
January 24, 2024

To:

Baruch Shay, Head of the News Division, Israeli Public Broadcasting Corporation

Avi Weiss, CEO of Channel 12 News

Or Celkovic, CEO of Channel 13 News

Danny Zaken, Commander of Army Radio

Gal Berger, Director of Reshet Bet

We, lecturers in international law and the laws of armed conflict at law schools in Israel, express deep concern in light of calls by public figures, including former senior IDF officers, to carry out actions that are contrary both to the laws of armed conflict under international law and to international criminal law. In this context, we believe that the media must not give a platform — without any challenge — to individuals advocating for such actions, regardless of their past status in the security forces or in government, however senior that may have been.

Given the recent airing of such calls, it is our duty to emphasize the following principles, which the IDF must uphold in its difficult war against Hamas forces in Gaza. We call on you, as those with special responsibility in conveying reality to the public, to uphold these principles in your journalistic work and to challenge interviewees who advocate for actions in violation of them.

1. The overwhelming majority of Gaza residents are civilians

The most important rule in the laws of armed conflict is the duty of the parties to distinguish between combatants and civilians. Only members of the fighting forces of Hamas and other armed groups, such as Islamic Jihad, are not civilians. All other residents are civilians. We do not know, and cannot know, the extent of residents' support for Hamas or for its war against Israel. However, so long as they are not members of the fighting forces, the support of residents for Hamas does not remove their civilian status. Civilians lose their protection only to the extent, and for the duration, of their direct participation in hostilities.

2. Starving civilians as a method of warfare is prohibited

International law imposes an absolute prohibition on the use of starvation of civilians as a method of warfare. This prohibition is enshrined in Article 54(1) of the First Additional Protocol to the Geneva Conventions, and is considered a rule of customary international law that binds even states not party to the protocol (such as Israel). The crucial element of this prohibition is the use of starvation — i.e., as a tool in war against the enemy. Therefore, proposals to block the supply of food and water to the civilian population in Gaza in order to pressure Hamas are contrary to international law, and their implementation may incur international criminal liability for those carrying them out.

It should also be noted that attempts to cloak a measure whose purpose is to starve the population as a “siege” on the enemy's fighting forces — which in certain circumstances may be lawful —

does not negate the unlawful nature of the measure. A clear distinction must be made between a siege intended to induce the enemy's forces to surrender, and a "siege" intended to cause suffering to civilians so that they pressure the fighting forces to surrender. Even when imposing a siege on the enemy, steps must be taken to prevent harm to civilians affected by it. In particular, if a siege on the enemy's fighting forces causes disproportionate incidental harm to civilians, it ceases to be lawful. Furthermore: if the goal of the measure is the starvation of civilians, the opening of an escape route from the area does not legitimize the use of that measure.

3. The duty to allow humanitarian aid to civilians

Large parts of the international community still consider all of Gaza to be occupied territory. Even though there are differing opinions on this issue, it appears to us that insofar as the IDF has effective control over certain areas in northern Gaza, the law of occupation may apply to it. Under this law, the occupying army is obligated to ensure regular provision of food, water, and medicine to the civilian population under its control.

Even if we assume that no area in Gaza is under the IDF's effective control, the IDF is still obligated to allow the provision of humanitarian aid to the population, including food. The IDF may take steps to ensure that the aid is intended for the civilian population and not for Hamas fighters, and that it does not include items that could assist Hamas fighters in their war against Israel. However, it must be ensured that such control measures do not, in practice, prevent the aid from reaching those in need.

We are fully aware of the challenges facing IDF officers and soldiers in their war against a brutal enemy operating from within the civilian population. We are also fully aware of the vital need to bring about the swift release of the hostages still held by Hamas and other groups, and support increased efforts to secure their prompt release.

However, Israel is a state governed by the rule of law. The country's leaders have repeatedly declared that the IDF conducts its war in accordance with the rules of international law. Representatives of the state have reiterated this claim in their appearances before the International Court of Justice in The Hague.

4. The role of the media in a democratic society

The fundamental premise of a democratic regime is that the public gives its elected officials a mandate to act only within the law and subject to the rule of law. When the guns roar, the media is called upon to act all the more critically, independently, and in pursuit of truth, to ensure that democratic principles and the rule of law are not trampled under the cover of war.

In addition, in a democratic society — particularly one at war — the media bears a special responsibility to present the facts as they are, and not to give an unchecked and unchallenged platform to figures who mislead the public regarding the legal situation. In Israeli democracy, the public's right to know the truth about what is being done in its name and on its behalf carries special weight. In Israel, many citizens are soldiers, in mandatory and reserve service, who risk their lives for the public and its security. In this sense, the legality of the army's conduct in war is not merely a matter of security or international law — it is a fundamental issue for a democratic society that must act for its citizens according to law and subject to the rule of law.

Signed:

Prof. Aeyal Gross

Dr. Natalie Davidson

Prof. Tamar Hostovsky Brandes

Prof. Guy Harpaz

Dr. Limor Yehuda

Dr. Doreen Lustig

Prof. Eliav Lieblich

Dr. Tamar Megiddo

Prof. Itamar Mann

Dr. Michal Saliternik

Prof. David Kretzmer

Prof. Yael Ronen
