

Defense Minister Moshe Ya'alon

Closing Address and Q&A at "Towards a New Law of War"

Dan Jerusalem Hotel, May 5, 2015

Shalom, ladies and gentlemen. Glad to be here. And I would like [to begin] by thanking first of all Nitsana for the invitation to be here and to speak here and, more than that, for the activities of Shurat HaDin, fighting one of Israel's challenges of today: lawfare, BDS, delegitimization of the State of Israel and its right to exist as a Jewish state. Nitsana, thank you very much for what you are doing for the State of Israel.

The good news about lawfare, BDS and delegitimization is that in the last 67 years, since the creation of the State of Israel, our enemies have realized that there is no way to destroy Israel, to destruct Israel, to wipe it from the map of the earth, by conventional-type warfare. They lost in this kind of war. They were defeated and they understood early on that Israel is gaining more capabilities based on knowledge, technologies and, of course, the spirit of the Israeli soldiers.

Actually, the last war they initiated in the conventional arena was the Yom Kippur War in 1973. Since then they moved to terror, rockets, missiles, the aspiration to acquire weapons of mass destruction. And another tool is delegitimization, BDS and lawfare.

That's the good news.

The bad news [is] that in many ways they keep going on in challenging us with terror attacks, rockets, missiles and, in the international arena and also in the Israeli internal arena, using the law, using our own values, against us. And that [is], I believe, what you discussed here at this important conference in the last two days. And that is what I am going to talk about in my lecture.

In July 2013, in my office in the Ministry of Defense, I hosted the UN secretary-general, Ban Ki-moon. And part of the discussion was introducing to him the way that Hezbollah is preparing the next round of hostilities in Lebanon and Hamas and Palestinian Islamic Jihad were preparing the next round of hostilities, which occurred already last summer in the Gaza Strip.

And I showed him aerial photos of certain villages in Lebanon, certain neighborhoods in Gaza, to include well-known Sajayieh, with many red spots, which demonstrated rocket launchers, rocket depots, headquarters and other military assets, terror assets, in the densely populated urban areas. And I said, in July 2013, we are going to hit it. We have no chance, we have no choice but to hit it. Otherwise, our civilians are going to be targeted.

And actually, what we saw there, as we [saw] last summer in the Gaza Strip or in the Second Lebanon War in 2006, is what is called asymmetric war. In the way that we operate -- according to the rules of war, to international law, to Israeli law, according to our values in which we sanctify life -- against [an] enemy which cares less about international law and in a way cares less about these kinds of values of sanctifying life. Rather, they prefer to sanctify death. That's the asymmetry.

And of course, as a democracy, as a country, as armed forces, the IDF, which operate according to Jewish values, Western values, Israeli law, international law, we went even before the operations to very long and deep discussions [of] "what should be done, in case?"

And it reminds me of discussions, as the chief of general staff of the IDF in 2005, when we realized that Hezbollah, with Iranian support, positioned rockets in south Lebanon, the best rockets that they had at the time, Fajr, with a range of 75 kilometers. They positioned [them] in houses of Hezbollah activists in which the Hezbollah activists' families lived.

So we had an apartment or house with a living room, with a kitchen, with a kids' room and with a rocket room, ready with a launcher in a very sophisticated system, with Iranian engineers' support, ready to target Israeli civilian targets in one of the towns, in most of the cases, in the northern part of Israel.

And the dilemma in this specific decision was: what to do with it? Because we knew that if we don't intercept these launchers in advance, our civilians are going to be hurt, if not killed. And if we intercept these rocket launchers, in these specific houses -- 69 houses and launchers -- we are going to hurt Lebanese civilians, including kids of the family.

And we went through a very long, deep discussion in which at the end, with all moral considerations, legal considerations, we decided to intercept it in the first minute of any military operation. Of course, later on we were blamed for what is called collateral damage, killing civilians and so forth and so forth. We did it then, we did it in the Gaza Strip [and] we are going to do it in any round of hostilities in the future.

And now we know the law; of course Israelis know the law, the international law. Our rules of engagement are based on this law.

But more than that, if I have to consider opening fire, killing someone, as a soldier – which I did – or as a commander, or today as a minister, [who] has to approve any kind of military operation, my first consideration is what I call the "mirror judgment." [This is] whether I can look [in] the mirror, [at] myself, immediately after approving the operation or executing the operation. That's the first judgment to myself. And I can tell you, looking back [at] what I did, what I decided, what I approved in the past, I can look [at myself in] the mirror.

And personally I had to deal with allegations, whether in civil courts like in the District of Columbia in Washington – when I spent a year over there -- [or] in New Zealand. I prefer not to go to the United Kingdom, London, for about 10 years, or to Spain for a while, because of this kind of allegations.

You know, when I had to tell the soldiers or commanders [that] they might be subject to any lawsuit here and there, as we swear to the military, ready to sacrifice our lives, we should be ready to give up a visit to London.

But it's not fair, it is not just; it is counterproductive, when it comes to the challenges of not just the State of Israel [but] the challenges ahead [for] Western civilization.

And in a way we found the common language to discuss these issues with our friends, with our allies, the US armed forces and the US legislators, and European countries. But when it

comes to the international bodies, like the Human Rights Council, we find ourselves in a war after the war.

Now, of course, when we make a decision to act, first of all we consider the military necessity. It's obvious. How to deal with the threat, how to defend ourselves, how to save lives, whether it is homicide bombers, terrorists, rockets or missiles.

Then, of course, we consider the distinction between combatants and non-combatants. But unfortunately in certain cases we can't avoid what is called collateral damage.

As we act in order to defend our civilians, by sending the troops, sending the soldiers, to deal with the threat there – the terrorists mainly, whether Hezbollah or Hamas or Palestinian Islamic Jihad – they hide behind the terrorists. They use them as human shields, which is, of course, a war crime.

We try to avoid causing damage or harming civilians, in many cases what we call using precaution. We give up surprise, tactical surprise, by calling certain civilians in certain neighborhoods, like we did last summer in the Gaza Strip, telling them that we are going to act in this specific neighborhood and they have to leave. We use media, we use a system of phone calls -- we have a phone-call system specific for certain neighborhoods -- [and] disseminating leaflets by air assets, and then we act.

And you know, in certain cases in the Gaza Strip Hamas pushed back the civilians in order to [be] human shields, understanding our sensitivities, trying to prevent our military operation by pushing, forcing, the civilians to stay in this specific neighborhood.

It's a matter to consider, whether to lose tactical surprise by doing it, but we do it.

Of course, the issue of proportionality: What should be done in certain cases? And you know, the use of force, the use of excessive force: We are criticized for using excessive force in the Gaza Strip.

We [were blamed] for what was called the Jenin Massacre in 2002. We were blamed by UN officials. There was a UN commission on the way to Israel to investigate the "Jenin Massacre." Do you know how many casualties were on their side in this specific battle? Fifty-three or so. We lost in this specific battle 23 officers and soldiers as we deployed them in a surgical operation to avoid collateral damage.

And I can tell you that we were criticized, especially by the parents, the families, of the fallen soldiers. Why didn't you use artillery? Why didn't you use air strikes? Why did you put our sons in risk? Very good questions. I don't have clear answers. Because you have to weigh, in each operation, what are you going to do? To put the troops in risk or to use force in a way that might harm, of course, civilians, after warning them, after doing your utmost to evacuate from this specific area and so forth and so forth. Very good questions.

So I believe that we are committed first of all to our moral values. We are committed to Israeli law. We are committed to international law. We use the principles of law of war, the military necessity, the distinction between combatants and non-combatants, proportionality and even taking measures to warn civilians when we think we should do it, what is called precautionary measures.

But at the end, after every round of hostilities, we have to fight the war after the war. I mentioned [Operation Defensive Shield,] what was called the Jenin Massacre, which was not a massacre whatsoever. It was a battle, a fierce battle. And we decided not to allow a UN commission to come to investigate. Why? Because of political bias. And when such organizations like the Human Rights Council, with its more than 40 members, including countries like Syria and Sudan, are voting for such investigations, it's clear that it's not about moral values, it's not about the law, it's about delegitimizing Israel as well as restricting our ability to defend ourselves. And we shouldn't allow them to do it.

And that was the outcome of the Goldstone Report, the biased Goldstone Report. And that was the reason we decided not to cooperate with what was until recently the Shabas Commission. He had to resign because it has been found that he was biased from the very beginning to support the Palestinian side.

So we have to defend ourselves in a way that such biased, politically biased commissions, sent by politically biased organizations, even international organizations with nice names, we should fight them back.

It's a long way. But we should be sure for ourselves that we can look [in] the mirror. This is my basic judgment. And after any operation we launch immediately what we call military debriefing. First of all, we want to be better in the next round of hostilities, in the next operation, as we do it in exercises. Military debriefing, looking to our strengths, to our weaknesses, to be better in the next exercise, in the next operation.

In certain cases, of course, there is room for criminal investigations. But we should put the line very clearly. If we are talking about crime, like looting or raping – which didn't happen since I've known the IDF -- or shooting not according to the rules of engagement, namely killing, murdering, someone who wasn't armed or didn't threaten us, man, woman, [not to mention] kids, then there is room to launch a criminal investigation.

But not to launch after any operation, even when we cause collateral damage and civilians are harmed or killed, and it was done after thinking about it, considering all the considerations, and this is the outcome. It doesn't mean that automatically after each case we are going to launch or allow a criminal investigation.

But we should be, in our system, which is a well-known system, regarding our legal system, ... the military system, the military attorney general, talking about the Israeli legal system, the Attorney General of the government, our court system, on top of it the Supreme Court, we should be ready to be judged by all these systems. ... [This] is very helpful when it comes to other arenas, whether it is international commissions or even a civil lawsuit against myself in Washington, District of Columbia, regional court.

And I believe that Israel is operating, I believe that the IDF is operating, in this way. And when we have something which is not according to what I am saying, violating our moral values, violating the law, we know what to do with it. We should go on doing it, on one hand, and on the other hand we should fight back in the international arena.

And when it comes to the international arena, unfortunately we witness blood libels like the Jenin Massacre, blood libels, certain testimonies after the operations in the Gaza Strip. And

of course we should deal with it using legislation, using the courts like Shurat HaDin is doing in certain cases against them, as for sure they do not obey the law and they [commit] what we call war crimes.

And of course we should deal with it politically, diplomatically, in the media, to fight them back. It's not just about the IDF. It's not just about our political decisions when we have to defend ourselves. It's about the right of Israel to exist as a Jewish state, whether physically, by trying to restrict our ability to defend ourselves, or by trying to delegitimize Israel in the international arena. So for that I am again thankful to Shurat HaDin [for] what you are doing in the international arena, whether by raising our case, whether by fighting back in certain courts over the globe. Thank you for that.

I am here to answer questions.

Q: What else can we do, your audience here, to help you do these things? What more can we do as individuals to reach out and help you carry this load?

Q: In addition to the problem of lawfare, behind it there is the media problem. Because many of the allegations against Israel are fed with media bias. They use materials from Al-Jazeera, the jihad channel which operates from Israel – amazingly, I have no idea why – because according to Alan Baker, who I think is here, we have all the right to kick them out, legal right. How come Israel does not defend itself in the media through Arabic international channels, English international channels, not to mention Hebrew ones in order to address the Israelis who are all over the world and we are losing them? Because they could be our ambassadors. But we do not keep connection with them. And if we lose the battle in the media, later we will lose it also in the courts.

Q: I ask this question in the friendliest of terms. How does the IDF, the minister of defense, the prime minister and so on, how do you defend the morality and the ethics of putting your own citizen-soldiers lives at greater risk in order to cause, "less damage" to the enemies who are trying to destroy your own people?

Q: Thank you, Minister. My question is about Iran. Recently, John Kerry said the critics of the deal were guilty of hysteria and I wondered if you could respond to that, and also to the question of whether democracies are at a strategic disadvantage. Is dealing with a threat like Iran something that democracies are not structured well to do?

Q: I was wondering: If Israel does not intend to work with international human-rights committees ... what does Israel intend to show to the international community that it is in line with basic standards of human rights? Because as a citizen you can clearly see it, but it seems like this disengagement clearly can in some situations indicate guilt.

Q: Minister, as you know messaging is very important, and a single message to the rest of the world helps in these international claims against Israel. Your prime minister had a report written, or asked for a report to be written, called the Levy Report, and it now has been shelved. And [it] possibly would have helped Israel's message, being a single new message after the Talia Sasson Report that affected the outposts in Judea and Samaria. So if you could just talk about the Levy Report and why it wasn't accepted to help us fight against the people who are fighting against Israel.

Ya'alon: I know the criticism about the Israeli hasbara. "Hasbara" is not the right term. It's a war. And I believe that in this war all those who are capable -- whether Israelis, Jews, Western like-minded people -- should participate.

And today, with the development of the media -- the media is not controlled anymore just by stations, radio stations, TV stations. Each of us can become a warrior in this war, by talkbacking, by blogging, by disseminating articles, by raising our case.

It's a new world, in which each of us [who] will have the capability to do it should participate.

It's not enough, I know, and in certain cases we found ourselves dealing with incitement generated by Al Jazeera, which mobilized people to act.

That's what we see now, actually, what is called the individual terrorists. As we are very effective in dealing with organizations, in foiling their intentions -- last night in Hebron we arrested terrorists, we exposed laboratories or a depot of Hamas - incitement is mobilizing the individual terrorists, those who are not affiliated to the civic organizations, to go to use a car, knife, stones in order to kill Israelis.

So we can't do everything. We should be, of course, in this battlefield with government assets, diplomacy, messages, with stations, fighting back in their language, Arabic, whatever.

But to fight this war on the Internet, [on] Facebook and so forth, [each] of us can do something in order to raise our case and fight back.

I do not delude myself that just by investing more money, we are going to defeat them. But first of all let's win the Israeli hearts and minds, then the Western hearts and minds, as we found ourselves fighting Western like-minded people who accept their narrative and not ours. Even [to] countries that sent their troops to Afghanistan and Iraq we have to explain.

So first of all let's concentrate on the Israeli public, the Western public, of course the Western governments: That's our job. The government's, and all people's, job is to fight back [by] using the Internet.

No doubt that lawfare [and] delegitimization might harm the [morale] of our soldiers. The [morale] of our soldiers might be harmed if we will allow a criminal investigation in cases in which we should avoid.

You probably heard the public dispute, discourse, in which I put very clearly my position with all reservations. [The] government attorney general, the military attorney general [are] independent. I can't order them. But I have my experience as a commander. What do you mean to open a criminal investigation in a case that at the end it is not necessary?

So we should be very delicate in deciding when [and] where [a] criminal investigation is needed, a few cases, not automatically opening a criminal investigation because civilians were harmed.

And we should judge it, and the attorney general should do it independently, by looking to the military debriefing -- with all reservations, he's not allowed to use it, he has to open another investigation.

But in certain cases the commanders ask to open a criminal investigation if it is needed. The commanders have their own moral values. They understand that we should keep our camp, as we say, pure. And we shouldn't allow crimes among the troops.

It's, again, it's a challenge in which those who claim ... the soldiers, regular soldiers [and] reservists feel, by being investigated in a criminal investigation, being abused [and] insulted and it might harm their [morale].

This is my job, Minister of Defense. This is a commander's job, to say clearly our position. At the end the attorney general can decide whatever he decides, hopefully, according to this delicate line which I illustrated.

Now those who claim that this battle is not fair because democracy can't fight back tyrannical regimes, not [to mention] terror organizations, I don't agree with it.

In certain cases we might take certain steps that we believe ... should be taken in order to defend ourselves. I mentioned the discussion about the interception of the rockets positioned on civilian houses. We decided to do it. I can't imagine some other step that should be taken.

Of course, we should be sure that we can look [in] the mirror after the decision or operation. Of course, we should be sure that it is a military necessity. We should consider costs and benefits, of course, but at the end we might take certain steps.

I do remember the story of President Truman, who was asked, "how did you feel after deciding to launch the nuclear bombs at Nagasaki and Hiroshima, causing at the end [200,000 fatalities]?" And he said, "when I heard from my officers that the alternative is a long war with Japan, with potential fatalities of a couple of million, I saw that it is a moral decision."

We are not there yet. But that's what I'm talking about: certain steps in cases in which we feel like we don't have the answer by surgical operations or something like that.

The question of outposts and so forth: You know, it's, again, a dispute in the international arena -- part of the delegitimization campaign, claiming that first of all the settlements are illegal, the settlements are an obstacle for peace -- and [in] the Israeli political discourse, [that] because of the settlements, there is no money for the periphery.

And there are those who even claim that political corruption -- which unfortunately has been demonstrated in our courts, but we know what to do with it -- is because of the settlements.

Nonsense.

But nevertheless, we found ourselves as a government in our last term dealing with the settlements in a way that the Israeli legal system, whether it was the Supreme Court or the attorney general, considered Judea and Samaria as occupied territory.

That's why they decided to nominate the late Judge Edmond Levy, with his commission, to look at it. And their recommendation, which was adopted by the Israeli government, decision and resolution, [was] that this is not occupied territory. It is disputed land. That makes a difference.

And the Supreme Court, in its last decision of the former president, Grunis, based its decision on this resolution, which makes a difference.

Now, as a democracy, as a country which considers the law, there are certain cases in which there is violation of the law. That's a case where we have to evacuate, whatever, because of illegal activities.

But generally speaking our policy is the settlements are legal, the settlements are not an obstacle for peace, and we have enough money to allocate both to the settlements and to the periphery. And this is the way we act.

Again, this is part of lawfare and the delegitimization campaign. In this case for sure it begins at home. And this is my last point:

First of all, we have to win the Israeli public. In parallel, to win the western like-minded people. And by winning these cases -- even without it -- we can meet the challenges of Hamas, we can meet the challenges of Hezbollah.

And we should go on fighting with the military, with the law, in all the arenas, and I am sure we are going to prevail.

Thank you.