Attorneys at War: Inside an Elite Israeli Military Law Unit

June 15, 2015

By Willy Stern

The Weekly Standard

<http://m.weeklystandard.com/articles/attorneys-war_964911.html?page=1>

For three straight days starting on July 15, 2014, the Israel Defense Forces (IDF) made thousands of phone calls to the residents of Shejaiya in northern Gaza. The locals were encouraged to evacuate their homes before IDF tanks rolled across the border. Tens of thousands of leaflets were dropped into the village. These leaflets suggested both a safe evacuation route and safe destinations to head for within Gaza City. The IDF sent similar messages daily via local television and radio. But that’s not all. The IDF also made dozens of phone calls to Shejaiya’s influential citizens, asking them to get out the word of the impending IDF incursion.

Thousands and thousands of warnings were given. The Israeli military authorities essentially told the enemy where the IDF troops would enter the village and when. And for three days, Hamas fighters, no dummies, took full advantage. They dug their own forces in deeper. They activated booby-traps. They hid IEDs. They got snipers into perfect positions. They brought in additional fighters. They pre-positioned weapons. They readied their terror tunnels.

At this point, it was abundantly clear that IDF commanders had gone beyond any mandates that international law requires to avoid civilian casualties. No matter. Putting their own troops at even greater risk, IDF commanders decided to wait yet another day to allow more time for civilians to get out.

Then all hell broke loose. Shejaiya was the location of nasty urban fighting between Hamas and the IDF during the 2014 summer conflict. Sixty-seven Israeli soldiers would die in that war, and many of the injured are still in hospitals.

One who survived is Ben, a deft-thinking IDF attorney who grew up outside Sydney, Australia, swimming off Bondi Beach. Ben (IDF policy does not allow the use of some last names) is standing today on a hillside near the Israeli village of Mefalsim, looking some 500 yards across a verdant field into the Gaza strip. He’s viewing a peaceful scene​—​the very same Gazan town of Shejaiya. Ben ponders the $64,000 question; namely, Does he think the IDF does too much to prevent civilian casualties? He stares into Gaza for a long time. A very long time. “Who knows? I can tell you that I am proud that we do what we do.”

What exactly is it that Ben and his colleagues do? Ben works in the IDF’s international law department, essentially the best little niche law firm you’ve never heard of. These distinguished attorneys carry assault rifles, get shot at frequently, and sit at the cutting edge of the law of armed conflict. The unit goes by “Dabla,” the acronym for the Hebrew name of the international law department; Dabla, in turn, sits inside Israel’s equivalent of the U.S. Army’s Judge Advocate General’s (JAG) Corps.

“Dabla is the Harvard Law School of the international legal community in Israel,” says Joel Singer, a partner at Sidley Austin in Washington, D.C., and a former head of this prestigious unit. “But it’s more than that. Alumni of this unit go on to be the elite of the elite.” The Dabla attorneys are a remarkable, if under-recognized, breed of officers—​extremely well educated and able to provide real-time advice on a range of international legal issues. Dabla has never lifted up its skirts and let a journalist peek inside the unit’s decision-making operation before.

But to understand Dabla is to understand the insanity of the avalanche of criticism raining down on Israel for the way its military fights. Let’s start by looking at two extraordinary documents.

The IDF uses the first document​—​called a “target card”​—​when commanders prepare strikes against enemy targets. During the Gaza conflict, such targets included a weapons cache hidden on the second floor of a densely populated four-story residential building, a command-and-control center located in a mosque, and a surveillance platform hidden inside a hospital.

The cards contain a wealth of information about the targets from the intelligence and operations units. Before any attack can go forward, Ben and his fellow IDF legal advisers have to sign off. That’s when things get interesting. The lawyers must put their own check mark on the card​—​they call it a “tick”​—​indicating that it’s a lawful target.

Back to the Gaza conflict. After IDF professionals​—​weapons experts, operational planners, and so on​—​and the Dabla lawyers have all signed off on a target card, the strike is approved. As far as Dabla is concerned, anyway. The final decision rests with the commander.

Here are just some of the steps and warnings designed to prevent civilian casualties that might take place before missiles start flying: The IDF may, variously, gather detailed intelligence on who lives in the building; call or text those who reside in a particular building with a warning that a strike is coming; drop Arabic-language leaflets over the area warning residents; fly a drone with sophisticated surveillance cameras overhead, as an extra set of eyes to make sure the civilians have vacated; drop a small charge on the roof which shakes the building, as a final warning signal that a strike is coming; and employ a highly precise and carefully chosen weapon system which, IDF lawyers and commanders hope, would destroy only the weapons cache but not surrounding rooms.

Talk about signaling your intentions to the enemy. How can any military win a war when it decides to fight this way? No matter. That is how Israel chooses to fight. In an effort to go overboard to comply with the law of armed conflict, the IDF prepared and used more than 4,000 of these target cards for planned strikes during the 50-day Gaza conflict in July and August 2014. Ben and his Dabla colleagues put a tick on every one that met their standards.

But here’s the kicker: Although most strikes were carried out without harm to innocent bystanders, IDF field commanders nixed other approved strikes in Gaza, despite these multiple layers of precautions to prevent civilian casualties. Why? “There is no symmetry in international law,” says Lt. Col. Robert Noyfield, the Dabla attorney in charge of targeting. “We do it out of moral obligation; we do it for ourselves. We are a democratic country that abides by the rule of law. By doing so, of course, we also hope to avoid criticism from the international community. How can we be faulted when abiding by the law?”

But faulted they are, despite going far beyond what international law requires, in ways that are surprising and maybe a bit meshugge. This scribe has spent time downrange in Iraq and Afghanistan with U.S. troops, who are known to chafe under rules of engagement propounded in part by our own Pentagon lawyers. But after two weeks embedded with the Dabla attorneys and meeting with front-line commanders, including drone pilots, tank drivers, paratroopers, and infantry soldiers, it’s hard not to be a tad taken aback by the IDF’s legal zeal.

Virtually every Israeli has lost at least one buddy in war. Israeli soldiers die hard, to snipers, IEDs, mortar fire, and so on. But one Israeli soldier after another still weighed in, quite sincerely, indicating that he sees civilians in Gaza as victims of Hamas terror. Captain Dori tells a story. He’s camped out at an obscure IDF base deep in the West Bank overlooking Hebron. Dori is a tank commander in the 188th Armored Brigade and another IDF officer whose full name I cannot use. “We were involved in fierce fighting in the early days of the ground incursion into Gaza,” Dori says. “I was driving my tank, a Merkava Mark III, down a very tight spot, and we were taking lots of incoming. We knew where the fire was coming from and prepared a shell. Just then, a man ran out of his house, immediately in front of my tank. I don’t know who was more surprised, he or I. I had my head up above the tank, exposed, looking around. He had an AK-47 and started shooting at me. Bullets were pinging off the tank. I could see his eyes. He was maybe 15 meters away. Luckily for me, he missed.

“Then he ran back into the house and came out 10 seconds later into the middle of the street carrying a boy of 8 or 9 years. He used that kid as a human shield. The boy had on a white tank top and no shoes. I had heard of Hamas fighters doing this, but it still shocked me. Of course, we stopped firing. The man got away, and left the kid in the middle of the street. I can still remember the kid’s face; he had no idea what was happening. We try very hard only to injure terrorists and to allow civilians to live. Our enemy does the opposite; they want to kill civilians.”

Other examples abound in which Israelis delayed or called off legitimate strikes against enemy combatants to protect civilians. Take the July 9 case in Gaza City that involved a car marked “TV” to mask the fact that the vehicle was, in fact, carrying Hamas fighters and weapons; nonetheless, the Israelis delayed the attack. Retired general Gadi Shamni, formerly the IDF’s military attaché to the United States, says that “ultimately, we go the extra mile to protect civilians because of Israel’s values, our souls, our morality.”

Speaking of morality, let’s turn to the second document. This is a “doctrine manual” prepared by Hamas and captured by IDF ground forces in Shejaiya in early August. The document advocates that fighters embed themselves among Palestinian innocents, in the hope that the IDF will kill civilians. Translated from the Arabic, the manual proudly proclaims, “Collateral damage to civilians and civilian property increases the hatred of the citizens towards the attackers and increases their gathering [support] around the city defender [Hamas].”

There you have it: Hamas’s playbook calls for helping to kill its own civilians, while the IDF’s playbook goes to extreme​—​some say inappropriate​—​lengths to protect innocent life in war.

Buried deep in an old bunker at a Tel Aviv military base is the IDF’s visual operations room. Sit for an hour and you can watch live black-and-white footage of Hamas fighters in Gaza using random kids as human shields while bullets are flying; firing weapons from the second floor of al-Wafa Hospital (used as a command-and-control center as well as a surveillance post); and jumping into a clearly labeled Red Crescent ambulance to escape fire from IDF ground troops.

Then there’s the time that Palestinian families were seen scurrying up to a rooftop right after the IDF had warned civilians to evacuate. Why? Who knows for sure. The most likely explanation is that savvy Hamas commanders knew a win-win situation when they saw one. Hamas fighters have been known to force families into harm’s way. Hamas operatives know that IDF commanders will likely call off a strike if many civilians are present. But if the civilians are killed, well, there will be graphic photos to show off to sympathetic journalists. “We can prove we are in the right because in many instances the video is there for all to see,” says Lt. Col. Limor Gross-Weisbuch, who runs the IDF’s video unit. “But the outside world doesn’t seem to care.”

She is, sadly, correct. Surely, the world has been turned upside down. A powerful coalition of self-righteous journalists, pro-Palestinian NGOs, left-leaning academics, biased human rights organizations, and, of course, the United Nations has looked at some situations and routinely accused the IDF of perpetrating war crimes, of murdering innocents, of gross violations of international law.

Witness a U.N. Human Rights Council decision to create a commission of inquiry into the Gaza conflict. The timing was a bit off. The commission was created before the conflict had ended, yet still managed to condemn “widespread, systematic and gross violations of international human rights” and “disproportionate and indiscriminate actions” against civilians. The alleged bad guys? Yes, the IDF. There is no pretense of fairness or intellectual honesty. What proper international inquiry comes to conclusions before the investigation has taken place?

Scads of petitions to charge Israeli soldiers with war crimes are being prepared for filing at the International Criminal Court (ICC) in The Hague. The charges are mostly trumped up and ridiculous, but IDF lawyers take them seriously. It’s for this reason that journalists are forbidden from using the full names of many soldiers. Dabla attorneys fear that Captain Ben—​and thousands of others like him wearing the IDF uniform​—​might be arrested for alleged war crimes if vacationing in Europe.

It's worth noting that Dabla attorneys do far more than sign off on targeting cards and provide advice on rules of engagement and proper methods of combat. They are probably unique among military lawyers in the scope of their involvement within the IDF. Wander around the unit’s offices on the third floor of a drab concrete building inside IDF’s central command base in Tel Aviv and you’ll hear lawyers providing advice on proper use of weaponry, treatment of detainees, humanitarian issues like getting grocery items to Gazan residents, working with U.N. peacekeeping missions, even relationships with foreign militaries and the tricky details of peace agreements. Dabla attorneys are there when Israel is sued in Turkey for intercepting a flotilla trying to smuggle arms into Gaza, and when anti-Israel groups try to use foreign courts to obtain arrest warrants against IDF officers.

Yet in the court of international public opinion, the IDF is considered lawless. “I call it the ‘bigotry of double standards,’ ” says Geoffrey Corn, a leading academic expert on military law who coauthored a thoughtful report on the 2014 Gaza conflict for the Jewish Institute of National Security Affairs (JINSA). Legions of so-called experts on military law have sprung up in the post 9/11 milieu, and many are fairly naïve about the realties of war. Says Corn, a retired U.S. Army officer, “They see images of dead civilians and suppose, quite wrongly, that Israel is at fault.”

The definition of proportional strikes against those directly participating in hostilities is pretty easy to understand for those who bother to read the law. Strikes against lawful targets are fair game as long as at the time the decision was taken, it was considered that the collateral damage from the strike would not be excessive in relation to the military advantage anticipated from the strike. Sounds simple.

But whether rooted in naïveté or bias or outright antisemitism, many international groups remain predisposed to blame Israel. The sad fact is that war is terrible. People get killed. But Hamas knows that if its clever propagandists can show enough photos of dead civilians​—​even those unintentionally, if lawfully, killed​—​well then, it’s easy to convince both sympathizers and suckers that Israel must be guilty of war crimes.

This logic is unadulterated malarkey. A senior U.S. military lawyer who has visited Israel and is familiar with IDF operations explains, “People expect zero civilian casualties all the time. That’s not what the law requires. War is an ugly business where sometimes innocents get hurt.”

There is a term for the wrongheaded reasoning that sees dead civilians and concludes somebody must be guilty of something awful. It’s called “cumulative collateral damage.” The theory, used against Israel by its enemies, is that if hundreds of civilians die, even if every proper precaution has been taken, then Israel must be guilty of war crimes.

This radical interpretation of the law of armed conflict is gaining traction in some circles. Still, it’s plain nonsense. Actions are properly assessed per attack, not per war. Further, intentions matter. A commander can’t possibly know everything in the fog of war; sometimes civilians pop up in places no one can predict. The law is pretty straightforward on the fact that what matters is whether the commander intended to kill civilians.

Hamas knows it cannot win a military conflict with Israel so it sets different objectives; a primary purpose of the latest Gaza conflict, and one at which Hamas was quite effective, was, according to the detailed 75-page report prepared by JINSA, building “a well-orchestrated information campaign to distort the media’s understanding and reporting of the conflict in order to undermine Israel’s international legitimacy.” No surprise: This media strategy worked.

How about an investigation of Hamas’s war crimes? Don’t hold your breath, even though Hamas wrote the book on violating the law of armed conflict. Explains the JINSA study, “Hamas deliberately and unlawfully placed command and control, firing positions and logistical hubs underneath, inside or in immediate proximity to structures it knew the IDF considered specially protected, to include hospitals, schools, mosques, churches.” Hamas is quite shrewd at exploiting the IDF’s adherence to international laws. Hamas is already designated a terror organization; what do they care if policymakers in Washington or Paris think they fight dirty?

IDF Captain Guy (again, no last name allowed for him) was the Dabla legal adviser assigned to the Erez border crossing in northern Gaza during last summer’s conflict. True to form, Guy’s advice appears to have gone beyond the requirements of international humanitarian laws. After hearing his legal opinion, the IDF facilitated ambulances for wounded Hamas fighters and even coordinated the movement of an Israeli tank so that Palestinian laborers could repair a damaged fiber optics cable for the Gazans.

Did Hamas return the favor? That’s a silly question. Guy’s office window is pockmarked with shrapnel holes. In the parking lot just on the other side of his window is a crater where a mortar exploded. The young captain spent much of the 2014 conflict sprinting into a nearby bunker; when the sirens went off indicating incoming rockets, he had maybe five seconds to get to safety. Hamas poured down rockets and missiles on the crossing, killing their own civilians and even knocking out a U.N.-run school.

“We go beyond our legal obligations,” says Guy, an ever-ready assault rifle strapped to his side, “because we care deeply about civilians. But we also see a bigger world of moral, humanitarian, and public relations considerations.”

A slight detour is needed back to Dabla and its 20 or so high-end lawyers. Like their counterparts in the United States, Dabla’s attorneys make a mere pittance of what they could be hauling down in the private sector. But there are distinctions. The first striking difference from, say, the U.S. Army’s JAG Corps has to do with Dabla’s authority. In the United States and other Western military chains-of-command, the attorneys work for, and are subordinate to, higher-ranked combat commanders. Not so in Israel.

Dabla attorneys report up the chain of command only to higher-ranking attorneys. Dabla’s lawyers don’t merely give advice to IDF commanders; their legal positions are binding on commanders. The power and influence of the Dabla attorneys have ballooned in the last 10-15 years. “Even today, you hear the occasional commander say that the legal advisers are a pain,” says Col. Avi Gil, a former combat brigade commander who today runs the Officer Training Academy in Mitzpe Ramon in the Negev Desert. “But 10 years ago, that sort of skepticism was the majority. Today, virtually all commanders think the Dabla attorneys are useful.”

Israeli scholar Yoram Dinstein, a distinguished expert on military law, has a more cynical theory: “As long as Dabla signs off on a military action, the commanders know they can always blame the attorneys if things go wrong.” Of course, that also means that the commanders tend to abide by Dabla’s advice.

Dabla’s existence is virtually unknown outside Israel; still, the unit’s attorneys can write their own tickets if they choose to leave military serv-ice. Daniel Reisner, another former Dabla chief and today a partner at Herzog, Fox & Neeman, Israel’s largest and most prestigious law firm, says there are good reasons Dabla attorneys are in high demand. “Dabla’s graduates share high IQs, have subject matter expertise, commendable work ethics, and are trustworthy,” says Reisner. “They have spent their careers making decisions where people can die when they get it wrong.” They don’t make many mistakes. It’s no surprise to find another former Dabla senior legal adviser at Harvard Law School, where Gabriella Blum is the Rita E. Hauser professor of human rights and humanitarian law.

The competence of Dabla’s attorneys rings clear, but a visiting correspondent is also struck by the attorneys’ eclectic backgrounds. Filling Dabla’s ranks today are a former corporate lawyer from Australia and a French attorney​—​a young mom, actually​—​who holds a master’s in international law from the Sorbonne. Then there’s the ultra-orthodox Jew who wears a yarmulke and tzitzit to reflect his religious beliefs. Another Dabla lawyer has movie star good looks and an incisive legal mind honed while earning a Ph.D. in international law from New York University.

Why am I not surprised to find an intellectually gifted philosopher-lawyer leading this unit? The current Dabla chief, Colonel Noam Neuman, not only graduated from the University of Virginia’s JAG School but also earned a master’s in philosophy from Bar-Ilan University in Israel. Dabla officers are not just academic nerds. Many have seen kinetic action in combat and speak the language of the battle-tested commanders to whom they offer advice. Take the case of the former combat soldier who proudly displays jump wings on his uniform from his time in the elite Golani Brigade.

Standing in the dust looking at enemy territory a stone’s throw away, Ben is asked why he was willing to leave a high-powered corporate law job to serve in the IDF, in a country where war can, and does, break out at a moment’s notice. “Israel is at the forefront of applying international law in real-life situations,” he explains. “We’re not sitting in lecture halls discussing these issues theoretically. We deal on a daily basis with everything from peace negotiations to targeted killings. Who would want to miss that?”

The primary real-life situation Ben and his colleagues return to again and again is protecting civilians. Nothing is trickier than figuring out how to avoid civilian casualties when fighting in urban areas, and when the adversary deliberately embeds itself in the civilian population. A young drone pilot and air force captain named Dan tells the story. He is based at Palmachim Air Force Base, which abuts sand dunes overlooking the Mediterranean.

During the conflict last summer, Dan was providing aerial surveillance of five presumed Hamas fighters who had been spotted sneaking out to a field. “They lifted what appeared to be a rocket launcher up from a hidden spot,” he says. “The IDF fighter pilot with whom I was coordinating was cleared ‘green’ to take these out these enemy combatants. I stayed on-station.

“Two seconds before the missile was to be released, I took another look and saw it was a hose they had picked up. They were farmers. My heart was beating like crazy. I called off the strike just in time. There is just no way that these civilians deserved to be hurt. They are decent people, caught in a horrific situation.” Like many young Israeli soldiers, Dan brings to mind less a hardened military man than the kid with thick glasses who sat next to you in 11th grade AP chemistry.

IDF lawyers open what they call an “examination” into every allegation of misconduct. No matter who files a complaint, it is thoroughly checked out and, when possible, a report written and released publicly. The impetus for such an examination could be a complaint from a garden-variety anti-Israel NGO or even a news report from a pro-Palestinian TV crew. An example: The U.N. Office for the Coordination of Humanitarian Affairs filed a report claiming that IDF forces had shot into a mosque in Jabalia in Gaza last July 31 and that shrapnel from those shells had hit a U.N. school, injuring 10 civilians.

The examination determined that Hamas, or another terrorist group, had launched the rocket in question from an area in which the IDF was not operating. (The IDF can pinpoint in real time where rockets and mortars are being launched.) The Palestinians shot up a U.N. school and then tried to blame the IDF.

Lest one worry that the IDF whitewashes these affairs, several files have been presented in which an initial finding showed enough evidence of possible wrongdoing by Israeli military units to refer the cases for criminal investigation. But these were a mere handful of the 126 so far under review.

No investigation is needed in the case of Staff Sergeant Addi. He graduated from high school in California in 2012, moved to Israel, enlisted in the IDF, and found himself entering Gaza on foot with his paratrooper unit on the third day of the ground war in the 2014 conflict. He spent 19 days in intense urban fighting. One day, his unit uncovered a booby-trapped floor in a tool shed that housed a hidden terror tunnel. A Palestinian farmer or his kids who happened to be walking by could have been blown to bits. Another day, Addi’s unit found a weapons cache with AK-47s, grenades, and missile launchers in a private home with young kids. He also came across an ambulance carrying explosives. “There’s no way that you can mentally prepare yourself,” he says, “for Hamas’s disdain for human life, even for their own people.”

Increasingly, the IDF, and Dabla specifically, have been taking grief from a surprising quarter for their unique policies on avoiding civilian harm: academics and lawyers who are otherwise friendly to the IDF, or at least not openly hostile. Take the case of Wolff Heintschel von Heinegg, a distinguished expert on military law at European University Viadrina in Frankfurt. Dabla recently brought this law professor, and other top military law experts from outside Israel, to further train IDF combat commanders in the intricacies of the law of armed conflict.

Speaking at a smallish military base outside Tel Aviv, the German lawyer acknowledged that the IDF went to “great and noble lengths” to avoid civilian casualties in Gaza and other recent conflicts. However, he believes that the IDF is taking “many more precautions than are required” and in doing so, he fears the IDF “is setting an unreasonable precedent for other democratic countries of the world who may also be fighting in asymmetric wars against brutal nonstate actors who abuse these laws.”

He’s not alone. When Pnina Sharvit Baruch, a former Dabla chief, attends legal conferences around the world, she says she faces “recurring claims” from other militaries’ legal advisers that the IDF “is going too far in its self-imposed restrictions intended to protect civilians, and that this may cause trouble down the line for other democratic nations fighting organ-ized armed groups.” Today, Baruch is a senior researcher at the Institute for National Security Studies in Tel Aviv.

Israel’s fight with Hamas is not just an example of classic asymmetric warfare, it’s also just plain nasty. Why? Hamas may be a nonstate actor but its militants have access to a broad array of sophisticated weaponry that is more typically found in the arsenals of nation-states. Either way, bad news for Israel.

And maybe bad news for other Western nations as well. “The IDF’s warnings certainly go beyond what the law requires, but they also sometimes go beyond what would be operational good sense elsewhere,” says Michael Schmitt, director of the Stockton Center for the Study for International Law at the U.S. Naval War College. “People are going to start thinking that the United States and other Western democracies should follow the same examples in different types of conflict. That’s a real risk.” Schmitt is the author of a just-completed comprehensive analysis of the IDF’s targeting systems.

There’s another risk to the preoccupation with protecting civilians. Some commanders and outside legal experts worry that Dabla attorneys risk discrediting themselves in the eyes of the major consumers of their advice, combat commanders. The commanders at some point may say, “Why? We went overboard to protect civilians last time and we still got criticized. What’s the point?”

A valid question, and one for which Colonel Neuman has an unequivocal answer. “We tell commanders what they need to do to comply with international law. We are clear with them that they don’t need to do more but in a lot of cases they do anyway.” Neuman, a gentle soul who radiates integrity, leaves no doubt he believes that it’s the IDF commanders​—​and not Dabla​—​who do more than what is required by international law.

Despite Neuman’s unambiguous response, ambiguity remains as to who is the driving force behind the IDF’s taking such extensive measures to minimize civilian casualties. The commanders say the lawyers. The lawyers say the commanders. The Naval War College’s Schmitt believes both fighters and lawyers in the IDF share responsibility for the high standards. Ultimately, does it really matter?

There’s one final risk to Israel that stems from this preoccupation with protecting civilians. This risk comes from the north, where Israel faces a far more dangerous enemy than Hamas. That would be Hezbollah, the militant Islamic group, supported and funded by Iran, that controls southern Lebanon. Hezbollah is exponentially stronger and better equipped than Hamas. It seems readily apparent that the IDF will not be able to use methods like individualized phone calls and “roof knocking” in combat with Hezbollah. Will IDF officers then get hammered for acting one way in Gaza and another way in southern Lebanon? It’s a good bet they will.

No matter. For better or worse, combat commanders and Dabla attorneys will bend over backwards to prevent civilian casualties. The concept is simply deeply embedded into the IDF culture.