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Operation Cast Lead and the Ethics of Just War

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Was Israel's conduct in its campaign against Hamas morally justified?

Editor's Note:

On Saturday, December 27, 2008, after eight years of continuing rocket attacks on its territory by Islamic terrorist organizations, Israel launched a full-scale military operation against the Hamas regime in the Gaza Strip. Officially named Operation Cast Lead, it began with massive air-strikes against Hamas and Islamic Jihad targets, and continued with a ground incursion in which thousands of Israeli soldiers participated. After twenty-two days of fighting, Israel announced a unilateral ceasefire, which became effective on January 18, 2009.

While the political and military achievements of the operation are contested, the damage it left in its wake is undisputed. Ten Israeli soldiers and three Israeli civilians were killed. Due to the asymmetry of forces, the Palestinian side sustained especially heavy casualties: According to Palestinian sources in the Gaza Strip (whose credibility, it must be noted, is questionable), more than one thousand people were killed and much of Gaza's infrastructure was destroyed. Humanitarian relief agencies estimate that nearly 100,000 Palestinians were left homeless.

The destruction caused by the Gaza operation, as well as the disturbing pictures of it broadcast around the world, incited violent international protest and a public debate within Israel itself. The most outspoken critics of the operation accused the Jewish state of engaging in excessive and indiscriminate aggression, as well as committing war crimes against the Palestinians. More moderate commentators questioned the necessity of some of the Israel Defense Forces' (IDF) actions during the fighting, and wondered whether the operation could have been brought to a close without causing such widespread carnage.

Though understandable and perhaps inevitable, this heated debate is unfortunately founded, in most cases, on insufficient and flawed information, semantic confusion, and the misuse of moral principles. The main purpose of this article, written by one of Israel's leading philosophers, is to try to deal with some of these shortcomings. At the very least, it points us toward the proper moral, ethical, and legal standards by which the Gaza operation should be evaluated.

A properly functioning state should plan its actions carefully, execute them appropriately, and examine them scrupulously afterwards. A military operation is an important and complex act of state, and it is not exempt from proper planning, execution, and examination.

Whenever a state conducts a military operation outside of its borders, it engages in a political action. In a democratic state, the government must rigorously examine the political considerations and decisions that led to this action. A military operation also involves the deployment of armed forces and the cooperation of intelligence agencies. Each of these institutions is also expected to undertake a professional, methodical, and searching post-hoc inquiry into the considerations taken and decisions made in every professional locus of control that has had an effect on the operation—including those of operative planning, tactical performance, and intelligence. A responsible inquiry into these loci may then lead to a professional investigation of other loci of influence, such as those involved in capability building (i.e., developing military doctrines, practical training, etc.).

These political investigations and professional inquiries must pay special attention to every aspect of the operation that is related to moral and ethical values. Decisions, commands, and actions should be closely examined in order to determine whether they appropriately manifested the moral principles of the State of Israel, the ethics of the IDF and the General Security Service, and the laws to which Israel is subject.

There are two stages to such an analysis: First, one must determine the requirements that every military operation must fulfill in light of Israel's moral principles as a Jewish and democratic state;¹ the ethical codes of the IDF and the General Security Service;² the laws that Israel must observe as a state in which the rule of law prevails; and the laws it must observe as a properly functioning state subject to both *jus gentium* (the "law of nations," i.e., international norms which apply to all states) and *jus inter gentes* (the "law between the peoples," i.e., treaties and agreements entered into by sovereign nations). Second, one must ascertain whether the decisions made, orders issued, and actions performed in the course of the operation fulfilled these moral, ethical, and legal requirements. In order to do this, one needs as reliable, full, thorough, and accurate an account of the relevant facts as possible. It is impossible to complete any moral, ethical, or legal evaluation of an operation before an investigation of its political background and an inquiry into the military's professional performance are completed. During and after Operation Cast Lead, many people, both in Israel and abroad, made statements about it as if this kind of examination had already been completed and its findings were at their disposal. Since it is reasonable to assume that not a single one of them had a reliable, full, thorough, and accurate account of the facts, their assertions can carry no moral, ethical, or legal significance at this stage.

For the time being, then, we should focus on the first stage of investigation mentioned above and restrict ourselves to examining the moral, ethical, and legal requirements to which decisionmakers and participants in military actions are bound. These requirements predate and are not dependant on the specific facts of Operation Cast Lead. However, though we are not in a position to provide a comprehensive answer to all the questions raised about what took place in the Gaza Strip during January 2009, the data collected so far permits us to conclude that a significant part of the criticism directed at Israel and the IDF during and after the operation was, to say the least, based on flimsy evidence.

The first factor one needs to consider when analyzing a military operation undertaken by a democratic state outside its own borders is the political decision to initiate the operation, and the circumstances under which this decision was taken. In order to evaluate such a decision properly, it is necessary to do so from two separate viewpoints: external and internal.

We will begin with the external viewpoint. From this point of view, we will morally evaluate the political decision to wage war or carry out a military operation based on considerations of international relations. The question we face at this point is the following: Does a state have a moral justification for taking military action against another state under the circumstances in question? We can pose similar questions about a military action against a non-state entity with a ruling body that, to a significant extent, effectively governs a specific territory (such as Hamas in the Gaza Strip); an organization that operates from within the territory of another state, and enjoys so much freedom of action that it effectively governs part of that state (such as Hezbollah in Southern Lebanon); and finally, an organization that operates from within the territory of a non-state entity (such as terrorist organizations operating in areas controlled by the Palestinian Authority). Even at this early stage of the discussion, it is already necessary to note not only the similarities between these situations, but also the differences between them, each of which requires a separate moral discussion.

The basis for any such discussion is the moral conception known as *just war theory*.³ This term does not designate a doctrine that has a single, authoritative form or interpretation. It is, rather, a family of concepts (e.g., “combatants” or “proportionality”), distinctions (e.g., between military and nonmilitary targets), and principles (e.g., that it is forbidden to harm enemy soldiers once they have surrendered). Moreover, scholars of just war theory often disagree about the meanings of its concepts, the considerations underlying its distinctions, and the specific consequences of its practical principles.⁴ Over time, however, just war theory has developed an accepted set of eight principles, which form the basis of the standard moral discussion of war.⁵ In addition, a framework of international law has emerged that constitutes the basis of customary legal discourse on the subject.⁶

Just war theory, as expressed in its moral principles and in international law, makes certain assumptions about the warring parties and the circumstances of their conflict. Usually, it is assumed that the warring parties are sovereign states and that, most of the time, circumstances permit a differentiation between combatants and non-combatants that is not too complicated. These assumptions, however, do not hold with regard to Israel’s military confrontations with Palestinian terrorist organizations, Hezbollah in Lebanon, or the Hamas regime in Gaza. In order to apply the principles of just war theory to these engagements, it is necessary to widen its scope. For the purposes of the present discussion, however, we will abstain as much as possible from theoretical innovations, instead supporting our claims using the theory in its traditional form.

The first principle of just war theory in the circumstances under discussion is the *principle of just cause*. A state must have a compelling justification for taking military action against a state, entity, organization, or individuals outside its borders. From a moral standpoint, the only compelling justification for such action is self-defense. A state, therefore, can only justify military action if it can demonstrate that it acted on the basis of its *right to self-defense*.

No one can honestly dispute that, for years, Hamas, Islamic Jihad, and other terrorist organizations in Gaza have launched thousands of rockets at Israel’s population. Therefore, we can present a responsible answer to the question: Was the decision to take military action against those terrorist organizations, at that particular time, justified on the basis of the right to self-defense? The answer is self-evident: Firing rockets at Israel is an attack on the state and a constant endangerment of the life, health, security, and well-being of the citizens under attack.

Nevertheless, just war theory makes it clear that it is not enough for military action to be justified on the basis of self-defense. Though self-defense is a *necessary* condition for the justification of war, it is not a *sufficient* one. The moral considerations behind this assertion are clear: Military action poses a grave danger to human life, health, well-being, property, and liberty. If effective self-defense can be guaranteed by other means, this is clearly preferable to a course of action that involves destruction, suffering, and death. The use of military force is, therefore, justified only if all other alternatives have been exhausted. In just war theory, this is known as the *principle of last resort*.

Was the decision to launch Operation Cast Lead justified under the principle of last resort?

In order to answer this question in a responsible manner, it is necessary to understand the threats facing Israel’s citizens, the possible alternatives to military action, the various attempts to pursue them, and the outcome of each attempt. Within the spectrum of threats, the rocket attacks initiated by terrorist groups—not only Qassam rockets but also longer-range missiles and more destructive weapons—must be considered. Alternatives to military action could include indirect negotiations for a ceasefire, international diplomatic pressure, and the imposition of a blockade. Israel, along with other international actors, pursued these options without success while Hamas and Islamic Jihad continued their rocket attacks on Israel’s southern population.

The continued rocket attacks on Israel by the terrorist organizations in the Gaza Strip, as well as Israel's continued abstention from any large-scale military response in the face of this aggression, give rise to a presumption of justification regarding the state's decision to take military action as a last resort. Those who argue otherwise bear the burden of proof, and would need to demonstrate that: (a) there was a non-military alternative that Israel did not pursue; (b) had Israel pursued this alternative, its citizens would have been immediately and effectively protected from the threat of rocket attacks; and (c) this would have made military action unnecessary. To date, no alternatives that would have fulfilled these conditions have been proposed.

Some people claim that a peace agreement between Israel and the Palestinians would provide Israeli citizens with the best protection against rockets and missiles, suicide attacks, and other horrors of terrorism. It is true that a democratic state is required to seek peace agreements with neighboring states and peoples.⁷ However, the idea that it is possible to reach a political settlement with the Palestinians that would be upheld by Hamas, Islamic Jihad, and other terrorist organizations is quite doubtful. Even if we accepted the plausibility of such a claim, it is all but certain that rocket attacks on Israel would continue throughout the negotiations. In fact, they would likely *increase*. Leaving a state's citizens vulnerable to persistent threat is not morally justified by the mere fact of ongoing negotiations. Nor can the fact that negotiations are taking place justify avoiding the last-resort option after all alternative courses of action have failed. As long as a state's citizens are under attack, even during a negotiation process, that state has an obligation to provide them with adequate protection.

There are those who call on Israel to engage in direct negotiations with Hamas, in order to rid its citizens of the threats posed to them by rocket attacks and other kinds of terrorist activity. This argument warrants a similar response. From a moral standpoint, demanding that Israel engage in direct negotiations with a terrorist organization that does not recognize its right to exist cannot be justified. While indirect negotiations through some sort of mediation are a possibility, there is no basis for the supposition that this alone would be enough to achieve protection for Israel's citizens. Indeed, as we have already seen, rocket attacks continued while Israel was engaged in indirect negotiations with Hamas. Neither direct nor indirect negotiations can fulfill the three requirements mentioned above and cannot, therefore, be seen as effective alternatives to military action.

While a state entering into a war or embarking on a military operation must do so in self-defense and in the absence of other alternatives, these conditions alone do not suffice according to just war theory. A state may have other intentions—historical revenge, for example—which can alter the course of the war or its political aftermath, and which are not morally justified. Such motives can lead to excessive death and destruction, beyond what self-defense would require. The *principle of right intention* demands that a state not only wage war in a just cause, but that all of its intentions, on every level, be equally justifiable.

The aims of Operation Cast Lead included deterring Hamas and other terrorist organizations from launching rockets into Israel. Such deterrence is, in and of itself, morally desirable, because it can effectively prevent terrorist operations (or even war itself, as in the case of a state such as Syria). Nevertheless, measures taken in order to establish deterrence must meet certain moral requirements.⁸

The best method of achieving deterrence in a morally acceptable way is to achieve it as a side effect of some other action. Targeted killings of terrorists, for instance, not only offer immediate protection to a state's citizens. They also achieve deterrence, because the enemy becomes aware of the state's ability to detect threatening activities, identify the perpetrators and their whereabouts, and attack them. Deterrence is not the primary goal of targeted killings, however, but rather a welcome side effect. The intention to deter the enemy as a side effect of military activity constitutes a right intention.⁹

The difference between deterrence as a goal and deterrence as a side effect is essential. An operation whose goal is to thwart terrorist attacks should not be influenced by the likely possibility that it will also create deterrence. Theoretically, an operation can include the use of measures whose purpose is not to foil terrorist attacks but only to create deterrence. To the extent that injury or even death is caused as a result of these measures, they are morally unjustified. For example, killing someone who is essentially harmless in order to deter others from possibly posing a threat cannot be morally justified. A democratic state is required to protect human dignity as such. It cannot use human beings as mere tools to create deterrence. Human beings are not tools to be used.

Generally speaking, it is reasonable to ascribe to Operation Cast Lead the intention of achieving deterrence as a side effect of an act of self-defense. Likewise, descriptions of the operation as “disproportionate” in the Israeli and international media are problematic, because they appear to presume that deterrence was the main purpose of the operation, rather than a side effect of it. A description of the operation in terms of “powerful response” is more appropriate.¹⁰

One of the lesser-known principles of just war theory prohibits a state from embarking on a military campaign if it does not have a reasonable chance of winning it. War, by definition, involves the loss of human life, as well as suffering and destruction on a massive scale. The *probability of success principle* prohibits taking military action—which inevitably involves death, suffering, and destruction—if it is certain to fail. Therefore, it is impossible to justify a war that serves only a “symbolic” purpose.

This principle deserves our renewed attention in regard to military actions such as the Second Lebanon War and Operation Cast Lead, which were undertaken against guerrilla, terrorist, or terrorist guerrilla organizations. In conflicts of this kind, the definition of “victory” is different from that of “classic” wars between states and their armies. As we witnessed in the Second Lebanon War, a state’s military action against a terrorist guerrilla organization can kill many of the group’s combatants and destroy a significant part of its infrastructure without eliminating its ability to carry out terrorist activities and attack the state’s citizens. During Operation Cast Lead, we realized that the same holds true in conflicts with urban terrorist organizations.

While the term “victory” may be emotionally satisfying, it is problematic from a professional military point of view. This is because it does not enable a clear distinction between the goals of a “classic” war and the goals of different kinds of wars or campaigns such as Operation Cast Lead. In these new contexts for the use of military force, it is best to replace the elusive term “victory” with the notion of “achieving specific goals by accomplishing the missions.” This concept is easier to evaluate with precision and to use in professional employment of military forces.¹¹

The primary goal of Operation Cast Lead was described as “improving the security situation” in the areas of the state under rocket attack. This is a proper objective, not only because it stems from the right to self-defense, but also because it is attainable. “Improving” the situation does not mean the elimination of all threats. An improvement can be attained by killing many terrorists, destroying much of their available weaponry, and causing heavy damage to their armaments infrastructure.

“Proportionality”—a term raised many times in the context of Operation Cast Lead—actually refers to two different principles of just war theory: The *principle of macro-proportionality*, which applies to the overall decision to take military action, and the *principle of micro-proportionality*, which applies to specific military actions. I will now turn to the first principle, and address micro-proportionality later in our discussion.

In order to clarify the issue, we must examine some of the commonplace accusations of disproportionality made regarding the Second Lebanon War and Operation Cast Lead. The most

common charge raised by critics of these campaigns concerns the number of casualties. They argue that, since very few people are killed by rocket attacks on Israel's population, while many people are killed by the Israeli response, this response is disproportionate and, therefore, both morally unjustified and contrary to international law. This claim is both invalid and groundless. It is invalid because the number of Israeli casualties is not a reliable measure of the threat posed by enemy rockets. Let us recall the Grad rocket that hit an Ashkelon classroom on February 28, 2009, which happened to be a Saturday morning. Had the missile hit the school on a day when classes were in session, dozens of school children would have been killed. The good fortune of these children does not diminish the threat posed by the attack itself. A responsible comparison between Hamas attacks and Israeli action during Operation Cast Lead would not distinguish between "hits" and "close calls." It would take into account the thousands of rockets that have been fired into Israeli towns and cities, and would reach the conclusion that the Palestinian threat to Israeli citizens is greater than the Israeli threat to residents of the Gaza Strip who reside in the vicinity of the terrorists.

Furthermore, no principle of proportionality entails a demand for numerical equivalence. A moral evaluation of proportionality in military action should focus on the question of whether the positive results of the operation on one front outweigh the negative results on another. Macro-proportionality requires that this condition be met. The positive results of the operation should be measured in terms of the protection it has provided to the state and its citizens at the conclusion of the military campaign and its aftermath. The negative results should be measured in terms of the death, suffering, and destruction inflicted on the other side. Once again, this is not a numerical comparison, but rather an assessment of existing threats and the measures that must be taken in order to avert them.

Let us examine, for example, the circumstances of the outbreak of the Second Lebanon War. During the first stage of the war, Hezbollah fighters killed eight Israeli soldiers and kidnapped two who died of their wounds. At this point, Israel was faced with two threats: First, that Hezbollah would carry out another operation in which they might succeed in killing or kidnapping more Israeli soldiers. Second, were Israel to take military action in order to avert the first threat, Hezbollah might respond by barraging the north of Israel with Grad rockets. In order to protect itself from both of these dangers, Israel needed to launch a strike against the sources of the second threat, both in South Lebanon and in certain neighborhoods of South Beirut. Whether or not Israel could have minimized the damage inflicted on a specific site in South Beirut or any other area without diminishing the security of its citizens is a legitimate question. But most of the accusations of disproportionality during the Second Lebanon War were more generalized and thus invalid and unsubstantiated.

Similar charges were made about Operation Cast Lead. For example, the Spanish author Javier Marías told the Israeli newspaper *Haaretz* that Israel "drew a gun in response to a slap in the face."¹² This is a colorful expression, but it is also an invalid and unsubstantiated claim. The cause of Operation Cast Lead was not a "slap in the face," but a very long series of thousands of slaps. After how many slaps and attempted slaps and threats of slaps is it time to draw a gun? I assume that the author did not mean to say that Israel should have turned the other cheek, so it seems reasonable to assume that he thinks Israel should have responded to a slap with a slap, or a punch at most. He thus missed the major point: Israel's response was not undertaken simply for the sake of responding, but to obtain genuine protection for itself and its citizens. One is permitted to ask: How can we know that an Israeli slap would prevent the next Hamas slap? It seems reasonable to assume that even a punch would not have prevented future slaps or lowered the threat they posed—which is not the case with "drawing a gun."

Moreover, accusations that Israel "drew a gun in response to a slap in the face" entirely miss another essential point: In this context, proportionality is not assessed by simply comparing the Israeli military response to a specific enemy operation ("the slap"). Instead, it involves a comprehensive assessment of Operation Cast Lead in light of the ongoing actions that the enemy has committed for many years and will continue to commit for the foreseeable future ("endless

repeated slaps"). Such an assessment should take into account the enemy's desire and ability to inflict continuous harm on Israeli citizens. After all, Israel did not draw a "gun" in response to one "slap in the face," but in response to constant slapping, attempts to slap, and threats to inflict stronger and more powerful slaps.

Accusations of disproportionality in war often refer to the "use of excessive force." To justify these claims, one would need to offer alternatives in which the use of force (a) would not be excessive; (b) would be effective, i.e., provide the required protection from specific threats;¹³ and (c) would be available when the circumstances require it. Considering these conditions, it is not surprising that we have yet to encounter any defensible criticisms of the use of overwhelming force. Indeed, they are quite difficult to make from the comfort of one's armchair.

So far, we have discussed the principles of just war theory from the external viewpoint, which focuses on the interaction between the state and outside bodies and forces. Now we will turn to the internal viewpoint, which is concerned with the relations between the state, its institutions and basic arrangements, and the citizenry.

The most important aspect of the relationship between a state and its citizens is the *obligation of self-defense*. This is one of the highest duties of a properly functioning democratic state. It requires the state to protect its citizens—indeed, anyone under its effective control—from any danger to their life, health, security, and well-being resulting from acts of violence, both in the short and long term. As a democratic state, it must fulfill this obligation with proper respect for the human dignity of all people.

The distinction between the external viewpoint and the internal viewpoint becomes apparent when one considers the difference between a state's *right* of self-defense, which relates to what is beyond its confines, and a state's *obligation* of self-defense, which relates to what is within its confines.

A state must protect its citizens from acts of violence, whether from a foreign state or from a terrorist or guerrilla organization. This obligation is binding whether its citizens are threatened by an external source or an internal source; whether the cause is criminal activity or political subversion. The obligation of self-defense is based on a simple rationale: A democratic state is characterized by a system of fair arrangements of civic life. In order to uphold this system, the state must preserve and defend the conditions that enable it to exist. The most important of these conditions, without which the citizen cannot enjoy the arrangements of democracy, is the very fact that the citizen is alive. A democratic state is therefore under an obligation to defend its citizens' lives. (The same principle guides the state's obligation to defend its citizens' health, security, and well-being. For the purposes of this discussion, however, we will not deal with these considerations, and will restrict our analysis to life-threatening dangers.)¹⁴

A state's obligation of self-defense grants each of its citizens the right to ask it the following question: "What have you done to protect me from a given violent threat that endangers my life?" (The *citizen's question*.) Every citizen has the right to receive a satisfactory response to this question, a response that will refer him to the institutions, arrangements, policies, and actions that are charged with protecting him against the threat he has in mind.

A state is never exempt from its responsibility to give a satisfactory answer to the citizen's question. This also holds true when the citizen is serving in the military, for the simple reason that soldiers are citizens. The state owes them a satisfactory answer just as much as it owes one to every other citizen. At times, the *soldier's question* will be more challenging and the state's answer will be more complex. Usually, a properly functioning state does not intentionally design a situation that will endanger the lives of its citizens. When a citizen is put in harm's way, the

state ought to defend that citizen in an effective manner. However, a citizen in military service may find himself in an extremely dangerous situation because the state has knowingly sent him to risk his life on its behalf. The soldier's question will therefore be twofold: "First, what justification do you have for sending me into a life-threatening situation? Second, once I am in this situation, what are you doing to protect me from the danger I am in?"

We will not give a full account here of the state's response to the soldier's question. Such a response would have to justify conscription and reserve military service, insofar as they are rooted in the fair arrangements befitting a democratic state under present conditions. Instead, we will only mention one key component of Israel's reply to the first part of the soldier's question: "We have no choice," or, in other words, "It is *necessary* to do so under the circumstances in which we find ourselves." Because of the threats facing Israel and its citizens, the state cannot fulfill its obligation of self-defense without imposing conscription and reserve military service. When a threat to its security is not imminent, the state is required to develop its military capabilities. When the threat is imminent, it must exercise its military power. While preparing for conflict, the state places severe restrictions on the liberties of its uniformed citizens. When using military force, the state may send them into battle and thus endanger their lives. "Being forced by circumstances," the state must impose conscription and reserve military service in order to fulfill its obligation of self defense.

Just war theory distinguishes between *jus ad bellum* and *jus in bello*, that is, between the moral justification for war—which we have already discussed—and the moral justification for actions taken during a war. The question of moral conduct in war, upon which we will now focus, must be evaluated according to the proper relationship between the state and what is outside of it (the external viewpoint), as well as between the state and its citizenry, including its soldiers (the internal viewpoint).

The distinction between *jus ad bellum* and *jus in bello* is manifest in the difference between the principle of macro-proportionality explained above, and the principle of micro-proportionality to which we now turn. Just war theory requires that all actions conform to the principle of proportionality, not only with regard to the decision to wage war or a military operation, but also in regards to specific military actions that endanger harmless enemy non-combatants. Similar to macro-proportionality, the principle of micro-proportionality concerns the question of whether or not the positive consequences of actions on one front morally justify the negative consequences on another.

It is easy to answer this question affirmatively when military action, in terms of both its goals and the means of achieving them, is unavoidable. In other words, the action is of *military necessity* in the strict sense of the word.¹⁵ The aim of such an action is to fulfill the state's absolute duty to defend its citizens, given the dangers they face. The means employed to meet this requirement must be those which can most successfully fulfill the obligation to protect the citizens of the state as well as the human dignity of all people. When security conditions make it a necessity, military action accompanied by a genuine effort to minimize harm to enemy non-combatants can be justified under the micro-proportionality principle, because its positive consequences outweigh the negative ones.

Many military actions, however, do not fall strictly within the scope of military necessity. Often, the means required to carry out various actions are not, in a sense, unavoidable. Sometimes a military commander can choose between achieving the mission's objectives through a difficult, slow, and problematic process, and doing so in a simple, fast, and easy way. Let us assume that these two options do not diverge in terms of the degree to which they endanger the lives of the soldiers involved, but only in terms of the length of time and the magnitude of the effort required to achieve the objective. The micro-proportionality principle demands that the positive

consequences of employing the faster and less demanding option justify its negative consequences, namely, inflicting death, suffering, and destruction on enemy non-combatants. There is, obviously, no ready answer to the question of which option is preferable in some cases, because we usually possess only a partial picture of the facts, and have to take into account multiple factors and conditions. Take, for example, situations in which soldiers are required to carry out a specific mission and, afterward, must continue immediately to another urgent and difficult mission. If both missions are militarily necessary, then it is preferable for them to carry out the first mission in what they consider the easiest way, despite the fact that it may be more harmful to enemy non-combatants. On the other hand, if the soldiers do not expect the first assignment to be followed by another urgent and complex mission, then it is better for them to take the more difficult course of action, thus causing less harm to enemy non-combatants.

In order to know whether the micro-proportionality principle was upheld during Operation Cast Lead, it is necessary to be familiar in a full and detailed way with the specific actions taken during the operation. One cannot judge the operation in a serious, professional, and responsible manner without having adequate knowledge of the actions in question, and one should therefore resist the political and emotional temptation to do so.

Just war theory also demands that combatants respect the *principle of distinction*. This is a key principle in moral discussions of military actions, and it ought to be properly understood. A crude and superficial presentation of the principle of distinction often creates a slippery slope that leads to conclusions that cannot stand up to moral scrutiny. Therefore, we will exercise special caution in presenting and explaining it. Though the main elements of the principle of distinction were formulated with the classic concept of war in mind, they will be described here so as to be applicable to the “newer” context of fighting terrorism.¹⁶

The principle of distinction presents the combatant with three different standards of conduct to guide him in any military action: (a) a standard he should follow when facing a group comprising enemy combatants and no one else; (b) a standard he should follow when facing a group of enemy non-combatants who are not participating in the fighting and are not in proximity to enemy combatants; (c) a standard he should follow when facing a mixed group of combatants and non-combatants.

It is important to understand that we are not drawing a distinction between different kinds of people, but rather between different standards of conduct to be applied in different situations. The first standard of conduct permits soldiers to attack enemy combatants freely without considering the immediacy of the danger they pose—with the exception of wounded persons, prisoners of war, medical teams, and clergy.¹⁷ The second standard of conduct prohibits attacking enemy civilians who are not involved in hostilities and are not in proximity to enemy combatants. This restriction is *absolute*. Under certain conditions that we shall elucidate at length, the third standard of conduct permits attacking enemy combatants even if this endangers non-combatants in their vicinity.

The moral rationale behind the principle of distinction, which institutes multiple standards for military action, is self-evident: Military conduct that complies with the principle of distinction greatly reduces the horrors of war. Nevertheless, the question must be posed: Does this principle possess a deeper moral justification? Furthermore, is the framework of standards that it establishes of the highest moral standing, or is it simply superior to circumstances in the past, in which armies freely and equally harmed combatants and non-combatants? This question reveals a fundamental dispute that need not be resolved here in order to evaluate Operation Cast Lead.¹⁸ Even those—and I am among them—who hold that the standards of conduct delineated by the principle of distinction do not offer an ideal moral solution to the problem will nevertheless respect them, and seek to replace them with arrangements that are better both in theory and practice.

Operation Cast Lead mostly took place under conditions that required the application of the third standard of conduct, as well as considerations of micro-proportionality. The above-mentioned third standard enables us to answer the difficult question of what should be done when dealing with a group of people that includes both terrorists who pose a threat to the safety of Israelis and enemy non-combatants who do not threaten anyone. In a situation such as this, we face a dilemma: If the terrorists remain unharmed, they will continue to threaten Israelis. Attacking these terrorists, however, is likely to injure or even kill their non-combatant neighbors. Either way, people who should not be harmed and whom the circumstances of combat do not justify harming will be hurt.

The first way to attempt to resolve a dilemma is by altering the situation so that there will be no need to choose between alternatives, all of which involve undesirable consequences. In the situation we just described, it would be necessary to separate the people who pose a threat from those who do not. Efforts to do this may include scattering leaflets notifying people about the impending attacks, contacting specific places by phone in order to issue a warning, using non-lethal weapons, etc.¹⁹ If enemy combatants and non-combatants are successfully separated, there is no need to use the third standard of conduct, since the first standard will be employed against the terrorists and the second will protect their neighbors from being injured. The trouble is that, despite all efforts, such a separation is not always possible, frequently because warnings would alert the terrorists to a coming attack and thus make it more difficult to defend people from them. What, then, should be done when the dilemma cannot be eliminated, and soldiers are faced with a heterogeneous group of hostile terrorists and harmless non-combatants?

The third standard of conduct allows combatants in such situations to make a double effort: They should try to ensure that they strike the terrorists with high probability, and they should try to minimize harm to harmless civilians. Whenever these two demands are incompatible, the first is preferable to the second, but never overrides it entirely.

Discussions of just war theory relate the above-mentioned third standard of conduct to the *double effect principle*. According to this principle, when we are seeking a goal that is morally justified in and of itself, then it is also morally justified to achieve it even if this may lead to undesirable consequences—on the condition that the undesirable consequences are unavoidable and unintentional, and that an effort was made to minimize their negative effects. Micro-proportionality is also a required condition.

Thus, civilian casualties—though an undesirable, painful, and troubling reality—are an acceptable outcome of a military action if they cannot be avoided. During Operation Cast Lead, it was claimed that it is prohibited to attack one hundred terrorists if one child might be harmed along with them. This claim is both morally indefensible and utterly irresponsible. No one wants to harm a child, but refraining from attacking one hundred terrorists because of the child they hold means allowing them to continue attacking Israeli civilians—including children. Is it justified to allow a child—or an adult, for that matter—to be harmed in Israel in order to avoid harming a child in Gaza?

Israeli historian Zeev Sternhell raised an equally weak argument when he severely criticized Operation Cast Lead and warned that “the Israelis... by wreaking havoc on a civilian population... remove themselves from the family of civilized Western nations.”²⁰ In response to this claim, we should first recall that Israel was fighting Hamas, which is considered a terrorist organization by many among the “family of civilized Western nations.” Destruction, suffering, and casualties are, unfortunately, inevitable during urban warfare against such groups. The moral question, then, is whether the destruction, suffering, and casualties were justified in light of the continuing attacks by Hamas and other organizations against Israel and its citizens. The mere fact that destruction, suffering, and casualties were inflicted in the Gaza Strip in no way answers this question.

Secondly, if we wish to evaluate Israel’s place among the “family of civilized Western nations” in the context of “wreaking havoc in a civilian population,” we might learn a great deal from

comparing Operation Cast Lead to Operation Phantom Fury, which the United States Marines launched in the city of Fallujah, west of Baghdad, during November and December 2004. According to a report published by the United States Army Combat Studies Institute, many of Fallujah's 350,000 residents fled the city before the operation, leaving an estimated number of 3,000 insurgents behind. During the operation, about 6,000 Iraqis and 1,200-2,000 insurgents were killed. Of the city's 50,000 buildings, some 10,000 were destroyed, including 60 mosques, each of which was used to store substantial quantities of armaments and munitions. Over half of the city's buildings were substantially damaged.²¹

The Gaza Strip is home to a population five times larger than the number of people that lived in Fallujah prior to Operation Phantom Fury, and about twenty times larger than the population that remained in the Iraqi city after the mass flight. The number of terrorists in Gaza was more than five times the number of insurgents in Fallujah. We do not yet know with certainty how many people were killed in Gaza, but even the terrorist organizations and their supporters do not claim that it was five times the number killed in Fallujah—which would be 30,000 dead. We also do not know with certainty how many buildings were destroyed in Gaza, but no one claims that the number is anywhere close to 50,000. Thus, a simple calculation shows that the United States, a senior member of the "family of civilized Western nations," left a trail of destruction in Fallujah that was at least twenty-five times greater than anything Israel inflicted on Gaza during Operation Cast Lead.²²

It is important to note, however, that such a comparison cannot serve as a valid basis for reaching moral conclusions. American actions in Fallujah and Israeli actions in Gaza may both be morally justified; and, possibly, neither of them is morally justified. It is also possible that Operation Cast Lead was justified, but Operation Phantom Fury was not, or vice versa. I mention the American operation only to demonstrate that there is no basis to the claim that Israeli conduct of anti-terrorist urban warfare is worse than that of other enlightened states.

We have emphasized the fact that harmless civilian casualties may be an unavoidable consequence of military action in defense of a state's citizens against terrorists. How does one defend the claim that a particular outcome is "unavoidable"? The first step is to review the various courses of action that were available to the military forces. The second step is to assess the effectiveness of each of these options in terms of the probability of successfully striking the terrorists. Third, it is necessary to evaluate the potential consequences of each course of action that are both possible and undesirable. These considerations should point us toward the preferable approach. For example, attacking a building in which dangerous terrorists and harmless civilians are present is likely to cause harm to non-combatants even if the preferred method of action is used. Harming these civilians would be considered unavoidable only if all other alternative courses of action are less desirable, whether because they present an even graver danger to the terrorist's neighbors or because they are ineffective against the terrorists themselves.

The task of examining possible courses of action in terms of their potential consequences, both desirable and undesirable, with respect to the above-mentioned moral principles (the principle of distinction and the double effect principle), should be reserved for professionals. In regard to one point, however, an additional moral consideration is involved: Imagine that a military force is dealing with a situation in which dangerous terrorists and their harmless civilian neighbors are inside the same building. Let us assume that the military force arrayed against the terrorists has already invested considerable efforts in attempting to separate enemy combatants from non-combatants by issuing warnings in writing, by phone calls, by loudspeaker announcements, by using non-lethal weapons, etc. Nevertheless, a mixed group of terrorists and their harmless neighbors still remain in the building. We will also assume that the preferred course of action, from a professional military point of view, is to fire at the building from the ground or from the air, which is likely to harm the terrorists and some of their neighbors. At this juncture, it would be apparently reasonable to offer an alternative course of action: sending soldiers into the building in order to separate the terrorists from their neighbors. If this is successful, then the soldiers can

retreat from the building and the attack will only target the terrorists. If, however, the soldiers' attempt to separate the terrorists from their neighbors is unsuccessful, then the military force will have no choice but to fire at the building despite the possibility of harming non-combatants. It is self-evident that such a course of action presents a greater risk to the lives of the soldiers who are to be sent into the building than a course of action that does not send them in.

There are those who claim that this is a proper risk if it will reduce civilian casualties. In my opinion, however, there is no moral justification for favoring the lives of a terrorist's neighbors over the lives of soldiers. In what follows, I shall raise three points to support my position.

First, we must recall the moral challenge of the soldier's question: "I am a citizen of the state. I enter combat in uniform because it is my duty to participate in defending other citizens of the state from a danger they face. It is for lack of any other choice that I am put into dangerous situations in order to attack terrorists and thereby defend my fellow citizens. These dangerous situations inevitably threaten my life. To send me into a building in order to reduce the chances of injuring enemy non-combatants will significantly increase the threat to my own life, and not for the purpose of carrying out the mission of eliminating terrorists, but rather for the purpose of protecting their neighbors. What justification is there for increasing the threat to my life?" I am not aware of a compelling response to the soldier's question and the moral challenge it presents. I am familiar with several attempts to formulate such a response, but they are unsuccessful, unpersuasive, and do not justify endangering soldiers' lives in this manner.²³

Second, the suggested solution we just described is a good example of the slippery slope down which a careless presentation of the principle of distinction can lead. If this principle is used in order to draw a distinction between different types of people, it will inevitably lead to preferring some people over others in a sweeping and unjustified manner. An accurate presentation of the principle of distinction would avoid this slippery slope. Although we have two different military standards of conduct—the permissibility of attacking combatants during war and the impermissibility of attacking non-combatants—we cannot deduce from these a third standard of conduct that requires a state to prefer protecting the lives of enemy civilians over the lives of its own soldiers.

Third, and perhaps most important, we must consider the *special duties principle*. While morality demands that the human dignity of *all* people be protected, the provisions regulating this protection are not necessarily universal. Canada's obligation of self-defense, for example, is Canada's obligation toward Canadian citizens just as Israel's obligation of self-defense is Israel's obligation toward Israeli citizens. Canada does not have a duty to defend Israelis who are not in Canada, and Israel does not have a duty to defend citizens of Canada who are not in Israel. Israel is expected to offer assistance when a natural disaster hits another state because of its obligation to protect the human dignity of all people, but it is obviously required to invest greater efforts when such a disaster hits within its own borders than when it hits elsewhere. Israel's special obligations toward its citizens far exceed its duties toward all human beings as such.

Israel, like every other democratic state, is bound by a hierarchy of duties toward different populations. On the first, and highest, tier of this hierarchy, we find Israeli citizens. Just below them, on the second tier, are residents of the state who are not citizens, such as permanent residents, foreign workers, visiting tourists, etc. These are all the people who are found within Israel's international borders (the "Green Line"). On the third tier are the residents of the territories over which Israel has had effective control since the Six Day War and who are not Israeli citizens. On the fourth tier, which lies far below the preceding tier, are residents of territories that Israel does not effectively control and are not Israeli citizens. There is a decisive difference separating the first, second, and third tiers from the fourth. Israel is accountable for actions within its borders and in territories that it effectively controls; it is not accountable for actions that take place in territories in which it has no effective control, such as Gaza, Greece, or Canada.²⁴

Where do Israeli soldiers stand in this hierarchy? Being Israeli citizens, they belong to the first tier of the state's hierarchy of duties. When they are not serving in the IDF, they are full citizens and the State of Israel is duty-bound to them, just as it is to all of its citizens. However, when they are in military uniform and engaged in military activity, special obligations and restrictions imposed on them lower their place in the hierarchy to somewhere between the third and fourth tiers. The state has a duty to protect its non-combatant citizens and the rest of the people under its responsibility with its uniformed, combatant citizens; consequently, the lives of its soldiers are often jeopardized. It is important to emphasize that the state must come up with a compelling justification for endangering the lives of its soldiers. In principle, it should do so only under the necessity of self-defense.

Therefore, in the dilemma at hand, the state should favor the lives of its own soldiers over the lives of the neighbors of a terrorist when it is operating in a territory that it does not effectively control, because in such territories it does not bear the responsibility for properly separating between dangerous individuals and harmless ones. Once it has exhausted its efforts to separate terrorists from non-combatants, not only is the state no longer obligated to endanger the lives of its own soldiers in order to attempt to further such a separation, it is forbidden from doing so. (Some micro-proportionality considerations have to be mentioned in the full description of the decision we recommend, but since they do not change our practical consequences we will not presently describe them.)

The position presented here is also formulated in the IDF's ethical code of conduct.²⁵ Though the values outlined in the code, known as the "Spirit of the IDF," are presented in an abstract and abridged form, it is nevertheless possible to derive clear conclusions from them with regard to our discussion.

First, the definition of the value of *purity of arms* in the IDF code states: "A soldier will not use his weapon and force to harm non-combatants or prisoners of war." In line with the double effect principle mentioned above, when a soldier uses his weapon to attack a terrorist and unavoidably harms non-combatants at the same time, he is not using his weapon "to harm non-combatants." He is acting the way he does in order to harm other, dangerous individuals, whom it is his duty to attack under the circumstances, in order to protect his fellow citizens from them.

Secondly, the value of purity of arms includes the demand that IDF soldiers "will do all in their power to avoid causing harm to the lives, bodies, dignity, and property [of non-combatants]." In order to properly understand the phrase "do all in their power," let us examine the following example: Terrorists have taken over a residential building in Gaza, owned by a harmless non-combatant. Only terrorists are present in the building. They can be attacked in two ways: One possibility is to bomb or shell the building and topple it with its present inhabitants—who are solely terrorists—still inside. The other possibility is to send soldiers in to kill the terrorists without demolishing the building. The first option will, of course, "cause harm to... [the] property" of the non-combatants who live there, as opposed to the second possibility, which will not cause the same degree of destruction, but will gravely endanger the lives of the soldiers involved. The professional and moral solution to this problem is self-evident: It is not acceptable to risk soldiers' lives in order to avoid damaging the property of non-combatants.

Such a decision coincides with the demand that soldiers "do all in their power," because a soldier's courses of action are not determined by the physical options available to him, but rather by professional ethical considerations. The limits placed on a soldier's conduct are dictated by the values and principles that he must uphold. Among these is the *value of human life*, which asserts that, "During combat, [a soldier] will endanger himself and his comrades only to the extent required to carry out their mission." When a soldier enters a building, his mission is to attack the terrorists inside. He thus puts himself at risk. If he is a commander, he endangers his soldiers "to the extent required to carry out the mission." A soldier will not endanger himself or other soldiers in order to avoid damaging the property of enemy civilians.

The value of human life delineates the limits of a soldier's conduct not only in regard to damaging the property of non-combatants, but also to harming their "lives, bodies, [and] dignity." We have already seen that soldiers are required to endanger themselves only "to the extent required to carry out the mission." Soldiers are *not* required to endanger their own lives in order to reduce the risk of harming a terrorist's neighbors. They "will do all in their power to avoid causing harm" to non-combatants, but without risking their own lives and the lives of their comrades.²⁶

Over the course of Operation Cast Lead, questions arose regarding situations in which soldiers' lives were endangered due to causes other than enemy action. For instance, four Israeli soldiers fell in the course of the operation in "friendly fire" incidents. In another case, IDF soldiers were wounded by an Israeli mortar shell that landed near their position.²⁷ In a third incident, one Israeli force fired at another, though the episode ended without casualties.²⁸ There is no need to repeat here that such incidents are unwarranted. At the conclusion of the operation, when asked how to avoid "friendly fire" incidents, Colonel Ilan Malka, commander of the Giv'ati Brigade, noted the importance of the value of *professionalism*, and immediately added an insight into the appropriate attitude toward soldiers' lives. He said, "We have to explain [to the commanders] that even if they lose a bunch of terrorists, it is no big deal. Don't shoot if you are not sure you know where your troops are." In this context, Malka pointed out a clear failure in the preparations for the operation. "We did not discuss this enough when going over the procedures of the fighting.... It did not come up as much as the other topics came up. We went in without being sufficiently prepared on this issue."²⁹ "Friendly fire" is not unavoidable, and some of the confusion that happens during combat is indeed unnecessary. This confusion can be ameliorated, and Israeli casualties from "friendly fire" can thereby be reduced. When it comes to military action, the value of professionalism requires showing proper respect for the value of *human life*.

Another danger that faced Israeli soldiers during Operation Cast Lead was the possibility of being kidnapped by the enemy and being used later as a bargaining chip against their own country. IDF soldiers are supposed to be trained in precautionary steps to prevent abduction and to properly respond to kidnapping attempts. The Hannibal Procedure Rules of Engagement, drafted prior to 2000 while the IDF was still present in Lebanon, instruct a soldier how to act professionally in order to preempt an attempted abduction. Unfortunately, this order was misinterpreted by both commanders and the media, who believed that it sanctions the killing of a soldier, either by his own hand or at the hands of his comrades, in order to prevent him from being taken alive by a terrorist organization. This is, of course, unacceptable both ethically and morally. The purpose of the Hannibal Procedure is first and foremost to retrieve the abducted soldier and return him safely to his home and army unit. It is inconceivable that a military order would require IDF soldiers to kill one of their comrades or require an Israeli soldier to commit suicide when abducted.³⁰

All military actions carried out during Operation Cast Lead should undergo a professional, thorough, and detailed investigation, just like any other non-routine and complicated professional operation. Moral, ethical, and legal evaluations of specific actions can only be undertaken through the methodical and systematic framework of a professional inquiry. Only on the basis of these inquiries will it be possible to arrive at a general conclusion regarding Operation Cast Lead. Allegations of war crimes against Israel or its soldiers, which started at the time of the operation and continue today—long before these inquiries have been completed and the lessons drawn from them made public—are neither objective nor serious. The ease with which they are made serves as sufficient proof that they draw their inspiration from the deceitful propaganda of Israel's enemies.

I shall conclude my essay with two comments. In his *Nichomachean Ethics*, Aristotle wrote, "it is for a noble end that the brave man endures and acts as courage directs," which, according to a

Jewish commentator, refers to "those who endanger their lives in war to save the community."³¹ I am deeply impressed with the courage displayed by each and every one of the soldiers who participated in Operation Cast Lead and their commanders. They acted and suffered "for a noble end," and endangered their lives "in war to save the community." I would like most of all to commemorate the four officers and six soldiers who died in combat, along with the three civilian casualties, and to pay my respects to their families. At the same time, I am deeply grieved on behalf of each and every one of the harmless Palestinians who were not involved in terrorism, but nonetheless died during the operation due to the malicious designs of Hamas.

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Notes

1. For a deep presentation of the moral principles of the democratic state, see John Rawls, *A Theory of Justice*, revised ed. (Cambridge, Mass.: Belknap, 1999). The first edition was published in 1971, also by Belknap. The theory was reworked in John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Belknap, 2001). An elucidation of the principle of a "Jewish and Democratic State" based on Rawl's theory is found in Asa Kasher, "A Jewish and Democratic State: Philosophical Outline," *Iyyunei Mishpat* 19:3 (July 1995), pp. 729-739 [Hebrew]; this article was reprinted in Asa Kasher, *Spirit of a Man: Four Gates* (Tel Aviv: Am Oved and Yehoraz Association, 2000), pp. 13-27 [Hebrew].
 2. The most important of these are the "Spirit of the IDF" and the military code of ethics for fighting terrorism. See Asa Kasher, *Military Ethics* (Tel Aviv: Ministry of Defense, 1998), pp. 231-237 [Hebrew]. The "Spirit of the IDF" can be found at <http://dover.idf.il/IDF/English/about/doctrine/ethics.htm>. The values of the General Security Service can be found at www.shabak.gov.il/English/about/Pages/valuseEn.aspx. For a specific discussion of the ethics of fighting terrorism, see Asa Kasher and Amos Yadlin, "Military Ethics of Fighting Terror: An Israeli Perspective," *Journal of Military Ethics* 4:1 (2005), pp. 3-32.
 3. For an important formulation of this theory, see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, fourth ed. (New York: Basic Books, 2006).
 4. See, for example, Anthony Joseph Coats, *The Ethics of War* (Manchester: Manchester University, 1997); Paul Robinson, ed., *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), parts I and IV.
 5. The eight principles that are most commonly quoted in scholarly literature on just war theory are: legitimate authority, just cause, last resort, right intention, chances of success, macro-proportionality, micro-proportionality, and distinction. In this paper we will not consider the legitimate authority principle, because no one contests that the Israeli government was authorized to initiate Operation Cast Lead. We shall touch upon the other principles, also mentioning additional principles that are not normally considered part of just war theory, but nevertheless make important contributions to the moral analysis offered here.
- See, for example, Bruno Coppieters and Nick Fotion, eds., *Moral Constraints on War: Principles and Cases* (Lanham, Md.: Lexington, 2002).

6. See Yoram Dinstein, *War, Aggression, and Self-Defense*, third ed. (Cambridge: Cambridge, 2001); Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge: Cambridge, 2004).
7. See Asa Kasher, "The Democratic Obligation to Pursue Peace Arrangements," *Mehkarei Mishpat [Bar-Ilan Law Studies]* 14:2 (1998), pp. 343-361 [Hebrew]; this article was reprinted in Kasher, *Spirit of a Man*, pp. 145-171.
8. See Lawrence Freedman, *Deterrence* (Cambridge: Polity, 2004).
9. For the Principle of Operational Deterrence, see Kasher and Yadlin, "Military Ethics of Fighting Terror," pp. 27-28.
10. The concept of "powerful response" has not appeared so far in the context of Operation Cast Lead, outside of specific references to plans for responding to future rocket attacks from Gaza. See Yarden Winter and Ido Elazar, "The Response of the Gaza Division to Rocket Attacks from Gaza: 'We Have Plans for a Powerful Response in the Gaza Strip,'" *Bamahane* 10 (March 6, 2009), p. 8 [Hebrew].
11. Pronouncements of this kind appeared in David Caspi, "Facing the Fences of Gaza in Amir's Armor Battalion," *Shiryon* 31 (January 2009) [Hebrew]. The Commander of the 75th Battalion in the 7th Armored Brigade, Lt. Col. Amir, was asked "what, in his opinion, would constitute a 'victory' over or a 'subjection' of Hamas." He answered that a "subjection" of Hamas would be achieved when "the enemy loses its ability and will to fight," while a "victory" would be achieved when "the battalion has successfully completed all of the missions it was charged with." The relationship between victory and subjection is complex and falls outside of the scope of our discussion.
12. Roi Bet Levi, "King Javier the First," *Haaretz*, March 1, 2009 [Hebrew].
13. In order to assess effectiveness, one would need to rely on intelligence information that is, by its very nature, not widely accessible.
14. For a discussion of the "infrastructure principle," the "principle of preserving human life," and the "principle of protecting the lives of soldiers," see Kasher, "The Democratic Obligation," pp. 155-164.
15. For a discussion of different, problematic uses of the concept of "military necessity," see Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, second ed. (Upper Saddle River, N.J.: Prentice-Hall, 1999). The strict use of the term in this paper is free from the problems inherent in other uses.
16. For novelties in these contexts, see Paul Gilbert, *New Terror, New Wars* (Washington D.C.: Georgetown, 2003), ch. 1, pp. 1-23.
17. There are also other reservations, including some that relate to the means and tactics of combat, but they are not relevant to the present discussion.
18. An attempt to justify the principle of distinction on moral grounds, based on the special status of combatants, is found in Michael Walzer's *Just and Unjust Wars*. For the opposite claim, see Asa Kasher, "The Principle of Distinction," *Journal of Military Ethics* 6:2 (2007), pp. 152-167.
19. In the past, the so-called "neighbor procedure" was also used, in which the IDF would ask a neighbor or relative of the terrorist to approach the terrorist—without any risk to their own person—in order to ask the terrorist to hand himself over to the IDF. This procedure has since been banned by a Supreme Court ruling. In my opinion, an improved, more appropriate, and

secure version of this procedure should have been authorized in order to offer more protection to the lives of all parties involved in the conflict. See HCJ 3799/02, *Adalah—The Legal Center for Arab Minority Rights in Israel et al. v. Commander of the Central Command, IDF et al.*, ruling from June 23, 2005.

20. Zeev Sternhell, "Kadima to Democracy's Rescue," *Haaretz*, March 6, 2009 [Hebrew]. This is not the place to discuss the meaning of the phrase "the family of civilized Western nations," but it would also be inappropriate to entirely ignore its condescending and even racist tone. For a discussion of non-Western theories of just war, see Robinson, *Just War in Comparative Perspective*.

21. Kendall D. Gott, *Breaking the Mold: Tanks in the Cities* (Fort Leavenworth, Kan.: Combat Studies Institute Press, 2006), pp. 91-106.

22. The number of casualties and the scale of destruction caused by Operation Cast Lead as reported in Israeli and foreign media are not reliable, in my opinion. Lorenzo Cremonesi, a correspondent for Italy's *Corriere della Sera* and the only foreign reporter to enter Gaza during the operation, presented evidence that called into question any numerical assessment coming from Gaza. This skepticism is also based on past experience: One should recall the use of deceitful propaganda by Palestinian terrorist organizations and their supporters when they accused Israel of a "massacre" in Jenin. The number of casualties they cited was grossly inflated in comparison with the number confirmed by an objective investigation. See "Palestinian Civilians in Gaza to 'Corriere della Sera': Hamas Wants Israelis to Shoot at Our Homes," *Haaretz*, January 29, 2009 [Hebrew].

23. I will mention one example: In the past, but also more recently, some commentators claimed that the value of human dignity requires that the human dignity of neighbors of terrorists should be protected. At the same time, these commentators described soldiers as state instruments. Such an approach deprives soldiers of their human dignity and is therefore invalid. Soldiers are not instruments, but rather uniformed citizens, and the obligation to respect human dignity as such applies to them as well. Examples of this problematic attitude can be found in Colm McKeogh, "Civilian Immunity in War: From Augustine to Vattel," in Igor Primoratz, ed., *Civilian Immunity in War* (Oxford: Oxford, 2007), pp. 62-83. For a contemporary example, see p. 80.

24. The implications of the concept of "effective control" are manifold. See Sari Bashi and Kenneth Mann, "Control and Responsibility: The Legal Status of the Gaza Strip after the Disengagement," *Hamishpat* 25 (May 2008), pp. 13-24 [Hebrew]. Despite the claims presented in that article, it is clear that Israel does not have effective control over the Gaza Strip in a way that renders it responsible for separating between terrorists and their noncombatant neighbors.

25. One should recall that the "Spirit of the IDF" is a summarized version of the IDF's first ethical code, "The Spirit of the IDF: Values and Basic Norms." The original document included a two-part definition for each value, one concise and one longer. *Purity of arms* was defined there as follows (notice that the term "soldier" in the IDF context applies not just to the army, but also to the air force and navy): "The IDF soldier will use his weapons and force to the extent necessary for subduing the enemy and will exercise restraint in order to avoid causing undue harm to human life, person, dignity, and property. The IDF soldiers' purity of arms constitutes the restrained use of weapons and force while carrying out the missions, only to the extent required for accomplishing them, without undue harm to the human life, person, dignity, and property of soldiers or civilians, especially helpless dependants, during war and everyday security operations, in armistice and peacetime."

Human life was defined there as follows: "The IDF soldier will act strongly to save human life, out of recognition of the supreme value of human life, and will endanger himself or others only to the extent required to carry out the mission. The sanctity of life as upheld by IDF soldiers will

be expressed in all of their actions, in judicious and careful planning, considerate and cautious training, and proper performance in accordance with the mission, the professionally appropriate extent of danger and extent of caution, and will manifest a continuous effort to lower the number of casualties to the extent absolutely necessary for accomplishing the mission." See Kasher, *Military Ethics*, p. 232.

26. On one occasion I was told that my position implies a demand for "zero risk to the lives of soldiers." This claim is groundless. When a soldier operates in a battlefield against terrorists, he is endangered by enemy sniper fire, small arms, grenades, mortar shells, rockets of different types, roadside bombs, loader bombs, booby-trapped buildings, assault and kidnapping threats, etc. Everyone agrees that the soldier is expected to remain in such a dangerous situation during a military operation.

27. Daniel Al-Peleg, "My Travels in Hamastan," *Bamahane* 6-7 (February 6, 2009), pp. 29-34 [Hebrew].

28. Nir Costi, "Champagne," *Bamahane* 6-7 (February 4, 2009), pp. 103-105 [Hebrew].

29. Col. (Res.) Saul Nagar, "I Insist that the Ninth Battalion Join Me in This Battle," *Shiryon* 31 (January 2009), p. 45 [Hebrew]. The article covers a joint operation of the Giv'ati Brigade and the 9th Battalion of the 401 Armored Brigade; Col. Amir Eshel, "The Military's Force is in Ground Maneuvering," *Shiryon* 31 (January 2009), p. 47. Eshel, Head of the Armored Corps Doctrine Development Center, defined the friendly fire incidents as the IDF forces' most crucial failure.

30. See the basic rules 24-25 in "The Spirit of the IDF: Values and Basic Norms," in Kasher, *Military Ethics*, p. 236.

31. Aristotle, *The Works of Aristotle*, trans. W.D. Ross, vol. 9 (Oxford: Oxford University, 1963), *Ethica Nicomachea*, book III, ch. 7, p. 1115b; Aristotle, *Book of Ethics*, translated and elucidated by Itzik Stanav (Lvov: I.O. Salat, 1867), p. 26a [Hebrew].