serve as a forum for learning, and even as a warning. On the other, not all the investigational details can be made known because there are so many, and their presentation is liable to overload and slow down the system. Furthermore, exposing the inquiry may bring with it the threat of prosecution even in cases where there is no basis for such action, and this will keep soldiers from telling the truth.

Even if the inquiries themselves cannot be announced, the mere fact of their existence should be publicized.

## **E. TEACHING MORALITY AND INCULCATING NORMS BY COMMANDERS**

One of the most effective ways of coping is by teaching morality

and values. This type of education must begin in the school system.

The IDF is characterized as an "army of the people," and it attracts soldiers from a variety of backgrounds who act differently when faced with situations of moral conflict. It is the duty of the IDF to serve as a beacon for its soldiers, and to inculcate in them moral values and ethics so that when a soldier or commander goes out into the field, he is armed with a "pack" full of values, the IDF spirit, and the rules, orders and norms of what is permissible and what is not.

The commanders are the ones who must educate soldiers and teach them the ethical norms of warfare, since they are the ones who are out in the field with them and coping with the same dilemmas, just as they are.

## **F. REDUCING POINTS OF FRICTION**

One further way of coping is to reduce the points of friction between soldiers and Palestinian civilians to a minimum. This can be done in several ways:

1. Replacing regular soldiers with reserve troops in those locations where it is less advantageous to post conscripts while reserve soldiers, because they are older, can demonstrate greater sensitivity and wisdom. Moreover, such replacement can reduce burn-out among the regular troops.
2. Establishing sophisticated checkpoints to replace existing blockades. At these checkpoints, contact between soldiers

and Palestinians would take place through a reinforced glass window, and with several lanes the checkpoint would enable passage for more Palestinians, thereby reducing waiting time.

3. Deciding to minimize the length of time soldiers remain in Palestinian homes and towns, in order to prevent damage to personal property and vandalism.
4. Possibly opening a direct channel of communication (a telephone hot-line, for example), for individual complaints from Palestinian civilians against the IDF authorities.

## **G. DETERRENT MEASURES**

The preventive measures used on an ongoing basis are not always sufficient to ensure that all the rules of ethics and morality are kept. Sometimes penalties within the IDF are needed after the fact. Thus, internal inquiries are conducted for the purpose of finding out who is guilty and putting that person on trial. Sometimes soldiers may even be dismissed from their units as punishment for inexcusable actions, such as looting, damaging property, and maltreatment or humiliation of the other side.

## **H. PROFESSIONALISM, SUITABLE TRAINING**

The professional qualities required of IDF soldiers today are different from those that characterized the military profession in very intensive wars. When defining this new profession, we must identify a level of requirements for commanders who

are deliberative, good listeners, and inquisitive by nature, but without jeopardizing their determination and decision-making processes. The current system demands much more from the soldier and the commander than intellect.

## **I. AN ETHICAL CODE: YES OR NO?**

Given the dilemmas of the current conflict and its various influences, we must ask whether a code of ethics should be formulated for this type of warfare; that is, is it desirable and possible to create a combination of rules that can serve as a guideline?

There are those who claim that the Israeli-Palestinian conflict is a cultural struggle that could not be contained within such a code. Others emphasize that moral rules are always context-specific, and it is difficult to define rules of what to do and not to do in this type of warfare.

There are those who argue that an ethical code is also unnecessary because the IDF is part of Israeli society, and there should not be a difference between military morality and social morality—there is no reason the IDF should have to adopt a different moral code. Moreover, the IDF already has a system of rules, techniques and procedures that address—at least to a certain extent—the moral issues with which soldiers must struggle (see, for example, "The IDF Spirit"—Appendix G). Others add that it is actually the discussion and dialogue around issues of morality and ethics that precedes an operation which is more important, because the use of a single and fixed ethical

code that is correct for every situation could spell danger by making combat mechanical.

In contrast to all these opinions, there are those who are in favor of writing a code of ethics for contemporary types of war. They feel that formulating an ethical code is part of making the army more professional. Just as other professions, such as medicine and law, have guiding codes, soldiers must also be equipped with a set of ethical rules that can be applied to new situations. According to this approach, reasoning at the macro level, that is at the level of principles (for example, the principle of proportionality), will help soldiers reach inferences for the micro level; i.e., day-to-day situations (orders for opening fire, for example). Here, too, we can ask whether it is possible to formulate a code of ethics under changing combat conditions. It would appear that if we formulate an ethical code, it would be by collecting individual moral dilemmas and attempting to infer a rule from them. For example, regarding dilemmas experienced by soldiers at checkpoints—booby-trapped ambulances, innocent Palestinians asking to go through without proper authorization—what method is both effective and moral, which can distinguish between innocent people and terrorists, which takes into account restraint of power, and which is appropriate for all scenarios? Such an ethical code, in reality, generalizes from a solution for a specific situation—a series of events of a particular type that took place near a checkpoint—to a solution for a general situation, and produces rules for how to behave at checkpoints.

Given that no ethical code exists in the present conflict, there is a system of ethical and moral principles that can be raised for discussion and debate.

## **A System of Ethical-Moral Principles Governing the Behavior of IDF Commanders and Their Soldiers in the Present Armed Conflict**

### **A PROPOSAL FOR DISCUSSION AND DEBATE**

1. **The principle of proportionality:** The IDF response to any provocation and terrorist act must be proportional (according to the magnitude of the provocation).
2. The principle of asymmetry: The IDF does not operate according to the same moral criteria (or lack of such moral criteria) as the Palestinians.
3. **The basis for justifying military action:** The IDF does not act with the intent to punish. Justification for the legitimacy of military action against the Palestinians: self-defense in light of a clear and immediate threat, or prevention. "A clear and immediate threat" may be defined according to the level of expected damage and according to the likelihood that the threat will be acted upon. Punishments are meted out by the police and the courts.
4. **Humanitarian considerations in operational thinking:** As part of its operational considerations, the IDF includes assessments regarding the existence of a significant threat to civilian groups. The IDF acts against hostile agents with an effort to minimize damage to the surrounding population and property ("focusing").
5. **The principle of shared operational decisions:** Decisions regarding planned military operations against terrorism that include an element of risk to the civilian

- population are made only after consulting with the senior levels, preferably in the political echelon (civilian), which receives all information regarding the aforementioned risk.
6. **The principle of compensation:** The IDF avoids damage to Palestinian property. If there is damage to property belonging to people who were not involved in the fighting (for example, cutting down orchards on the side of the road, demolishing the bombed-out shells of apartment buildings, appropriating a house for a military position), payment of full compensation must be considered.  
In the event of harm to innocent Palestinian civilians (injury or death) who did not provoke such injury by their behavior, the State must consider compensating the injured or his family.
  7. **The principle of respect for the enemy:** Even when actions must be carried out that restrict or harm the civilian Palestinian population, we must avoid violating their human dignity.
  8. **The principle of self-examination:** In any incident where Palestinian civilians are hurt or killed, a documented inquiry must be conducted.
  9. **The principle of preliminary "judgment":** Targeted killings will be carried out against someone only if his involvement in terrorist activity is proven through an orderly procedure as determined by the IDF, and in cooperation with the military advocate general.

## **A Research Agenda**

The complexity of the combat reality and the fact that Israel is one of the only countries having to face such a situation raises the need for empirical studies whose findings can clarify the situation and provide guidance for effective action in the future.

Below are several suggestions for research topics:

1. Retroactive inquiry: An important source of information regarding the behavior, attitudes and feelings of soldiers is the examination of demobilized soldiers who have served one or two years of their military service in the Territories
2. An examination of psychological processes that take place among soldiers who serve among the Palestinian civilian population, using questionnaires and monitoring
3. The impact of serving in the Territories on motivation to serve in the army, national identity and perspectives on "the other"
4. The desire of young people who have served in the Territories to leave the country, compared with young people who have served in the IDF but not in the Territories, and compared with young people who did not serve in the IDF
5. Perceptions of the Israeli public regarding a series of ethical dilemmas
6. The effect of the ongoing fighting on the perception of the Palestinian "other" among soldiers and Israeli civilians
7. A military-historic study: examining events and processes in the period between 1948 and 1998 from the point of view of the overt and covert influences the chief of staff had on political processes

8. An examination of the democratic perceptions and attitudes towards democratic civilian rule among IDF senior officers
9. Attitudes of the Israeli public towards the International Criminal Court in The Hague
10. A multi-year attitudinal survey on questions of ethics and morality in war, as they are perceived by a representative sampling of the Israeli public over time
11. A study that focuses on the impact of the events on the Palestinian civilian population: psychologically, in terms of political opinions, in terms of actual behavior, etc.
12. Perceptions among the Israeli public regarding the level of morality in the army
13. Examining the degree to which Israeli civilians and Palestinian civilians are prepared to formulate and agree to a joint ethical-moral code

## Appendices

### APPENDIX A: PROGRAM OF THE SIXTH SESSION OF THE ARMY AND SOCIETY FORUM

#### **Morality, Ethics and Law in Wartime**

13 January 2003

**Chairman: Lieutenant General Moshe Ya'alon** Chief of Staff

**Moderator: Professor Arye Carmon** President, The Israel  
Democracy Institute

#### **Introductory Remarks:**

Lieutenant General Moshe Ya'alon

Professor Arye Carmon

#### **Study Topics:**

##### **Developments Regarding Morality in Wartime:**

###### **Historical Background**

Dr. Motti Golani

Israel Studies Dept., Haifa University

###### **Fighting Terrorism: Legal Aspects**

Major General Menachem Finkelstein

Military Advocate General

###### **International Law and the International Criminal Court**

Colonel Dan Reisner

Office of the Military Advocate General

## **Command Perspectives on Fighting Terrorism among Civilian Populations**

Brigadier General Ilan Paz

Head of the Civilian Administration in Judea and Samaria

## **Comments and Remarks on Relevant Issues**

Professor Mordechai Kremnitzer

Senior Fellow, The Israel Democracy Institute;  
Faculty of Law, Hebrew University

## **Group Discussions**

Discussion took place in four separate groups, and each group discussed the two topics listed below.

## **Plenary Session**

Reports of the discussion groups

## **Concluding Remarks**

The chief of staff and the president of The Israel Democracy Institute

The two issues discussed by the groups and in the plenary session were:

### **A. Morality in Wartime—The Internal Dimension**

What dilemmas do the IDF commanders and soldiers face, and what are the necessary coping mechanisms in light of the ongoing fighting in general and the war on terrorism

conducted in the midst of a civilian population in particular? What are the criteria for making command decisions based on norms of human dignity and a tradition of "the purity of arms?" What is "a patently illegal order" in this type of fighting? Should society share in the moral responsibility of ongoing fighting, and how would this be carried out? Does society play any role?

**B. Developing Global Norms—The External Dimension**

What impact, both direct and indirect, on command and personal decisions with regard to the fighting should there be from the changes and developments that have taken place in the arena of global norms regarding rules of war and human dignity? Does the International Criminal Court have a role to play in developing such norms? What is the State's role in backing up the IDF, its commanders and its troops?

## APPENDIX B: CONFERENCE PARTICIPANTS

### Group A

**Moderator: Dr. Eli Salzburg** Faculty of Law, Haifa University

#### **Civilian Participants:**

**Dr. Motti Golan** Israel Studies Dept., Haifa University

**Carmit Guy** Editor and newscaster, Kol Yisrael;  
Editorial board member of the The Seventh Eye Journal

**Dr. Yaffa Silberschatz** Faculty of Law, Bar-Ilan University

**Professor Arye Carmon** President, The Israel Democracy Institute

**Professor Danny Stetman** Philosophy Dept., Haifa University

**Justice Meir Shamgar** President Emeritus, Israel Supreme Court

#### **IDF Participants:**

**Lieutenant General Moshe Ya'alon** Chief of Staff

**Major General Dan Harel** Head of the Operations Division

**Major General Menachem Finkelstein** Military Advocate General

**Major General Moshe Kaplinski** OC Central Command

**Brigadier General Elazar Stern** Chief Education Officer

**Lieutenant Colonel Yaron Rosen** Squadron Commander

### Group B

**Moderator: Professor David Nachmias**

Senior Fellow, The Israel Democracy Institute;  
School for Government and Policy, Tel Aviv University

**Civilian Participants:**

**Attorney Alan Baker** Legal Counsel for the Foreign Ministry

**Nachum Barnea** Journalist, Yedioth Aharonoth

**Professor Moshe Halbertal**  
Dept. of Jewish Philosophy, Hebrew University

**Aviram Wertheim** Orwer Management, Ltd.

**Dr. Michal Yaniv** Researcher, Ministry of Defense

**Professor Mordechai Kremnitzer**  
Senior Fellow, The Israel Democracy Institute;  
Law Faculty, Hebrew University

**IDF Participants:**

**Major General Gabi Ashkenazi** Deputy Chief of Staff

**Major General Doron Almog** OC Southern Command

**Major General Eyal Ben Reuven** Commander, 479th Corps

**Major General Yiftach Rontal** Commander, Land Forces HQ

**Brigadier General Gershon Yitzhak**  
Commander, Judea and Samaria Division

**Brigadier General Ruth Yaron** IDF Spokesperson

**Colonel Yossi Bachar** Commander, 623rd Brigade

**Group C**

**Moderator: Dr. Ilana Dayan** Journalist and Attorney

**Civilian Participants:**

**Dr. Meir Buzaglo** Philosophy Dept., Hebrew University

**Dr. Michael Gross** Political Science Dept., Haifa University

**Dr. Yoram Turbowitz** Businessman

**Rabbi Yehuda Amital** Director, Har-Etzion Yeshiva

**Attorney Irit Kahan**  
Head of the International Dept., State Attorney-General's Office

**Ofer Shelach** Journalist, Yedioth Aharonoth

**IDF Participants:**

**Major General Dan Halutz** Commander of the Air Force

**Major General Yishai Bar**  
President of the Military Court of Appeals

**Major General Gil Regev** Director, IDF Personnel Division

**Brigadier General Ilan Paz**  
Brigade Commander, Judea and Samaria Brigade

**Colonel Dan Reisner** Military Advocate General

**Colonel Nadav Shahar (Res.)** Commander, 263rd Brigade

**Group D**

**Moderator: Professor Baruch Nevo**

Director, The Army and Society Forum  
at The Israel Democracy Institute;  
Psychology Dept., Haifa University

**Civilian Participants:**

**Professor Yaron Ezrahi**  
Senior Fellow, The Israel Democracy Institute;  
Political Science Dept., Hebrew University

**Uri Dromi**

Editor in Chief of Publications and Director of Outreach,  
The Israel Democracy Institute

**Attorney Eli Zohar** M. Seligman & Associates, Attorneys at Law  
**Professor Asa Kasher** Philosophy Dept., Tel Aviv University  
**Professor Ruth Lapidot** Faculty of Law, Hebrew University  
**Dan Meridor** Prime Minister's Office

**IDF Participants:**

**Major General Giora Eiland** Head of the Planning Division  
**Major General Benny Gantz** OC Northern Command  
**Major General Yedidya Ya'iri** Commander of the Navy  
**Colonel Moshe Tamir** Commander, Golani Brigade  
**Colonel Gal Heersh**  
General Staff Liaison Officer, Central Command

## APPENDIX C: SOURCES FROM THE CONFERENCE INFORMATION PACKET\*

### A. General

- Natan Alterman, *Al Zot* [For This], printed in *The Seventh Column, Davar*, November 1948
- *The IDF Spirit* (the code of ethics of the IDF)
- Reuven Gal, *On the Importance of Military Ethics*, Israeli Institute for Military Research

### B. International Law—Norms, Law and IDF Backing

- Excerpts from *The Geneva Convention Relative to the Protection of Civilian Persons in Time of War*
- Excerpts from *The Rome Statute of the International Criminal Court*
- "The International Criminal Court: Authorities and Limitations," *Parliament* (36) 2002
- *The Authority of the International Criminal Court towards Israelis and Israel*, The Knesset Constitution, Law and Justice Committee, June 11, 2002
- Elyakim Rubenstein, *On public law during times of crisis and times of war*. Excerpts from a lecture given on April 14, 2002.
- Excerpts from the press

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\* The information packet was sent to participants several weeks before the conference was held and served, among other things, as a basis for the writing of this article.

### **C. Morality in Wartime**

- Asa Kasher, "Human life and the purity of arms," *Military Ethics*, 1996.
- "Morality, War, and the Morality of War." From an interview with Asa Kasher, 1988
- Anthony E. Hartle, *Moral Issues in Military Decision-Making*, 1989, ch. 5.
- R. Linn, "Conscience in war and assessing reliability: Theoretical and practical questions" (abstract), *Politics and Individual* 4(2), 1994, pp. 47-61.\*\*
- J. B. Dixon-Gomez, "Lessons of war: The psycho-social effect of war on morality in El Salvador," (abstract) *Humanities and Social Sciences*, 60(4a), 1999.\*\*
- D. Bar-Tal and D. Labin, "The effect of significant events on stereotypes: The period of terror in Israel and perceptions of Israeli youths regarding Palestinians, Jordanians and Arabs in general," (abstract) *European Journal of Social Psychology* 31, 2001, pp. 265-280.\*\*
- Amnesty International, "*Shielded from Scrutiny: IDF Violations in Jenin and Nablus*," November 2002.
- Findings of the Amnesty International report on IDF activity in Jenin and Nablus during "Operation Defensive Shield" (April-June, 2002).
- Excerpts from the press

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\*\* The full article can be obtained through the Information Center of The Israel Democracy Institute.

**APPENDIX D: SUMMARY OF THE FINDINGS OF THE AMNESTY INTERNATIONAL REPORT ON IDF ACTIVITY IN JENIN AND NABLUS DURING "OPERATION DEFENSIVE SHIELD" (April-June 2002)**

The following is a summary of the main points of the Amnesty International report that was published on November 3, 2002. The findings are taken from the report itself as it was published on Amnesty's website ([www.amnesty.org](http://www.amnesty.org)), and from articles written in the press in response to the report.

It should be noted that the findings cited represent the viewpoint of Amnesty International alone.

**Introduction**

Amnesty International is a worldwide organization for the protection of human rights. On November 3, 2002 the organization published a special report focusing on IDF activity in Jenin and Nablus during "Operation Defensive Shield."

The report is based on interviews with residents, representatives of the Palestinian local authorities, medical teams, media people, Israeli, Palestinian and foreign civilians working for humanitarian organizations, official representatives of the IDF as well as on medical documentation, protocols from Supreme Court hearings and the results of investigations in the field by experts within the organization.

The original report contains quotations from specific interviews in order to illustrate the findings.

## **The Findings**

### **1. Unlawful killings**

In Jenin and Nablus, Amnesty documented cases where Palestinians were killed or injured in circumstances that indicated they may have been hurt deliberately and illegally, due to an exaggerated use of force, or negligence in protecting those who were non-combatants (Palestinian civilians). According to the report, in several cases Palestinian deaths were caused by the demolition of homes while residents were still inside. IDF soldiers frequently failed to give adequate warnings before demolishing houses, refused to allow family and neighbors to warn residents, failed to offer help themselves or to call rescue units or ambulances. There were cases where they shot at those who tried to help.

### **2. Failure to ensure medical or humanitarian aid**

According to the report, in both Jenin and Nablus the IDF denied medical teams, ambulances and humanitarian relief organizations access to wounded citizens for several days, even after the fighting had reportedly stopped. As a result of the lack of medical aid, many Palestinians died and their bodies remained for days in a state of decay in the places where they had been killed.

### **3. Demolition of houses and property**

UNRWA has determined that between March 20 and April 23, 2002, some 2,629 Palestinian homes, housing about 13,145

refugees, were severely damaged. According to Amnesty, hundreds of houses and apartments were destroyed without any military justification and after fighting had ceased.

In both Jenin and Nablus there were instances when the IDF bulldozed houses while residents were still inside them. Not only did the IDF give inadequate warning to residents, they subsequently failed to take measures to rescue those trapped in the rubble and prevented others from searching for them. According to the report, during the fighting, commercial, religious, cultural and civic buildings were also destroyed without any military justification. The organization documented cases where personal property in the apartments and homes had been damaged, and sometimes even looted.

#### **4. No supply of water and electricity**

In Jenin, the report describes electrical power cuts (total or partial) lasting several weeks during the month of April, after the central electrical generators were damaged by fire. It is further claimed that the water supply was also cut off and there were residents in the Jenin refugee camp who remained without water for nearly three weeks.

#### **5. Torture or other cruel, inhuman or degrading treatment in arbitrary detention**

The report contends that the IDF abused Palestinians who had been detained in mass arrests, prevented released prisoners from returning to their homes, and treated the prisoners in a manner that was inhuman, degrading and punitive (beatings, withholding food, no access to toilet facilities, etc.).

## **6. The use of Palestinians as "human shields" during military operations**

The report claims that many witnesses point to the fact that in both Jenin and Nablus, Palestinians were used as "human shields" during the fighting (they were the first ones to lead house-to-house searches, etc.), a procedure that is known in the IDF as the "neighbor procedure."

## **7. Preventing international intervention**

The report points an accusatory finger at the IDF, which closed off the area of fighting to the world: human rights organizations, the press, medical teams, representatives of foreign countries, and a committee sent in by the UN.

The organization claims that during the period between February 27 and the end of June 2002, the IDF killed nearly 500 Palestinians, including seventy children; more than 8,000 Palestinians were arrested and over 3,000 houses were demolished. During that period, 250 Israelis were killed, of whom 164 were civilians and thirty-two were children.

The report claims that IDF forces that operated in Jenin and Nablus during "Operation Defensive Shield" committed war crimes and crimes against humanity. The report states that Israel has the right and the duty to protect the lives of its citizens, but the means it uses do not justify the violation of human rights that are rooted in international treaties and humanitarian law. Even human rights violations and crimes against humanity that are perpetrated by armed organizations do not justify the violation of human rights by governments.

**APPENDIX E: EXCERPTS FROM THE GENEVA CONVENTION  
RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS  
IN TIME OF WAR**

**The Geneva Convention Relative to the Protection of  
Civilian Persons in Time of War**

Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949

Entry into force 21 October 1950

(Israel submitted its letter of ratification on July 6, 1951)

**PART I: GENERAL PROVISIONS**

**Article 1**

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

**Article 2**

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

### **Article 3**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly

constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

#### **Article 4**

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

### **Article 5**

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present

Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

### **Article 6**

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

### **Article 7**

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149,

the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

### **Article 8**

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

### **Article 9**

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

### **Article 10**

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

### **Article 11**

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake

the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State with which the State of which they are nationals has not normal diplomatic representation.

### **Article 12**

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement. For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected person, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross who shall be invited to take part in such a meeting.

## **PART II: GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR**

### **Article 13**

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

### **Article 14**

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

### **Article 15**

Any Party to the conflict may, either directly or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) Wounded and sick combatants or non-combatants;
- (b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

### **Article 16**

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

### **Article 17**

The Parties to the conflict shall endeavour to conclude local

agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

### **Article 18**

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

### **Article 19**

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

### **Article 20**

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of

the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

## **APPENDIX F: EXCERPTS FROM THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

### **PART II. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW**

#### **Article 5**

##### **Crimes within the jurisdiction of the Court**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

#### **Article 6**

##### **Genocide**

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

## **Article 7**

### **Crimes against humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity

on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, **inter alia** the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which

they are lawfully present, without grounds permitted under international law;

- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to

acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

## **Article 8**

### **War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct

- overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital

treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material

and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the

Geneva Conventions;

- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article

7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as

riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2(c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

## **Article 9**

### **Elements of Crimes**

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

- (a) Any State Party;
- (b) The judges acting by an absolute majority;
- (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

### **Article 10**

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

### **Article 11**

#### **Jurisdiction *ratione temporis***

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

### **Article 12**

#### **Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
  - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that

vessel or aircraft;

- (b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

### **Article 13**

#### **Exercise of jurisdiction**

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

## APPENDIX G: THE IDF SPIRIT

The ISRAEL DEFENSE FORCES is the military force of the State of Israel. The IDF is subordinate to the directions of the democratic civilian authorities and the laws of the state. The objective of the IDF is to protect the existence of the State of Israel and its independence, and to thwart all enemy efforts to disrupt the normal way of life in Israel.

IDF soldiers are obligated to fight, to dedicate all their strength and even sacrifice their lives in order to protect the State of Israel, its citizens and residents. IDF soldiers will operate according to the IDF values and orders, while adhering to the laws of the state and norms of human dignity, and honoring the values of the State of Israel as a Jewish and democratic state.

### ***"The Spirit of the IDF"—Definitions and Origins***

**The spirit of the IDF** is the embodiment of the IDF's values, which should serve as the foundation of all of the activities of every IDF soldier, on regular or reserve duty. **The spirit of the IDF** and the guidelines of operation derived therefrom are the ethical code of the IDF. **The spirit of the IDF** will be applied by the IDF, its soldiers, its officers, its units and corps to shape their method of action. They will comport, educate and evaluate themselves and others in accordance with **the spirit of the IDF**.

**The spirit of the IDF** draws on four sources:

- The tradition of the IDF and its military heritage as the Israel Defense Forces
- The tradition of the State of Israel, its democratic principles, laws and institutions
- The tradition of the Jewish People throughout its history
- Universal moral values based on the value and dignity of human life

### **Basic Values:**

#### **Defense of the state, its citizens and its residents**

The IDF's objective is to defend the existence of the State of Israel, its independence and the security of the citizens and residents of the state.

#### **Love of the homeland and loyalty to the country**

At the core of service in the IDF are the love of the homeland and a commitment and devotion to the State of Israel—a democratic state that serves as a national home for the Jewish People—its citizens and residents.

#### **Human dignity**

The IDF and its soldiers are obligated to protect human dignity. Every human being is of value regardless of origin, religion, nationality, gender, status or position.

## **The General Values**

### **Tenacity of Purpose in Performing Missions and Drive to Victory**

IDF soldiers will fight and conduct themselves with courage in the face of all dangers and obstacles; they will persevere in their missions resolutely and thoughtfully, even at the risk of endangering their lives.

### **Responsibility**

IDF soldiers will see themselves as active participants in the defense of the state, its citizens and residents. They will carry out their duties at all times with initiative, involvement and diligence, with common sense and within the framework of their authority, while being prepared to bear responsibility for their conduct.

### **Credibility**

IDF soldiers shall present things objectively, completely and precisely, when planning, performing and reporting, and will act in such a manner that their peers and commanders can rely upon them to perform their tasks.

### **Personal Example**

IDF soldiers will conduct themselves as is required of them, and will demand of themselves as they demand of others, out of recognition of their ability and responsibility within the military and without, to serve as a worthy role model.

**Human Life**

IDF soldiers will act in a judicious and safe manner in all they do, out of recognition of the supreme value of human life. During combat they will endanger themselves and their comrades only to the extent required to carry out their mission.

**Purity of Arms**

IDF soldiers will use their weapons and force only for the purpose of their mission, only to the extent necessary and will maintain their humanity even during combat. IDF soldiers will not use their weapons and force to harm human beings who are non-combatants or prisoners of war, and will do all in their power to avoid causing harm to their lives, bodies, dignity and property.

**Professionalism**

IDF soldiers will acquire the professional knowledge and skills required to perform their tasks, and will implement them while striving continuously to perfect their personal and collective achievements.

**Discipline**

IDF soldiers will strive to the best of their ability to fully and successfully complete all that is required of them according to orders and the spirit of those orders. IDF soldiers will be meticulous in giving only lawful orders, and shall refrain from obeying blatantly illegal orders.

**Comradeship**

IDF soldiers will act out of fraternity and devotion to their comrades, and will always go to their assistance when they need their help or depend on them, despite any danger or difficulty, even to the point of risking their lives.

**Sense of Mission**

IDF soldiers view their service in the IDF as a mission. They will be ready to give their all in order to defend the state, its citizens and residents. This is because they are representatives of the IDF who act by virtue and within the framework of the authority given to them in accordance with IDF orders.