

# How to scrap modern military Justice to restore Army's deterrence capacity<sup>1</sup>

*Modern military Justice punishes officers and soldiers of democratic nations' armies for their military success. "Excessive use of force" and similar artificial judicial constructions undermine incentives of army officers, making the military machine virtually inoperative. Artificially abridged Army capability prevents any opportunities to win the fight against terror, to defend democratic nations and to break trap of violent dictatorship or warlords brutality for peoples of rogue / failed states. Shurat a Din conference "To the new Law of War" addressed the issues such as human shields, proportionality, fighting in civilian areas, defining war crimes in attempt to propose solution of the problem, to restore Democratic nations' ability to defend themselves against Islamic terrorism. Our comments are based on our extensive research program on the issues of Governments' failures to provide sustainable defense for the people. The comments focused on the most obvious practical conclusions and recommendations based on the conference materials. The comments also raise some additional problems to be solved in order to restore our Armies' deterrence capacities.*

Keywords disproportional use of force, military justice, ROE, lives values' priority, officer's incentives

JEL codes: D74, D78, H56

The Conference main sources:

<http://israelawcenter.org/activities/law-of-war-conference-towards-a-new-law-of-war/>

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<sup>1</sup>Selected materials of the conference "Towards a new Law of War" is presented here. The conference was hosted by Shurat haDin Law Center fighting terrorism in the US courts <http://israelawcenter.org/> <http://israelawcenter.org/activities/law-of-war-conference-towards-a-new-law-of-war/>; see also short notes / transcript fragments (not quite accurate, unfortunately) at the blog: <http://ilcblog.org/> ; Latest updates see at: <http://ssrn.com/abstract=2626141>

# **Few theses on the conference outcomes**

The Shurat HaDin "Towards a new Law of War" Conference was the first "perennial event to bring together lead academics, policy makers, and military leaders to exchange ideas regarding the development of armed conflict legal doctrine favorable to Western democracies engaged in conflict against nontraditional, non-democratic, non-state actors".

The goal of the "Law of war..." conference was to influence the direction of legal discourse concerning issues critical to Israel and her ability to defend herself. The law of war is mainly unwritten and develops on the basis of state practice.

The conference organizers' initial point was: International Law is outdated; it prevents the Democracies' Armies from defense of population of our countries. We should find a way to change the situation.

There is no any doubt about the conference's outcomes in sense of introduction the corpus of useful cases and good ideas. Unfortunately, some key ideas turned to be missed or overshadowed in the transcripts by less important speeches or ideas. This material presents a humble attempt to close the gap.

Some issues not prioritized by speakers but relevant for the issue is added by author.

## **The key points and issues risen and developed by the conference's speakers**

| Speaker  | Key theses  | Comments  |
|--|---|---|
| <p><b>Nitsana Darshan-Leitner</b>, founder and president of Shurat HaDin</p> | <p>Hamas "proudly" hide behind alive shield, operated in densely populated towns</p> <p>The current state of affairs cannot continue.</p> <p>International Laws of Warfare (based on Geneva convention) is anachronism and outdated.</p> <p>We need to redefine, to change Laws of Warfare so the Democratic countries can adequately fight back.</p> | <p>(1) One should tell original version of 1949 Geneva Convention from the current version (Protocol 1, June 8, 1977, to the Geneva Convention of 1949) introducing requirements of "proportionality", creating opportunity to sue successful commanders, to punish him for his military achievements, open era of politicized judicial reprisals, encouraging alive shield tactic use.</p> <p>Original Geneva Convention version concerning the defense of the civilian population in times of war. However it in no way hindered the destruction of the enemy TOGETHER with the living shield, unambiguously placing the burden of responsibility for civilian lives on the side resorting to living shields for purposes of defense, rather than on the side of the attacker.</p> <p>(2) Practical ways and political opportunities to change International Law by means "majority of nations" consensus looks very problematic (as the issue could win majority in two democratic countries – Israel and USA - only).</p> |
| <p><b><u>Benny Gantz</u></b>, general, former IDF General Staff Chief</p>    | <p>The battlefield seized to exist in some modern conflicts. We lost the battle before the start of hostilities.</p>  | <p><b><u>IDF Generals</u></b>: the current state is hard. The Law, the rules are sometimes unfair, but we are proud to stay where we are currently stay and pay the price (Benny Gantz – his Lebanon 1<sup>st</sup> war experience; Shifa hospital case; Yom-tov Samia it is in ours' best</p>  |

| Speaker   | Key theses  | Comments   |
|---|---|--|
|   | <p>To warn the enemy about forthcoming attack is foolishness, but we are proud of it (on "moral considerations")</p> <p>Shifa hospital used as Hamas staff cover case but Gantz not authorized the attack on the hospital.</p> <p>Weak side isn't always the right side.</p> <p><i>We haven't any interest (have zero interest) in Gaza and in Lebanon but security</i></p> | <p>interests to keep the "moral standard").</p> <p>Why our generals position is so strange or at least - poorly defined? I guess they are a little bit left-biased<sup>2</sup>, being depended on leftist's judicial elite.</p> <p>Gantz is proud of 500 criminal cases files opened against IDF soldiers<sup>3</sup>.</p> <p>The "moral values" endorsed by general require to sacrifice own civilians and own soldiers to protect enemies' alive shield. This values encourage enemy to kill more and to use alive shield more. So</p> |
| <p><b>Samia Yomtov</b>, IDF general was head of the Israel Defense Forces' Southern Command from January 2001 to December</p> | <p>To fight under the current judicial limitations almost impossible, but we need these limitation to preserve our moral</p>  | <p>this "moral" is obviously distorted.</p> <p><i>"We haven't any interest ... but security"</i> (in reality Ganz means quiet for some years. Not more) idea looks pretty bad for security ends.</p> <p>Security measures without decisive victory, without land conquered can't discourage the enemy (this sort of enemy at least). Zero-sum game w/o strategy targeted "we win big, they lose big" looks strange.</p> <p>The enemy which not values human lives, who is resupplied by rich</p>   |

<sup>2</sup> See some historical references "The Evolving Priorities of the Israeli Left: From Social Justice to Security and Back" <http://ssrn.com/abstract=2425418> and "How Safe Is It, to Confuse Defense with Care?" <http://ssrn.com/abstract=2236354>

<sup>3</sup> At least, Ganz avoid he risk to repeat Chief of IDF Central Command in 2002 general Yitzchak Eitan and his colleagues "asserting that they prefer dead IDF soldiers to Arab civilian casualties" (Feiglin, 2013, p. 326)

| Speaker  | Key theses   | Comments  |
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| 2003   |  | sponsors could be discouraged by clear, undoubted defeat, lost territories etc – only. Alternative strategy choice is to inflict heavy casualties (among well trained personal, commanders, sergeants). Enemies' weapon / ammunition stocks destruction can't impress terrorists' leaders and definitely haven't significant deterrence ability (case 2 <sup>nd</sup> Lebanon war with Hezbollah quickly rearmed by Iran). Even losses in well trained sergeants / officers could be compensated in few years without decisive victory, total destruction of organizational structures with subsequent occupation / annexation. |
| <b>Judge Amnon Straschnov</b> , former Israel district judge and former IDF Judge Advocate General. <sup>4</sup> | Strashnov referenced Israel Supreme Court decision explicitly imposing "civilian population" (hostile, being under belligerent militants' control) lives of highest priority than IDF soldiers' lives.<br>The current "Law of War" must be left as it is.<br>Even the actions not prohibited by these laws | Attorney Strashnov honestly expressed and manifested his professional and political interests:<br><br>(1) Israel Supreme Court & Strashnov based their decisions / opinion on unmentioned "International Law" <sup>6</sup> ;<br><br>(2) He has manifested how his anti-legal logic built on never ratified documents like 1977 (8, June) Protocol I to Geneva 1949 Convention and International Criminal Court (ICC) statute <sup>7</sup> , Judicial  |

<sup>4</sup> A. Strashnov was personally responsible for rise of risks of politicized judicial reprisals for IDF officers and soldiers since 1987 - see "The First Intifada, the Oslo Accords, and the Escalation of Terror: Causalities Revisited" <http://ssrn.com/abstract=2550441> ; see his remarks video at <http://israelawcenter.org/activities/law-of-war-conference-towards-a-new-law-of-war/> 40-ties minutes, panel 1.

| Speaker     | Key theses   | Comments  |
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|             | <p>unacceptable if these actions could cause bad impression about us<sup>5</sup>. Y.Rabin opinion "Not every thing which is legal is also wise to do" Strashnov was asked would it be possible to clarify and simplify legal situation annexing Gaza, Judea and Samaria?</p> | <p>discretion and on so-called "public opinion" razed to the ground the clear distinction between immoral/ illegal and moral / legal deeds;</p> <p>(3) He paid our attention on the fact: without targeting decisive military victory in the war (war on terror including) which explicitly demonstrated by territories annexation any measures / actions in the mode of law enforcement are doomed to failure;</p> <p>(4) Strashnov, answering on annexation option question, repeats leftists' argument (proven to be failed) of "Demographic threat"<sup>8</sup> and stressed necessity to grant voting franchise to Arabian population (as if Universal Suffrage is unavoidable option and as if Estonian and Latvian experience of 1990-ties never existed<sup>9</sup>).</p> |
| <b>Adv.</b> | Targeted killing – example how new law could   | Pnina Baruch insisted we needn't to change Law of war because all   |

<sup>6</sup> Simply speaking, the International Law is not something written and published, it is current image or platonic "Ideal of international Law" kept in Judges' mind at the moment. This approach reminds us concept of Constitution and constitutionalism coined by ex-chief justice Aharon Barak. In his vision, Israeli Supreme Court is the only body in charge with Constitution's formations through and by the Court precedents' decisions, so absence of the written text of Constitution is, in some sense, an advantage of our legal system. See his books "The Judge in a Democracy" Princeton University Press, 2006 (for example, at p. 9 – the case in the US Supreme Court description pictures Judges' almost full discretion in shaping the constitution). See also critics of Barak activism by (US) judge Richard Posner and further discussion: pro-Barak Barak Medina (Hebrew University) <http://ssrn.com/abstract=992972> and contra Barak – "Barak's rule" by famous conservative US judge Robert H. Bork <http://azure.org.il/article.php?id=34>. In our context one could guess the closest prototype of "Ideal International Law" of war more or less reducible to 1977 Protocol to Geneva convention. The protocol which never been ratified by Israel as well as ICC statute.

<sup>7</sup> Joining ICC is subject of leftist interest groups obsession – se Haaretz 2010 editorial with the only argument "to join enlightened nations".

<sup>5</sup> Then he finished, citing Golda Meir "Better have a bad press than good epitaph", disavowed his own point.

<sup>8</sup> See for example: A Jewish Majority in the Land of Israel The Resilient Jewish State <https://www.academia.edu/4745349/> and Demographic Trends in the Land of Israel (1800-2007), 2011 Update <https://www.academia.edu/3330335>

<sup>9</sup> See for some details: Democracy of 'Taxation-Redistribution' and Peacetime Budget Deficit at <http://ssrn.com/abstract=2367861>

| Speaker   | Key theses  | Comments   |
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| <p><b>(military lawyer) Pnina Sharvit Baruch,</b><br/>former head of the IDF's International Law Unit</p> | <p>be developed 2<sup>nd</sup> Intifada</p> <p>Law enforcement or Arms conflict situation?</p> <p>1- Arrest needed</p> <p>2- Kill 'em all</p> <p>We decided here is 2002 – the (2) situation</p> <p>So arrest is not relevant and you are allowed to kill</p>   | <p>changes will turn against us. Her approach are quite common for all this group. Her most important (useful) idea is: our decisions shapes International Law so to create precedents is most efficient way to reach our ends.</p>  |
| <p>Other participants – <b>military lawyers</b></p>   | <p>They delivered message which fits their core interest to preserve this comfortable for them situation from changes: the International Law is not for change; IDF and US Army should pay the price. These Armies must follow the Laws and even should bound themselves harder than Law's requirements (not all legal actions are the wise actions – Amnon Strashnov). Otherwise International community would throw it's support behind HAMAS and would go hostile to Israel.</p> <p>So the Law of war in, military lawyers' opinion,</p> | <p>Military lawyers currently are enjoying unprecedented power in the US Army and in IDF with zero responsibilities – like early stage Red Army "political commissars". So in their best interest is to preserve current enforcement practices against the armies of Israel and US.</p> <p>Their claims to "public opinion" isn't impressive because leftist journalists and European bureaucrats are hostile to US and Israel irrespective the course of events.</p> <p>The terrorists couldn't be bound by any ethical or legal norms, but resource scarcity and fear of retaliation only.</p> <p>Losses in resources, losses in territories under the absence of any indications of successes will annihilate their credibility in the terror sponsors' opinion and their legitimacy in population's (under their</p> |

| Speaker  | Key theses   | Comments   |
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|  | <p>is totally exogenous for IDF =&gt; in some sense not matter (we can't / shouldn't influence).</p> <p>Very idea of the conference is dangerous (as Hamas will use the conference discussion for its; propaganda).</p> <p>The Alive Shield is not good practice, but the organizers only could be accountable for. We must hunt after them and to bring them to the Justice</p> | <p>control) opinion.</p> <p>The session's moderator Harel Arnon asked a question was left unanswered by participants: how the people of post-modern, denying any universally binding moral values could reference on these values in support of their position (IDF critics etc)? Why we should take seriously moral claims of universal moral values deniers?</p> <p>The costs of hunting of the alive shield organizers (to say nothing about probability they will be found guilty and not will be changed for hostages after that, so overall chances to bring them to the Justice are laughable)</p> <p>We are restraining ourselves from discussing the Morality of requirements, posed by lawyer who not bearing his/ her personal risks of hunting and bringing terrorists to the Justice.</p> |
| <p><b>Colonel Richard Kemp</b><sup>10</sup>, former commander of the British forces in Afghanistan</p> | <p>Frank Edward Kitson delivered "best practices" and explained how to win against this sort of the enemy (Kenya).</p> <p>ICC and European institutions are deeply politicized and hostile to fighting armies of</p>   | <p>Kemp stressed the problem of powerful negative incentives created by powerful special interest groups in the UK.</p> <p>As a result, the cost to serve and to fight for victory is rising.</p> <p>Kemp "disagrees with General McChrystal on courageous restraint. The willingness to sacrifice soldiers to win hearts and minds among civilians</p>  |

<sup>10</sup> <http://israelawcenter.org/wp-content/uploads/2015/01/Colonel-Richard-Kemp.pdf>



| Speaker | Key theses  | Comments  |
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|         | <p>Democracy.</p> <p>British leftist lawyers are seeking any opportunity to sue army to extort money from the budget.</p> <p>We can't afford just stop to fight because of "alive shield" in front of us...</p> <p>He supports the point on values of lives: population loyal to the enemy can't enjoy protected status; it is crystal clear for the case of volunteers of the alive shield. They are legitimate military goal.</p> <p>His priorities matches Bar Yehoshofat's priorities – se below.</p> <p>We can't to restrain our soldiers to "win hearts of population". Afghan and Iraq population's experience and traditions shaped another approach to assess the ruler.</p> <p>So sometimes commander have take risks and</p> | <p>was “not entirely wrong but was slightly flawed,... Kemp insists, we can't ignore logic of local population. So, " The Afghans don't have the same mentality as us. They respect strength and detest weakness. If they see U.S. forces withdrawing because of “courageous restraint,” they will see weakness. And then they prefer that the Taliban should be in power because that group’s fighters never show restraint. They see the Taliban as the one that will take control. ”<sup>11</sup></p> <p>Political leaders of the US and UK proclaimed they are not going to colonize "Home of Islam" = they are ready to escape ASAP. One couldn't send the more powerful message, encouraging signal to militant terrorists' groups to go on, to wait until enemy will disappear themselves and then to reestablish their control over horrified population . This was a "powerful" message to the population "we are restraining against our enemies and we are looking forward to escape soon, so you can't hope to be protected by our superior forces".</p> <p>Compare with Max Boot:</p> <p>"In reality, the populace will embrace the government only if it is less dangerous to do so than to support the insurgency. That is why</p> |

<sup>11</sup> <http://israelawcenter.org/wp-content/uploads/2015/01/Panel-41.pdf>

| Speaker   | Key theses   | Comments  |
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|   | responsibility for necessary actions.  | successful population-centric policies aim to control the people with a 24/7 deployment of security forces, not to win their love and gratitude by handing out soccer balls, medical supplies and other goodies." Max Boot (Boot, 2013)   |
| <b>Lieutenant General David P. Fridovich,</b><br>former Deputy Commander of US Special Operations Command | Rules of Engagement (RoE) are matter. He delivered example of 2001 Philippines campaign.<br>Amendments in the RoE changed things to better.<br>Fridovich supposed, one can't to deter suicide terrorist. | Restrictive legal environment prevented the US Army's efficient actions. So during Paul Wolfowitz (then Deputy Secretary of Defense) visit when visitor asked general: "... so, what do you need from me? ... And we had a list of things, and it wasn't equipment.<br><i>We said, look, the rules of engagement said that we can only stay at the battalion level - battalion level is very, very constraining - but that's all where we can go to train..."</i> And he said will the change that you are asking for be accepted in Manila?<br><i>And the answer was yes. He said okay.</i><br><i>So he went back and, according to legend, he waited until the Secretary of Defense was on leave and he signed the new rules of engagement. He didn't have to explain it and, you know, things got much better there. We did recover the hostages. One was alive..."</i> <sup>12</sup><br>Regarding impossibility to discourage and to deter suicide terror: 1) The terror organizers are not suicide bombers; 2) the clear and |

<sup>12</sup> See Fridovich speech's transcription at <http://israelawcenter.org/wp-content/uploads/2015/01/Fridovich-Transcription.pdf>

| Speaker   | Key theses  | Comments   |
|---|---|--|
|   |   | undisputable defeat itself is powerful means to discourage every terrorists – see for details notes below.   |
| <b>Ran Bar-Yoshafat</b> , a former IDF combat soldier (sergeant) and an attorney and policy expert; | <p>My priorities are (1) to complete the mission – the highest one (2) to return home alive (3) to minimize collateral damage<sup>13</sup>.</p> <p>The civilian losses minimization could harm mission completion (it means the priority harms Israel civilians' safety) and IDF soldier's safety (aims (1) &amp; (2) ).</p> <p>Shooting from the mosque case till IDF platoon has being waiting for permission to return fire they lost soldier dead.</p> <p>Normal approach must be: you are under fire – shoot back (return fire).</p> | <p><i>"His group was shot at from a school. In general, he said, "you know that the vast majority of people in a school are children." Usually IDF soldiers must take cover and not fire back. This incident occurred at night and the group responded."</i><sup>14</sup></p> <p><i>"...soldiers are not stupid, he said. "The problem is that you will always have more circumstances than rules." And</i></p> <p>Soldiers must follow the automatic procedures in which they were trained, so these procedures need to be simple to become subject for training.</p> <p>American teens' question: "Why you not fired terrorists' hands instead to kill'em?"</p> <p>A door opens and you see a 10-year-old kid holding a gun. Do you shoot or do you not shoot? You have three options: Your soldiers get shot, you kill an innocent kid and you kill a non-innocent kid. You</p> |

<sup>13</sup> Compare with "We must fight the enemy even if they are hiding out among civilians and even if those civilians will be harmed. Every mother in Israel should know that the lives of her children take precedence over the lives of her enemies" (Feiglin, 2013, p. 327 ("Moral Warfare" article, April 2002))

<sup>14</sup> <http://israelawcenter.org/wp-content/uploads/2015/01/Panel-41.pdf>

| Speaker | Key theses   | Comments  |
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|         | <p>One could see the fire splashes only at night shooting. How one could measure "proportionality" then?</p> | <p>shoot and the kid is dead. You check the gun – and it is not loaded.</p> <p>Being provided by input information by probability to be killed (your friend killed already" the same teens corrected their attitude quickly and side position "to shoot him now").</p> <p>Bar YOSHAFAT proposed ideas which are quite practical and applicable for first –round discussion of future legislation:</p> <p>The problem of lives priorities to be explicitly written in the law</p> <p>RoE approved by executive power must be as flexible as possible until they aren't contradict three-level priorities system: Israel civilian 1<sup>st</sup> priority; IDF soldiers the 2<sup>nd</sup> and enemy's loyal or controlled population 3<sup>rd</sup>.</p> |

# Selected relevant issues not covered by the conference participants

## *How to deter terrorists*

How really one could imagine to deter terrorist ready to suicide and happy to die for 70-virgin paradise?

(1) Terrorists leaders and organizers sometimes die<sup>15</sup> but never as a suicide martyrs. So they could be discouraged by credible threat of annihilation.

(2) Potential suicide bomber, volunteering "martyr" is encouraged, first and foremost, not necessary by dreams of paradise and virgins. Public support, examples of previous suicide attackers: their posthumous reputation, glorification and benefits for the family could be taken into account generally.

The image of loser, who joined horribly failed military enterprise, caused damages in the "Home of Islam", punished family (family home destroyed, family stripped of regular incomes and deported) could change incentives drastically, to balance great passion for the virgins.

First and foremost obvious military Defeat (territorial losses<sup>16</sup> are much more important than casualties because it would interpreted as religious failure), posthumous humiliation instead of currently observable glorification; damages and losses for terrorist's Family instead of currently observable incomes (for example, PA provided salaries and compensations<sup>17</sup>) can deter terror "supply", discourage new recruits for suicide bombing etc.

The proofs: cases of Sri Lanka, Chechnya, Palestine 1936-39 riots failure, Kenyan mau-mau rebellion defeat and more (Henkin, 2006).

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<sup>15</sup> Ahmed Yassin, Hamas leader annihilated March, 22 2004; Abdel al Rantisi, Hamas leader annihilated April 17 2004; Hamas threatened "to open hell's gates for Israel after, but definitely not succeeded.

<sup>16</sup> All "Rule of Force" cultures and regimes, where government legitimizes herself by successful violence are vulnerable, are critically endangered facing obvious military defeat – like Nazi Germany and her allies (1945), Argentinean Junta (1983), etc

<sup>17</sup> Palestine Media Watch PA salaries to terrorists 2011-2015  
<http://www.palwatch.org/main.aspx?fi=1005>;

## ***Presumption of Innocence for Soldier and Jewish Tradition***

Jewish tradition requires not discourage the rescuer (see for example Sanhedrin tractate sheets 73b, 74a). Excessive defense norm formally exists, but surely not enforceable (Yoav vs. Avner ben Ner case).

If and only if attacker (invador) couldn't made impression of real threat and, in spite of his obvious harmlessness, he was killed, the killer could be punished<sup>18</sup>.

Genuine Jewish Law of War tradition looks harsh<sup>19</sup> but proven be efficient, pragmatic and irrefutably moral. In its' framework all mentioned above discussion would be totally needless. The presumption of innocence (defendant's rights) in Jewish law are very well preserved (court seating started from declaration – "if you are not guilty you are safe and will be acquitted"; every sage's (judges) disciple allowed to seat in the hall can ask for floor and deliver arguments in defense only etc, so initial implicit assumption is – the defendant is innocent).

The idea to undermine presumption of innocence (defendant's rights) in cases against army officers and soldiers is totally unacceptable judicially and morally. This very idea, as a matter of fact, enjoys broad support among military lawyers (for example, huge majority of these officials believe they allowed to measure proportionality, to access necessity / excessiveness of use of force without their own personal combat experience, to say nothing about lack of knowledge / information about specific situations).

### **The goals and the ends of War: the Victory**

To win or to decrease intensity of enemies' attacks is the best goal of the modern army?

The army can't win if this goal is broadly considered as outdated.

Without clear indications of victory / defeat impossible to create and to hold on the credible threat.

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<sup>18</sup> "If the robber is found while tunneling and is beaten and dies, there is no bloodguilt for his death. But if daylight shines on him there is bloodguilt in this case. ..." (Exodus 22:1-2)

<sup>19</sup> See for example lecture by Rabbi D. Bar Haim <https://www.youtube.com/watch?v=6cePM18Yvp8>; See also Levin, Shapira, 2012.

IDF (US forces, other Democratic country's army) decisive victory / defeat of the terrorists and rouge state army is the best way to discourage terrorism, including suicide terrorism, as it was mentioned above.

Islamists' defeat, territories lost, posthumous humiliation, the family/kin's material losses, obligations to cover losses of families suffered from terror are the most natural way to undermine incentives of "terror – supplying machine".

All these goods are achievable if ours victory / theirs defeat are targeted and prioritized explicitly.

### ***Annexation is a most powerful indication of Victory and as sign of rightness***

Disputable territories annexation (or even previously legitimately possessed by the country provided support and save heaven for terrorists) is the necessary ingredient of the cure (component of treatment) against terror.

Israel – Gaza case:

"There are two factors," Feiglin tells me about the conflict in Gaza. "Historically, Gaza has always part of Israel. There is no difference between Gaza and Yafo, for example, except that Yafo was recaptured in 1948. The whole discussion should be about rightness, not about occupation. Gaza belongs to the Jews."<sup>20</sup>

Annexation of Lands of Judea, Samaria and Gaza would mean:

- in Human rights sphere: normalization of legal status of local population, permanent resident rights and scope of civil (not political) rights for all law abiding population (i.e. obvious benefits and improvement);
- Military and police control, security situation normalization: permanent presence of IDF garrisons and police stations in every town means drastic rise in terrorists activities' costs and drastic fall in risks of cooperation with Israel authorities (security services and Police) for Arabian population;

However, the principal significance of annexation consists in message of undisputable defeat and weakness of terrorist organizations and respectively, complication of recruiting and fundraising for them.

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<sup>20</sup> <http://www.jewishisrael.org/dennis-mitzner-analyzes-moshe-feiglins-policies-jerusalem-post/>

More detailed analysis of conflict between artificial (new) and genuine moral approach to the military service and Law of war presented at Yanovskiy, Shulgin, 2013, section "New Morality for Army and failure to supply pure public goods".



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