



*INSS Insight* No. 742, September 2, 2015

## **National Security and International Legitimacy**

**Pnina Sharvit Baruch**

Throughout the document published recently by the IDF Chief of Staff on IDF strategy, special attention was devoted to retaining Israel's international legitimacy for the use of force. The issue was in fact interwoven into the document's very fabric. The document underscores the importance of attaining international legitimacy, since "the enemy is active in non-military kinetic dimensions and has in the past succeeded in neutralizing IDF's successes in that realm." This entails "a defensive as well as an offensive component. It is designed to create legitimacy for Israel (including freedom of action for the IDF) while delegitimizing the enemy (thereby reducing its scope of activity)." To do so, the document contends, a political, cognitive, and legal effort must be made that will "begin in preparatory stages and continue throughout the whole campaign to create, preserve, and enhance the legitimacy of action enjoyed by Israel, both in Israel itself and among the international community."

The IDF has done well in understanding the importance and centrality of legitimacy in achieving the necessary gains vis-à-vis the enemy, and in internalizing the fact that the days in which it was possible to ignore legal constraints and international public opinion during the fighting and still emerge from the campaign victorious are long gone. Today, every Western military involved in combat operates under the world's watchful eye. Horrific photographs of damage resulting from warfare reach the media – print journalism, television, and the internet – directly and in real time, which creates immediate pressure to avoid harm to civilians and civilian infrastructures. This phenomenon, which also affects the policies on the use of force of the United States, Great Britain, and other Western powers, is all the more relevant when it comes to Israel, which is perpetually viewed through the world's magnifying glass and usually judged by more stringent standards than those applied to any other nation.

Consequently, it is vitally important to examine what should be done to enhance Israel's international legitimacy regarding its use of force, and what must be avoided, to the extent possible, in order not to undermine that legitimacy. First and foremost, the way to attain legitimacy is to uphold the directives of international law applicable to warfare. It

is true that Israel is criticized and its legitimacy questioned even when it does play by all the rules, but as long as it operates on the basis of the laws of armed conflict, it has an answer to its critics and to possible legal proceedings and is better able to enlist the support of important allies.

Claims are often sounded that the laws of armed conflict are not suitable for contemporary conflicts in which nations fight non-state organizations rather than the regular armies of enemy states. To the extent that these assertions mean that the laws of warfare do not allow deliberate harm to enemy civilians and civilian infrastructures not connected to the enemy's military actions, the laws of armed conflict do indeed limit that possibility. However, such actions are also limited by the values of the IDF itself and the values of the State of Israel. Therefore, it is important that these limitations exist in international law, and honoring them helps realize Israel's national objectives defined early in the IDF strategy document as, *inter alia*, "maintaining the values of the State of Israel and its character as a Jewish and democratic State and as the homeland of the Jewish people."

The claim that the laws of armed conflict impose unattainable restrictions on the use of force and therefore make it impossible to fight effectively against non-state entities is inaccurate, generally reflecting a lack of understanding of the rules. The laws of armed conflict were not created by international treaties concluded by states seeking utopian standards and ignorant of the reality of war. These laws are based on customary law that developed via the practice of the states involved in warfare and through their explanation of what the law is. Moreover, international laws of warfare are dynamic and continue to develop all the time. True, recent decades have seen a growing effort to interpret these laws restrictively and demand almost complete avoidance of harm to civilians, a trend spearheaded by human rights organizations and academics. It is important to curb this trend; the way to do so is to encourage legal scholars who understand the complexity of the battlefield to issue publications presenting the practical and feasible interpretation of the laws of armed conflict, which like any other legal directives are open to different interpretations. A step in this direction was made by the US Department of Defense, which recently published its updated *Law of War Manual*. Covering 1,180 pages, it spells out the official US position. Israel should consider launching a similar project and allocate necessary resources to help reinforce feasible interpretations of the rules of warfare. In the meantime, it is important to encourage the publication of articles and studies analyzing various aspects of the laws of armed conflict and here too allocate the required resources.

Honoring the laws of armed conflict requires, first and foremost, an understanding of these laws by all involved, from the political echelon and the IDF's senior command to the lowest ranks. The law must be taught as part of all commanders training, from the

most junior ranks and up. Frontal lectures alone are insufficient: it is necessary to practice scenarios that entail legal dilemmas, just like other operational challenges are practiced. Given the reality in which the legitimacy of a whole battle sometimes hinges on the actions of the “strategic corporal,” it is irresponsible to deny this soldier the appropriate training. The IDF’s senior commanders and the political echelon must have a deep understanding of the rules. This will enable them to make informed decisions, taking into account the constraints and opportunities of the legal battlefield.

Moreover, in order to realize the goal of creating international legitimacy, legal advisors must be involved in operational decisions, from the planning stage, through the implementation stage, to the stage of the post-operational debriefings and investigations. Such teamwork is already in place, but must be strengthened. The importance of legitimacy requires that the rank of the Military Advocate General remain at major general rather than lowered to brigadier general, both so that his/her input will receive its due weight in discussions in the general staff and in the IDF in general, and to bolster the standing of the legal advisors subordinate to the Military Advocate General in their discussions with the commanders they advise.

In this context, there is great importance to statements made by IDF senior commanders and the political echelon, addressed both outwards to the public and inwards to the members of the IDF. The importance of upholding the laws of warfare must be stated loud and clear, without hesitation or equivocation. The slogan, “The IDF is the most moral army in the world” is not enough. It must be reiterated explicitly that every officer and soldier must obey the laws of armed conflict, because it is the right way to act, it is the moral way to act, and it is in the nation’s interest to do so. This means that it is also necessary to act firmly against anyone breaking these rules, because in so doing that person is violating the values of the nation and the IDF as well as compromising Israel’s ability to attain the objectives of the war. The Military Advocate General must receive full support when s/he examines suspicions of violations of the rules, including through investigations by the IDF’s Criminal Investigation Division if necessary.

Furthermore, senior IDF commanders and the political echelon – including ministers and senior officials – must avoid making irresponsible statements that damage the nation’s legitimacy. Statements, for example, by politicians that imply that civilians may be targeted intentionally, even when uttered to pander to Israeli public opinion, are liable to erode the nation’s legitimacy and “prove” that Israel has nefarious intentions. Their negative connotations are difficult to dispel, even if in practice they have no bearing on IDF operations. Similarly, statements aimed against the legal system, whether the Military Advocate General or the Israeli Supreme Court, damage the country’s international legitimacy.

Israel lives under the constant threat of enemies who seek its destruction and who systematically and grossly violate the laws of warfare. Despite this difficult reality, Israel in general and the IDF in particular must take care to continue to honor moral and legal norms, thereby distinguishing Israel from its enemies. For Israel's enemies, one form of victory is a situation in which Israel loses its values as a Jewish and democratic state. It is imperative to deny the enemy this victory. Norms of morality and the laws of armed conflict must be observed at all times, and this will help maintain international legitimacy for the use of force. The IDF strategy document underscores that international legitimacy is a vital component of national security. It is important that this understanding be translated into clear statements and actions internally and externally, both by military commanders and the political echelon.

