VIEWPOINT

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What the West Tells Its Soldiers

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FROM OPERATION DEFENSIVE SHIELD IN 2002 TO THE recent Gaza flotilla raid, Western leaders have repeatedly condemned Israel for failure to adhere to the laws of war. Israel has responded by pointing to the complexities of engaging in asymmetric warfare against militant groups like Hamas and Hizballah. It argues that the demands of international law should take into account the difficulties inherent in combating terrorists operating among civilians.

Judging by the continued flow of criticism, Israel's response has not been found particularly compelling. However, an examination of the guidelines and criteria Western powers use when evaluating the actions of their own armed forces reveals a much more realistic and nuanced approach to the complexities of modern combat. Indeed, if judged by these standards, it is unlikely that the IDF would have had much to answer for.

For example, one accusation raised repeatedly is that the IDF failed to take sufficient steps to avoid harming civilians and civilian property. Additional Protocol I (AP-I) to the Geneva Conventions, as well as customary international law, requires states to "take all feasible precautions in the choice of means and methods of attack" to minimize incidental civilian casualties.

But how do states or armies decide what actions and precautions are "feasible"? Britain, when signing AP-I, declared that it understood the term to mean that "which is practicable or practically possible, taking into account all circumstances at the time *including those relevant to the success of military operations*." (My italics). Later it modified its declaration to "…including humanitarian and military considerations."

The 1996 British Defense Doctrine manual clarifies the range of factors a commander is entitled to take into account when deciding how much and what type of force to use. These include "his stocks of different weapons and likely future demands, the timeliness of attack and risks to his own forces."

The UK is not alone in emphasizing, within the framework of international humanitarian law, the legitimacy of considering military goals including the safety of soldiers. Belgium, upon ratifying AP-I, declared that factors to be considered "include military considerations as much as humanitarian ones." New Zealand and Australia both declared that in determining whether an attack is proportionate, a commander must weigh the expected military advantage, which "includes a variety of considerations including the security of the attacking forces." The US Naval Commander's handbook requires its forces to "take all reasonable precautions… to keep civilian casualties and damage to a minimum consistent with mission accomplishment and the security of the force."

Another frequent source of accusations, and one central to several "lawfare" cases against Israeli officials, is the targeting of combatants embedded among civilians. The British Army's 2009 Field Manual highlights the danger that those without military experience may not fully appreciate the challenges of such a situation, noting that "when the adversary takes every effort to blend in with and operate from within the civilian population it is extremely difficult… to target him with distinction." This "may generate a public perception of indiscriminate and disproportionate use of force."

If the overly simplistic interpretation of international law used to criticize the IDF is not found in national defense doctrines, where does it come from? To a large degree, it derives from the work of international "human rights" NGOs such as Amnesty International and Human Rights Watch. A careful analysis of these two organizations' claims regarding Israel's compliance with the laws of armed conflict shows that they not only contain many factual errors, but frequently misrepresent international law as well. In the words of Michael Schmitt, dean of the George C. Marshall European Center for Strategic Studies, "exaggerated expectations" have led "those beyond the battlefield [to] impose unreasonable demands on the military or postulate norms that go beyond treaty or custom."

While these NGOs have exercised significant influence on Western perceptions of Israel, Western states have been more skeptical of NGO claims as they relate to their own activities. For example, Amnesty maintains an extremely close relationship with the British Foreign and Commonwealth Office, but has been denied similar influence with the Home Office. More tellingly, the UN committee set up to investigate NATO's bombing of Yugoslavia, which received numerous NGO submissions, including from Amnesty and Human Rights Watch, noted critically that "much of the material submitted… consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed." Unfortunately, these same NGOs' reports on Israel have not been subject to similar critical scrutiny.

Moreover, recognizing the potential difficulties in combating enemies who ignore international law, France and the UK have reserved the right to carry out "belligerent reprisals." The doctrine of belligerent reprisal allows one side to violate international law in order to compel an adversary to adhere to it. Israel has never claimed this right.

Thus Western governments, as opposed to some NGOs, show an appreciation for the complexities of international law and the modern battlefield. If international law standards are to be truly universal, those governments must judge others as they would like themselves to be judged.

Asher Fredman is the author of a recent study entitled 'Precision-Guided or Indiscriminate? NGO Reporting on Compliance with the Laws of Armed Conflict,' published jointly by the Jerusalem Center for Public Affairs and NGO Monitor.