

THE BEGIN-SADAT CENTER FOR STRATEGIC STUDIES
BAR-ILAN UNIVERSITY
Colloquia on Strategy and Diplomacy No. 27

Israel: An Embattled Democracy

© The Begin-Sadat Center for Strategic Studies
Bar-Ilan University, Ramat Gan 52900 Israel
<http://www.besacenter.org>
ISSN 0793-1042
May 2012

The Begin-Sadat (BESA) Center for Strategic Studies

The BESA Center for Strategic Studies at Bar-Ilan University was founded by Dr. Thomas O. Hecht, a Canadian Jewish community leader. The Center is dedicated to the memory of Israeli Prime Minister Menachem Begin and Egyptian president Anwar Sadat, who concluded the first Arab-Israel peace agreement. The Center, a non-partisan and independent institute, seeks to contribute to the advancement of Middle East peace and security by conducting policy-relevant research on strategic subjects, particularly as they relate to the national security and foreign policy of Israel.

Mideast Security and Policy Studies serve as a forum for publication or re-publication of research conducted by BESA associates. Publication of a work by BESA signifies that it is deemed worthy of public consideration but does not imply endorsement of the author's views or conclusions. *BESA Colloquia on Strategy and Diplomacy* summarizes the papers delivered at conferences and seminars held by the Center, for the academic, military, official and general publics. In sponsoring these discussions, the BESA Center aims to stimulate public debate on, and consideration of, contending approaches to problems of peace and war in the Middle East. The BESA *Memorandum* series consist of policy-oriented papers. The content of the publications reflects the views of the authors only. A list of recent BESA Center publications can be found at the end of this booklet.

International Advisory Board

Founder of the Center and Chairman of the Advisory Board: Dr. Thomas O. Hecht

Vice Chairman: Mr. Saul Koschitzky

Members: Prof. Moshe Arens, Ms. Judy Ann Hecht, Ms. Marion Hecht, Mr. Robert Hecht, Prof. Riva Heft-Hecht, Hon. Shlomo Hillel, Mr. Isi Leibler, Amb. Yitzhak Levanon, Sen. Joseph I. Lieberman, Mr. Robert K. Lifton, Maj. Gen. (res.) Daniel Matt, Rt. Hon. Brian Mulroney, Maj. Gen. (res.) Ori Orr, Mr. Seymour D. Reich, Amb. Meir Rosenne, Mr. Greg Rosshandler, Amb. Zalman Shoval, Amb. Norman Spector, Mr. Muzi Wertheim

International Academic Advisory Board

Desmond Ball *Australian National University*, Ian Beckett *University of Kent*, Eliot A. Cohen *Johns Hopkins University*, Irwin Cotler *McGill University*, Steven R. David *Johns Hopkins University*, Yehezkel Dror *Hebrew University*, Lawrence Freedman *King's College*, Patrick James *University of Southern California*, Efraim Karsh *King's College*, Robert J. Lieber *Georgetown University*, Barry Posen *Massachusetts Institute of Technology*, Jasjit Singh *Centre for Strategic and International Studies*

Research Staff

BESA Center Director: Prof. Efraim Inbar

Research Associates: Dr. Efrat Aviv, Dr. Yaeli Bloch-Elkon, Prof. Stuart A. Cohen, Dr. Gil Feiler, Prof. Jonathan Fox, Prof. Hillel Frisch, Prof. Eytan Gilboa, Col. (res.) Aby Har-Even, Dr. Tsilla Hersheco, Dr. Mordechai Kedar, Prof. Avi Kober, Dr. Yaakov Lifshitz, Prof. Ze'ev Maghen, Mr. Amir Rapaport, Dr. Jonathan Rynhold, Maj. Gen. (res.) Emanuel Sakal, Prof. Shmuel Sandler, Dr. Eitan Shamir, Dr. Dany Shoham, Dr. Shlomo Shpiro, Dr. Max Singer, Dr. Joshua Teitelbaum

Director of Public Affairs: David M. Weinberg

Program Coordinator: Hava Waxman Koen

Publication Editor (English): Ilana Hart

Publication Editor (Hebrew): Alona Briner Rozenman

INTRODUCTION

Dear Reader,

This monograph presents some of the topical highlights of the Greg Rosshandler international conference on "Democracies and the Right of Self-Defense," which took place on May 17-18, 2011 at Bar-Ilan University in Ramat Gan, Israel. The event was hosted by the Begin-Sadat (BESA) Center for Strategic Studies in partnership with the Bar-Ilan Center for International Communication (CIC).

The conference addressed several aspects of the important and very pertinent subject of Israel and Western society's right to defend itself. This included discussions on the campaign against democracies, the moral-philosophical debate on warfare, the use of force by Israel, the US, Europe, and India, the legality/illegality of asymmetric warfare, the media's role in covering non-conventional forms of combat, and recommended diplomatic avenues for Israel.

We wish you a pleasant reading.

Prof. Efraim Inbar
Director, BESA Center

CONTENTS

1.	Israel's Crime: Success Ralph Peters	1
2.	The failure of Europe in Understanding the Contemporary World Fiamma Nirenstein	9
3.	Legality and Legitimacy in the IDF's Asymmetric Warfare Pnina Sharvit Baruch	17

ISRAEL'S CRIME: SUCCESS

Ralph Peters *

Beneath the brittle crust of shame Europeans feel over the Holocaust, a layer of resentment continues to deepen. The sentiment gathering force in recent decades on the continent that perfected genocide and ethnic cleansing is one of “Penance enough!” Just as the comprehensive failure of the Muslim Middle East is blamed on the West by humiliated Arabs unable to accept responsibility for their self-wrought catastrophes, so Europe still cannot really shoulder its responsibility for the industrial massacre of six million of its most productive inhabitants: It was an aberration, the madness of a minority, “We didn’t know,” and so on. Germans desperately over-inflate the self-interested heroes of trivial resistance efforts, while neighboring populations just blame the Germans. And yet, the haunting guilt remains, insistent and irrefutable.

Thus: Jenin. The famed “massacre” of April 2002 was cause for barely disguised celebration in Europe – and grudging disappointment when the non-event was quickly revealed as fabricated Palestinian propaganda. The European intelligentsia and the left-leaning media representing it had enthusiastically embraced the Palestinian lies because they not only wanted, but *needed* to believe them. European elites need Israel to be as bad as Nazi Germany and the client regimes that cooperated enthusiastically when it came to hunting, dispossessing, deporting and murdering Jews. Thus, every Israeli misstep, real or imagined, is blown out of proportion, with no allowance for the confusion of conflict or the humanity of Israel’s soldiers. For one brief, shining moment, Jenin canceled Auschwitz.

* Ralph Peters is a retired Army officer and former enlisted man, a journalist who has covered multiple conflicts, and the author of 27 books, including *Lines Of Fire*, a new collection of his most enduring essays on security affairs and strategy from the past two decades.

COLLOQUIA ON STRATEGY AND DIPLOMACY

Amplifying the European yearning for Israel to be “exposed” as evil is the leftward tilt of the global media. Human beings self-segregate: Certain types of people seek careers in the military or business; communities of strict religious believers seek to exclude outsiders, while artistic communities establish lurid ghettos for themselves. Journalism generally attracts those who lean left politically and socially, those who prefer issuing lofty commentaries to the risk of taking practical action themselves. There are always exceptions – the independent artist, the leftist billionaire, the conservative columnist – but, in general, like seeks like. In the media, the result is politically correct racism and an abhorrence of distasteful facts – while journalists live off the deeds of those they despise, decry and defame. (The Oxford English Dictionary’s definition of “parasite” is perfectly tailored: “A person who lives at the expense of another person or of society in general.”)

For the global left and its media apostles, it’s fine to disdain Jews – as long as you use the code-word “Israelis.” Beyond that, Israel in and of itself has earned the hatred of the international left many times over for its greatest crime: Success.

The evolution of Israel in barely half a century from a dirt-poor, newly made state defended with homemade small arms to a wealthy titan of technology governed democratically under just laws has long been recognized as a humiliation to the lethargic, indolent and developmentally retarded Arab societies on its borders. Israel’s triumph – against tremendous odds – also savaged a fundamental tenet of the global left: the insistence that underdeveloped states cannot help themselves, cannot progress, cannot humanely self-govern, and simply cannot succeed because of Western-capitalist exploitation and chicanery. Ponder this: An impoverished new nation of malnourished refugees and clusters of pioneers now produces cutting edge technology, while neighboring states that received a breathtaking flood of oil wealth still, in the 21st century, build a decent automobile or even manufacture a competitive bicycle.

Wed to the myth of eternal underdevelopment as a result of the West’s malevolence is the unrecognized but virulent racism of the

Euro-American left. A century ago, Western jingoists could write and speak earnestly of “our little brown brothers,” but, soon enough, such rhetoric was relegated to cartoons of red-faced colonels with monocles and bulging bellies. One simply doesn’t say such things today. Yet, the sentiment is alive and well, having migrated from the political right to the left: The tacit assumption of leftists addressing the myriad failures of the Arab world (or of sub-Saharan Africa) is that brown (or black) people really are inferior and can’t be expected to rise to Western standards of behavior or governance.

This is a vitally important point to grasp. The left’s unspoken assumption that Arabs, or Pakistanis, or Zimbabweans are inferior creatures incapable of making progress or even behaving decently on their own lies behind the monstrous double standard applied to Israel and its enemies. If a Palestinian bomb slaughters Israeli children, the event is reported with a few crocodile tears...but when an Israeli air-to-ground missile goes astray and kills even the smallest number of civilians, it’s reported as an intentional war crime.

It bewilders me that no one challenges the left on its conviction that Arabs and others simply can’t be expected to measure up. All that oil wealth has failed to result in diversified, developed economies – and certainly hasn’t been used to provide meaningful assistance to the Palestinians – but the media downplay the colossal waste (including unforgivable human wastage) in favor of travel pieces praising the shopping in Dubai (where leftist views are not welcome and, for that matter, the goods on sale are produced in the West or East Asia; the Arab Middle East cannot even stock a shopping mall on its own).

For all the leftist blather about universal equality, there is no willingness to insist on universal human responsibility. There is one set of standards for Americans and Israelis, a somewhat less demanding standard for Europeans, and only the flimsiest pretense of standards for Arabs, Iranians, Pakistanis, Africans, etc. The baseline assumption is that the people we must help (often at great profit to NGOs and their career staffers) can’t meet elementary human goals for decent behavior and can’t be expected to treat their own kind humanely. The attitude of today’s left toward Arabs is identical to

COLLOQUIA ON STRATEGY AND DIPLOMACY

yesteryear's plantation owner's insistence that blacks were, at best, naughty children.

Well, even children need high standards to challenge them. The child left to run riot, will run riot. With adults, there's even less excuse: If we do not demand high behavioral standards of all, if we do not demand adherence to the rule of law and the observance of fundamental decencies, there will always be those who apply brute strength to tyrannize the rest: The thugs of Hamas are playground bullies with weapons and impunity. By not demanding that the Palestinians and other Arabs adhere to the same legal and ethical standards as the world demands of Israelis, the global left and the media are complicit in the endless failures in the ever developing, never developed regions of the world. What could have been more revealing about the international left than its outrage at the removal of Saddam Hussein?

Of course, underdevelopment and suffering allow leftists to cling to their tattered but cherished dogmas. As long as brown or black men, women and children are suffering, Americans and those eternal malefactors, the Jews, must be to blame. A leftwing worldview demands three things: victims, victimizers and dramatic, exploitable tragedies.

Thus: Jenin.

Journalists as a professional species also receive little critical analysis. Having stumbled into an after-career as a journalist of sorts, I got to know many reporters and commentators. A minority were objective, diligent and willing to examine their own beliefs. The majority were self-important to a degree worthy of parody.

One suspects that self-important journalists have not been in short supply since the earliest proto-newspapers appeared in the era of the English Civil War, yet the egotism today is simply impregnable.

The first thing you need to understand about journalists is that they are herd animals who fancy themselves as rugged individualists. Once the

alpha members of the pack establish the direction in which a given story will be covered, the others crowd around and sniff for their own scraps from the same side of the carcass. A classic example occurred in 2006, when Hizballah created more Jewish refugees (fortunately, only temporarily) than any other Arab actor since 1948. Unguided rockets rained down on Israel, driving tens of thousands from their homes, or into basements and bomb shelters. But coverage of the purposeful atrocities committed against Israeli civilians was, at best, muted. Early on, the pilot fish had decided that the big story (and there is only one big story per event) was Lebanese suffering.

So the star journalists poured into Lebanon, and we were treated to the “Miracle at Qana,” in which the same Arab infant emerged from the rubble again and again and again as fresh camera crews arrived. Israeli targeting officers took unprecedented pains to spare civilians, while Hizballah did all it could to kill unarmed Israelis. But the story line could not be challenged.

I was one of the odd-man-out journalists who covered the war from the Israeli side of the border. I arrived in mid-war and began by spending a few days at Kibbutz Sasa, an incredible base from which to watch the war unfold panoramically. The visuals were a cameraman’s fantasy. But there were no cameramen present. In my time at Sasa and roaming about the front lines, I encountered only one other non-Israeli journalist, a pool reporter who showed up briefly to grab a dateline. (Meanwhile, the live television reports occasionally filed from Israel were hilarious, with reporters in helmets and flak jackets on the terraces of Haifa hotels, suggesting grave dangers as, just off-camera, Israelis calmly ate their restaurant dinners.)

Ambitious journalists wanted scoops, of course – but needed stories within the allowable parameters dictated at the outset by organizations such as the BBC, the *New York Times*, Agence France Presse, and a few other opinion makers. Terrified Israeli children weren’t germane to the narrative.

Such situations are worsened by the fear of editors “back home” that they may miss the big story if their reporter or broadcast team isn’t co-

COLLOQUIA ON STRATEGY AND DIPLOMACY

located with the heavyweights. In the 24/7 world of global news, that may be understandable, to a point. What is intolerable is the willingness of the entire media “chain of command” to accept one-sided, anti-Israeli propaganda, such as that offered by Hizballah, with little or no skepticism – while questioning every word uttered by an Israeli.

To be fair, I do have to caveat these points with the observation that the IDF seemed to have given up on the information war. My presence was tolerated near the front, but, despite my pro-Israeli record, I was regarded as a nuisance. The IDF press officers appeared obsessed with the day’s headlines in Israeli papers alone. Certainly, the home front media will always be of paramount importance for any country party to a conflict, but Israel’s unique situation demands that it aggressively fight the global information war as well. Otherwise, tactical victories are unlikely to sum to strategic success.

Returning to the subject of journalists themselves, it’s also important to recognize that in North America, Europe and much of the rest of the world the profile of the person who embraces journalism as a career (and who is, in turn, embraced) has changed profoundly over the past half century.

In the United States, as late as the 1950s most working journalists did not have university degrees. Journalism was a “dirty white collar” profession. While the journalists of the earlier 20th century often were more skillful writers than today’s university graduates, their real advantage was that they knew the people they covered – especially in wartime. The great American combat journalists of the Second World War could write about soldiers with power and compassion because they had grown up together on the same streets, had played high school sports together, and, during the Great Depression, may have stood in breadlines together.

Then the Vietnam War ignited the fashion for hipster, anti-establishment journalism. Reporting leapt a fateful generation, from the old pro with a bottle of whisky in his desk drawer to the expensively educated brat with a joint or two in the pocket of his

jeans. Suddenly, being a journalist was cool. By the time of the Watergate debacle, this new breed of journalist had even managed to shift the focus of reporting – suddenly, journalists themselves were the story, the heroes, the guys every astute preppy wanted to be. Since then, a dismal proportion of “reporting” has been sheer self-glorification, with journalists casting themselves as the heroes of any given conflict or disaster, while using soldiers as props. Such vanity would have been unthinkable to the men who reported from the jungles of Guadalcanal, the beaches of Normandy, or newly liberated Dachau.

Today, journalists working at prestigious American news outlets are likely to have degrees from top universities, to have grown up in a privileged, suburban environment, to disdain military experience as beneath their talents, to have gotten foot-in-the-door unpaid or ill-paid internships through family connections (during which dad pays the rent), and to possess a narrow, insulated, elitist view of the world.

This was brutally manifest during the American experience in Iraq, where, despite the success of embedding reporters with military units, the most famous journalists declined to be “tainted” by intimate contact with the troops. Yet, they were always ready to criticize everything the military did, while rarely understanding any of it. As for the international media, it was so venomously anti-American that its profoundly dishonest coverage stopped the First Battle of Fallujah on the cusp of a Marine victory. Then, when American troops had to return to the city half a year later and subdued it in a textbook operation, the image the global media seized upon to symbolize the battle was a photograph of a Marine supposedly executing a prisoner, but delivered without any context.

The point – beyond the similarity of the challenges faced by the US Armed Forces and the IDF when dealing with the media – is that journalists are fantastically egotistical human beings who, without “dirty hands” experience of the world, set themselves up as moral arbiters and policy judges. On the battlefield they rarely have any grasp of the meaning of the slice of war they’re witnessing and almost never possess a mature perspective on events.

COLLOQUIA ON STRATEGY AND DIPLOMACY

And, as observed above, the media lean left. The difference between some Western “journalists” and Stalinist propagandists is that the latter were held to higher standards of performance.

Israel faces a post-modern Europe infected with medieval bigotry, an Arab world whose spiritual development is approximately that of 12th-century Christian scholasticism, a global left infuriated by Israel’s success, and a blithely hostile media blind to its own racism. What is to be done?

The only (terribly inadequate) answer I can offer is that Israel must continue to do what it has done since its founding: outperform everyone else and continue to succeed. Israel’s very existence is a constant affront to Europeans and to the left. I do not expect to see a shift in Europe to pro-Israeli sentiment in my lifetime. Even bereft of its Jews, Europe needs Jews to blame. Europe struggles clumsily to come to grips with its Muslim-immigrant dilemmas, but the confrontation with militant Islam does nothing to improve public views of Israel.

Israel nonetheless has to continue (indeed, to expand) its struggle with the global media. The three general steps are “engage, embarrass and excel.” As frustrating as it will be, Israel – and the IDF – must reach out to journalists, to encourage them to come along not just for a few hours and a dateline, but long enough to experience the reality on the ground. Israel must master the art of information warfare – where it lags behind its enemies (who have, of course, the advantage of media sentiment on their side). But Israel also should go to greater lengths to expose media lies and hold individual journalists accountable for shoddy reporting, gullibility, or outright lying. In the media world, shame still has an occasional effect – and journalists love to see other journalists publicly humiliated. Of course, exposing bad journalists will make enemies, too. But the gains are potentially greater if activist reporters know they’ll be publicly challenged.

Finally, I return to my earlier point: Israel must continue to excel. On that point, at least, I’m confident of its success.

**THE FAILURE OF EUROPE IN UNDERSTANDING THE CONTEMPORARY
WORLD**

*Fiamma Nirenstein**

The recent revolutions in the Muslim world – despite Western sympathy for the longing for freedom and justice after decades of tyranny – point out the failure of the realpolitik notion that relative stability can be achieved through good relations with tyrants, putting the human rights issue aside. The price of stability, which has for a long time sat on the shoulders of the Arab people, may now fall into our hands.

In this new paradigm, good governance and respect for human rights will become a strategic issue in the relationship between Western countries and the new powers that are emerging in the Middle East. Moreover, we must be prepared to defend ourselves against the general hostility that may emerge among the new masses that come to power.

This certainly compels us, the West – namely the US and Europe, to contemplate the concept of self-defense in the wider sense of the term.

The wars that we have waged against terrorism (e.g. Iran and Afghanistan) have been long-lasting, and the fact that we didn't win them quickly has spurred a convoluted discussion in the Western world about the respect of human rights, a discourse that paints the enemy more and more as a victim of Western colonial instincts. At the same time, in the UN, the automatic majority held by the Islamic states and the developing world has become increasingly hostile toward the West.

* Fiamma Nirenstein is an Italian journalist and author. She serves as a member of the Italian Parliament, Vice-president of the Committee on Foreign Affairs of the Italian Chamber of Deputies, and Chairperson of the International Council of Jewish Parliamentarians.

COLLOQUIA ON STRATEGY AND DIPLOMACY

The European Union, when confronted with multiculturalism, created a very detailed and strict set of rules, which concentrate only on a certain kind of human rights. For instance, while placing severe prohibitions on smoking it eased up on rules about clandestine immigration that practically legalize it. It embraced the abstract principle of “non-discrimination” while ignoring concrete problems and dangers. For example, the “freedom to wear a burqa” was introduced last year by the Commissioner on Human Rights of the Council of Europe, Thomas Hammarberg. Yet, at the same time, the growing problem of honor killings in Paris has not been addressed. Freedom of opinion is one of the most controversial of these rights, especially when it enables the Swedish newspaper Aftonbladet to print that Israeli soldiers steal and traffic Palestinian organs.

Europe, unlike the US, does not hold the belief that there is a fine line between foreign policy and national security, and that it is acceptable to act in self-defense when necessary. This is the core of the contradiction in European policy: the gap between individual rights and the rights of our community to stay faithful to its values. We are very liberal in recognizing the values of social or national groups. While we give enormous importance to the rights of the Muslims not to see a cross hanging in the classrooms where they study, or to have halal food available to those who work in the public sector, we don't lend any importance to the freedom of the Iranian people or to our interest in their freedom.

Iran

It is incredible that the West has allowed Iranian strength to grow to the level of an international power, today almost a nuclear power. Iran is a militarized, anti-Western, fundamentalist, genocidal nation equipped with long-range missiles, which has proxies throughout the Middle East that are aimed at destroying Israel. These include the murderous Syrian regime, the militias of Hizballah and Hamas – which obey Tehran's orders, and other terror branches worldwide, such as in Venezuela and Turkey.

This is the greatest proof of Western democracies' failure at self-defense. Western countries have imposed insufficient sanctions and demonstrate a despicable incapacity to understand that the best weapon of self-defense would be a regime change in Iran if not an attack on its nuclear facilities.

The possibility of regime change exists and this is what Western self-defense must focus on first and foremost. The Iranian Green Movement, twice beaten in elections, is still waiting for a helping hand from the West. But from the US to Europe, nobody has given the Iranian opposition substantial backing. If President Mahmoud Ahmadinejad was to be ousted, this would completely shift the balance of power in the Middle East, in the new Arab regimes – which are greatly misled and manipulated by Iran, and in the Israeli-Palestinian conflict – which is afflicted by Iran's influence on Hamas.

Non-Conventional Warfare

In general, Europe doesn't want to concede that there is an ongoing war – the war of extremist Islam – both in the Shiite and Sunni branches, which is being waged against Western civilian populations. This terrorist warfare endangers daily life, targeting civilians in our own cities through the use of non-conventional weapons and techniques.

We are the orphans of the Geneva Convention, unable to figure out a new way of military and moral thinking. The West's primary blunder when it comes to the right of self-defense is that we are incapable of identifying the enemy: We don't want to recognize that the Islamists have declared war on us for over a decade, launching worldwide terrorist attacks. If people and states did believe that a terrorist war was being waged against us, our immigration policies would be much stricter and more selective.

Moreover, we don't know how to defend ourselves against an irregular army that is a mix of terrorists, militias, and armed civilians. A clear example of this is the Gaza War of December 2008 in which the Goldstone Report claimed that between 1,200 and 1,400

COLLOQUIA ON STRATEGY AND DIPLOMACY

Palestinian were killed, most of them civilians. This data was completely inaccurate because the Hamas police – about 84 percent of the security mechanism of Hamas – were not recognized as armed militias, but rather as civilians. About 564 of the deceased were in fact part of Hamas' armed militias and roughly 100 were affiliated with Islamic Jihad. Others were identified as Fatah members, associates of smaller militant groups, or human shields unfortunately used by Hamas' armed forces. According to a calculation made by journalist Ben Dror Yemini, based on IDF research, 900 of the deceased were in fact part of Hamas' armed forces or used as human shields.

Goldstone's lie was thus entirely based on the intentional misinterpretation of who was a civilian and who belonged to the "army" of Hamas.

Friend or Foe? A Conceptual Turning Point

The philosophical, moral, and even practical confusion about the concept of war in Western societies has led in turn to the uncertainty about the notion of self-defense.

The war in Gaza certainly represented a turning point in the bafflement over who is a friend and who a foe. Hamas, a terrorist organization by the definition of both the US and the EU, was bombarding daily the Israeli civilian population with shells – 13,000 at the time of the war – as part of a clearly genocidal strategy. But in Western minds, the enemy was reversed: The victims were Hamas and its followers, seen as a miserable community of third-world innocent proletariat, which suffered the cruel attack of a modern army, the IDF, which was prepared to kill women and children.

This reversed friend-foe thinking has been typical of Western attitudes towards war since George W. Bush went to battle against Saddam Hussein. We can all recall how the Americans, particularly the neoconservatives, were, and still are, considered responsible for a war that began as a result of Saddam Hussein's support of terrorism, his refusal of UN control over his weapons program, and the killing of hundred of thousands of his own citizens.

The muddling of the conception of friend and foe has evoked in the West a complete denial of the right to self-defense. One case in point is the security fence that Israel built for national defense purposes – an extremely civilized method of self-defense – which was promptly labeled as a violation of human rights by the International Court of Justice in 2004, even though it achieved its aim of thwarting over 90 percent of planned terrorist attacks by Palestinians during the Second Intifada. Another instance in which self-defense has been frowned upon regards targeted killings, like that of Mahmoud al-Mabhouh, an extremely dangerous terrorist and weapons dealer for Hamas and Hizballah. In general, any operation that might entail the simple and logical concept of acting to stop someone that is trying to kill you has been considered extrajudicial in Western eyes.

Israel, the Epitome

Israel epitomizes the denial of a democracy's right to self-defense and highlights the double standard upheld by the West when it comes to Israel's response to national security threats. Consider the negative reactions of world leaders to the killing of Sheikh Ahmed Yassin versus the positive feedback for the assassination of Osama Bin Laden, or the condemnation of the Second Lebanon War as opposed to the salutation of NATO's 1999 bombing of Korisa and other ex-Yugoslavia refugee structures, which killed hundreds of people.

The phenomenon of Jews defending themselves has often been met with mistrust. This has, in turn, led the notion of self-defense to arouse suspicion. Even when the US and its allies waged war against al-Qaeda, a conspiracy theory arose, claiming that the war on terror was really a way to advance Zionist interests. However, the more the West condemns Israel for defending itself, the more we deny the basic reasons for which one must defend himself against enemies that threaten his existence. Many Europeans were indeed indifferent to the casualties ensued by Israel during the Second Intifada, but when terror reached Europe's back door, as occurred in both Madrid and London, panic ensued.

Another example of Western hypocrisy is the complete disregard for the demographic problem that Israel faces, as embodied in the debate over the right of return of the Palestinians. This issue today should be clearer to Europe because of the new wave of immigration that has brought a huge number of refugees, with both their problems and ambitions, from Middle Eastern and African revolutions toward our coasts.

Delegitimization

A leftist colleague in the Italian Parliament once said: “I can’t understand why, between a democratic, just state with a great judiciary, a great press, a great economy, scientific and cultural advancements, gender equality, etc., and countries where there is no democracy – where women are discriminated against, homosexuals persecuted and children exploited – we still take sides with the bad guys.”

Delegitimization has become an increasingly important tool in Palestinian endeavors to deny Israel's right to self-defense. For instance, Ariel Sharon's measures to protect the Israeli population during the Second Intifada became the object of campaigns that victimized the terrorists (if you recall the cartoon where he eats children covered with blood). Other cases in which Israel was demonized for its responses to Palestinian terror include the Mohammed al-Dura affair, the events at Khan Yunis and Kafr Qana, and of course the Gaza offensive. In fact, an entire vocabulary has been created to delegitimize Israel – placing upon it ideological blame – while painting the terrorists as resistance fighters, militants, and guerrillas. The recent strategy of blaming Israel for the peace process deadlock, due to the continued building in the territories, has been accompanied by continual moral delegitimization of the country through accusations of racism, apartheid, blood libels, and conspiracy.

It is obvious that a double standard is in place. While it has become customary to blame Israel for various "transgressions," accusing Iran, Sudan, Libya, Saudi Arabia, or the Palestinians – even when Hamas kills on purpose, such as the case of the murdered Italian activist

Vittorio Arrigoni, just to hide something – is out of the ordinary. Blaming Israel for the evil that, all these years, has characterized the tyrannical regimes of the Middle East, the enemies of Israel, and opponents of the West puts us in a position where it is impossible to defend ourselves because we have completely blurred the boundary between friend and foe, right and wrong.

The Decline of Moral Standards

The moral standards for distinguishing our friends from our enemies have declined drastically. Hamas was once considered a public enemy of the West. Thus, when the Quartet signed its first deal with Israel in 2007, it set out three conditions that Hamas had to accept in order to be legitimated by the US, the EU, Russia, and the UN: the right of Israel to exist, the respect of previous agreements, and the renouncement of terrorism. Due to its recent reconciliation with Fatah, however, some (the Quartet included) forewent these principles, believing that Hamas was on the right path and that we should optimistically wait and see. Hamas already made some concessions by accepting Egyptian mediation in the Israeli-Palestinian peace process and by agreeing that a future Palestinian unity government will be managed by technocrats. Europe sent €85 million to the Palestinian Authority just one day after the Fatah-Hamas agreement. Amr Moussa and Recep Erdogan showed great satisfaction over the new Palestinian unity. Western leaders, however, were more skeptical of the organization that, in its charter, has proclaimed its genocidal ambitions vis-a-vis Israel and doesn't have any intention of cancelling them. Is this an enemy or a friend? There cannot be any clearer evidence that this is the awful enemy behind such terror activities as the murder of the Fogel family in March 2011. But nobody is willing to admit this aloud.

Another troubling instance of the West's declining impetus to crush its adversaries was evident in the war against Libya's Gaddafi. After declaring Gaddafi an enemy the moment he started killing his own people, and rightly so, we adhered to the decision of the UN Security Council to adopt resolution 1973, allowing Western powers to act militarily. But, Western intervention quickly turned into a

COLLOQUIA ON STRATEGY AND DIPLOMACY

humanitarian mission instead of an operation to kill or exile Gaddafi, as was necessary. The European and NATO armed forces performed so poorly in this war that it is hard to imagine what would transpire in a war against a real enemy, like Iran and its allies.

Syria, for example, is the real Middle Eastern center of Iranian power, pulling the strings of Hizballah and Hamas. President Bashar al-Assad has already killed more than 5,000 of his own citizens and still the international community considers him a part of the peace process with Israel. The West's reaction to the situation in Syria transmits confusion, impotence and a complete lack of a moral compass.

Conclusion

It is up to the West to reestablish the right of Israel to defend itself, because Israel is the country most directly attacked today in the region due to its small size and enemy-lined borders. One of the most critical issues in the fight against delegitimization is the campaign for defensible borders for Israel.

The Fatah-Hamas unification and the prospective of a unilaterally-declared Palestinian state threaten any future in the Middle East. I'm very proud that Italian Prime Minister Silvio Berlusconi opposed the Palestinians' UN bid for statehood last September. If Europe were to abandon the premises for peace that it itself stated, this would be akin to encouraging the growing fundamentalism in Egypt, the ferocity of Hamas, the promise of war of Hizballah, and most of all the threat of destruction of Iran.

One point must be clear today: The right of Europe to self-defense is predicated on the right of Israel to self-defense. The standards for human rights, equality and democracy in Israel will determine the level of human rights, equality and democracy that exist in Europe. Today, however, we are all in danger because of our refusal to recognize Israel's right to self-defense.

LEGALITY AND LEGITIMACY IN THE IDF'S ASYMMETRIC WARFARE

*Pnina Sharvit Baruch**

One of the important roles of the IDF International Law Department is to identify the relevant legal norms applicable to different operational decisions and to make sure that they are incorporated. Its legal advisors are involved in the preparation of the operational plans, which are arranged ahead of time and form the basis of the actual operational commands issued when a concrete operation is carried out. The legal involvement continues when the plans are translated into actual commands – it does not lead to a legal annex attached to the plan or command (since no one will read it) but influences the operational part of these plans and commands.

Legal advisors are also involved in the planning process with regard to predetermined targets. This process leads to the creation of a “bank” of targets, which consists of a page for every target, including all the available intelligence regarding that target, an aerial photograph and map of the target, and the strike elements (aiming point, ammunition, anticipated collateral damage). It also details the directions given by the head of the operations division – required achievement, timing of attack, occupancy, visibility conditions – and the legal classification – allowed, problematic, or forbidden. The last category of targets is included in the bank to verify that they have been checked but may not be attacked. Every pre-planned target is referred to the commanding levels for authorization, and the level of authorization is determined by the sensitivity of the target or the attack. The decision can sometimes reach the prime ministerial level. When there are legal dilemmas, the issues are brought before the Military Advocate General and in some cases the Attorney General.

Determining whether a target is lawful is based mainly on the principle of distinction, which distinguishes between military

* Pnina Sharvit Baruch was head of the International Law Department in the Military Advocate General's Office during the Second Lebanon War. Currently, she teaches law at Tel Aviv University.

COLLOQUIA ON STRATEGY AND DIPLOMACY

objectives and civilian objects. The first may be targeted; the latter may not. It is not that simple, of course. Sometimes there are the clear military objectives, such as military bases and weapon systems, while other times the situation is more complex – for instance, houses, schools and mosques being used as headquarters, storage spaces for ammunition, or launching pads for attacks. The LOAC acknowledges that civilian objects may lose their civilian nature and be regarded as military objectives because of their use, purpose, or even location. Dual-use targets, such as gas stations and bridges, which might be used or required by enemy fighting forces, are also lawful targets.

Since it may take a long time before a target from the “targets bank” is actually attacked (if at all), prior to the actual decision to attack, all the data and considerations must be updated and reviewed again, and sensitive targets must attain specific authorization once again.

However, the fact that a target is deemed lawful does not mark the end of the story. The decision to attack a certain target requires the implementation of the principle of proportionality. This means balancing the military advantage on the one hand and the collateral damage expected to civilians and civilian objects on the other hand. An attack is lawful only if the expected collateral damage is not excessive in relation to the military gain expected from the attack. This balancing process is not a legal determination and is not the role of the legal advisor. The LOAC standard is that of the “reasonable military commander.” It must be remembered that the sheer fact that civilians are harmed by the attack does not in itself prove disproportionality and hence unlawfulness, even if it was expected to happen – the LOAC do not expect or require zero civilian casualties.

When deciding to attack a target, precautions must be taken to minimize collateral damage. For instance, an attack that may affect public buildings should be carried out at night when they are empty; a target should be attacked towards an empty field and not an inhabited area, to minimize collateral damage; and more accurate weapons should be used when possible, although considerations of limited means and quantity of certain kinds of ammunitions may be taken into account.

Another legal caveat intended to protect citizens from an impending attack is the duty to issue general or specific warnings, when possible, prior to attacks. The IDF has established an unprecedented process of issuing specific warnings to the residents of buildings prior to attacking. These include phone calls to the residents of the building and those of neighboring buildings that may be harmed. Following these, surveillance is carried out to verify that the building is being evacuated. If the residents remain, sometimes a warning shot is fired, aimed at a secure location. Again surveillance is used to check if the residents have left. If they remain, a decision must be made on whether to still carry out the attack. The civilians in the building are taken into account and not deemed to have lost their protection altogether. Other militaries have in fact urged me to clarify that this is not a legally required process, since they have no intention of implementing something so extensive.

Still, after such procedures are carried out, the decision to strike a target is always left to the operator that makes the final decision to go ahead with the attack and sometimes to abort an attack that has commenced

While attacking pre-planned targets has its challenges, these are minor compared to the dilemmas faced by decision makers with regard to attacking immediate targets. In this case, there is limited intelligence, if any – who is in the building/behind the tree; there is very limited time for analysis – the rocket will be fired any moment; the forces requesting assistance are under fire, etc. There are limited resources, aerial surveillance is not always available, more accurate weapons are not at hand, and there is no time to issue warnings. Furthermore, the commander making the decision is younger and less experienced and there is no legal advisor around. This does not, however, mean that the law is irrelevant – it must simply be applied by the commander to the best of his ability. The standard, as previously mentioned, is one of a “reasonable military commander,” and according to the LOAC his judgment must be based on the information available to him at the time of the decision making, taking into account these extreme circumstances and lack of hindsight.

COLLOQUIA ON STRATEGY AND DIPLOMACY

This begs the question: Why, after all this incorporation of the LOAC into operational decisions, is Israel having such a difficult time justifying the legitimacy of its military operations?

The answer is that a gap exists between legality and legitimacy – that is, the legitimacy of Israeli actions is often questioned. To further understand this, there are three factors that can be analyzed: first, the definition of the situation; second, the implementation of the relevant law; and third, the evaluation of the facts. For the purpose of this discussion, the political level will not be discussed, though of course it would provide a relevant backdrop to the legality-legitimacy chasm.

Regarding the definition of the situation, the main question here is whether it is defined as an armed conflict or as a law enforcement operation. If there is no armed conflict, then of course much more limited use of force is allowed. There are those who insist that a state (Israel) fighting a terror organization (Hamas) is, by definition, involved in law enforcement and not in armed conflict. Thus, the perception is that Israel is not acting in a legitimate manner. An additional issue of definitions, applicable mainly to the Gaza Strip, is whether it is considered occupied or not. This affects the question of to what extent Israel's duty to safeguard the well-being of its residents is.

The second factor, namely the relevant laws that apply, is of course influenced by the first. If this is not an armed conflict, then the rules that apply will be mainly based on human rights law, yielding the LOAC inapplicable. At the same time, even when the situation is accepted at face value as an armed conflict, as was the case of Operation Cast Lead, limitations are often still put on freedom of action – first, by giving a very limited interpretation to the LOAC themselves, and second, by also applying the rules of human rights law to these situations.

The main consequence of introducing human rights notions is that it automatically creates a duty to protect the rights of each and every civilian (and maybe of combatants as well). Consequently, any harm to civilians leads to a presumption that someone is to blame. This

reflects a lack of appreciation and understanding, non-existent in the LOAC, of the realities and complexities of armed conflict situations. Moreover, human rights law focuses on the duties and responsibilities of states, with unclear application to non-state actors. This means that the state is the one scrutinized while the non-state's disregard of basic human rights standards is overlooked.

The application of human rights law also leads to the involvement of human rights bodies in the evaluation and judgment of actions carried out in such situations, such as activities conducted by the Human Rights Council. The problematic nature of this body is evident, as the Goldstone Report on the 2009-10 Gaza operation exemplifies.

Another way law is used (or misused) is by blurring the dichotomy between *jus ad bellum* (JAB – the justice of going to war) and *jus in bello* (JIB – the morality with which war is fought). One of the basic tenets of the LOAC is that the question of who is “to blame” in starting a conflict, who is the aggressor, and who is the victim are relevant only at the JAB level, when assessing the right to use force. However, once an armed conflict is underway, the same rules apply to all sides. Still, there is a tendency to introduce these considerations into the equation when examining the conduct of the forces involved in the conflict. Israel is then labeled an aggressor fighting a helpless and weak victim and therefore any action it takes during the conflict is deemed excessive and unlawful.

Interestingly, while the basic principle of separating JAB and JIB is easily ignored, another basic principle – that of the lack of reciprocity – holds strong. And so, the fact that one side to a conflict disregards the rules does not relieve the other side of respecting them (with the narrow exception of permitted reprisals). Consequently, if the side which appears to be weaker in the conflict disregards the rules, the other, so called “stronger” party is still bound by the rules and at the same time is subjected to even more limitations because of its relative strength. In other words, one side is free to fight without any practical confines while the other side is expected to fight with both hands tied behind its back.

COLLOQUIA ON STRATEGY AND DIPLOMACY

The third factor that must be considered is the way the facts are evaluated after the conflict ends. Here, the Goldstone Report is a telling example of the inherent flawed processes and methodology. The members of the mission came to the Gaza Strip many weeks after the operation and saw the serious damage to the civilian infrastructure. They did not and could not see the rockets and mortars being fired from these localities, the arms stored therein, the armed operatives using them as a stronghold, the booby traps, etc. They disregarded evidence of such uses as unreliable and accepted testimonies to the contrary as fool proof, even when given in the presence of Hamas representatives.

This led to the conclusion that the attacks which led to the damage were not directed against lawful military targets with incidental civilian damage, but rather were intentionally directed against civilian objects and therefore were a blatant war crime. In addition, the report does not accept that mistakes happen and therefore assumes that every result was the one intended by Israeli forces. Even the fact that four soldiers were killed and 43 wounded by “friendly fire” during the operation does not change this assumption.

As we all know, this report and other similar ones are being used as a tool in the campaign to delegitimize Israel. This is mainly an Israeli concern. However, the different factors elaborated above, which have led to lawful actions under the LOAC being labeled as unlawful, are not only an Israeli concern, but a concern to all those trying to combat terrorism. Misconstruing Israel's actions as illegitimate puts constraints on the freedom of action of all countries facing similar threats, and it makes combating terrorism almost impossible.