Freedom of Expression Under Terror and War: A Question of Public Policy

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The open-door policy carried out by Israel Defense Forces Spokesperson during the second Lebanon war (July-August 2006) changed a long rooted policy of “security” being the magic word that kept the media mostly far from the arena of the actual fighting. As a matter of fact, many security matters were conducted beyond iron curtain. For many years, Israel’s citizens were used to learn about new appointments in the IDF (Israel Defense Forces), just via a dramatic announcement, by the IDF Spokesman. As a part of this policy, even as late as the late 1980s, security authorities waged a stubborn battle against publication of an article regarding expected changes in the Mossad’s leadership that was accompanied by analysis and criticism.

The article was due to be published by a Tel Aviv local newspaper, Ha’ir. At the time, local papers were not part of the “Censorship agreement” between security authorities and the media, by which matters were resolved “inside” without petitioning the High Court of Justice. This made a High Court of Justice ruling possible. The issue was heard by Justice Aharon Barak, a leading judge in Israel who became later the president of the Israeli Supreme Court. His judgment in 1989 created a new basis for the censor’s work1. The censor’s authority was limited to preventing publication only when it was “nearly certain” that the security information revealed would constitute a serious threat to state security.

The court’s ruling was based on a democratic viewpoint, according to which it is crucial to have a free interchange of opinions and ideas, especially when it comes to security affairs, because of their “existential” nature. Barak ruled that “due to the implications of a security nature for the life of the nation, it is important to leave an open door for discussions regarding security matters “.

This ruling contributed to the formulation of the “censorship agreement” that was rephrased on May 1990, according to which it is possible to prevent publication of information only when there is “near certainty of real injury to the security of the State of Israel.” The new agreement stated that the media would not be prevented from the right to petition the High Court of Justice, a principle that contains the basis for maintaining a proper balance between the freedom to publish information and security interests.

The ruling contributed to formulating a new comprehensive approach to “security matters” which ceased to be “magic words”. The authorities learned that it is not possible to prevent publication of information that is sometimes embarrassing or problematic, and it is also not possible to prevent critical articles, even during war and terror activities. In the recent Lebanon war the army adopted the concept of freedom of information to be followed during bitter fighting. It enabled open coverage during the pull out from Gaza Strip in 2005 and the war in 2006. Military correspondents still could not enter the battle zone as they pleased and where forced to have permits from the army authorities, but they got them quite easily. Online broadcasts from the battle zone became part and parcel from the war scenes.

This open door policy has been met with criticism due to the one-sided broadcasts of various foreign stations, particularly the BBC, some of whose broadcasts have, in effect, been directed by Hezbollah, as reported by Tom Gross, the Sunday Telegraph’s former correspondent in Israel in the media. Gross quoted a CNN reporter who admitted that Hezbollah members had told him where and what to photograph. Indeed, anyone following BBC and other foreign media broadcasts
cannot avoid the conclusion that almost the only people being hurt by this war were Beirut residents. Coverage of the damage suffered by Israel’s civilian population has been far less proportional to that suffered by the Lebanese.

The IDF Spokesperson did not try to dictate to reporters what to say and what to broadcast. The army has opened up possibilities of coverage that are unavailable in the world’s most democratic countries such as Britain and the United States, which hermetically sealed off war zones. This policy by its nature made possible rational criticism of the fighting and its justification during fighting. Thus many have expressed their desire for an “Olympic silence” while the cannons are roaring.

It seems to me that the Israeli public is still not ready for an online broadcasts from the battle zones which include criticism of plans and commanders. In a post war analysis it became clear that a large portion of the Israeli society does not want to know. Many find the media as a punching bag, as if the results of the war were dependent on it.

I, for one, think that the public has not only the right to know. A democratic society creates a duty to know. My approach is not intended to indicate that everything that was published during the Lebanon war was justified. We should draw the line so that a publication should not create danger to soldiers’ life or damage to a strategic plan. It should be noted that some publications created a danger to Israeli soldier’s life and served the enemy “right” to know. Freedom of publication during a war must be subject to reasonableness and proportionality. The democratic objective of widespread publication of information is not supposed to unreasonably affect security needs. A constitution should not be a recipe to a nation’s suicide, as noted by an American Supreme Court Justice. Freedom of expression should not serve terrorists or enemies during war. Still, the right and the duty of the public to know should not be undermined during war. It should always be the mile stone that can be set aside only under pressing and compelling interests.

Note
1 H.C.J. Schnitzer V Chief Military Censor, The Israeli Supreme Court Vol 42(4) P. 617 (1989)(Hebrew)
 devising and implementing policies.

The evaluation of the "Open Door" policy requires attention to several issues. Among them:

- Communication has received criticism from various angles on excessive information. It seems that the public is not receiving information about the war in real-time, in live broadcast. Many critics blame the reporter for providing information.

- The communicative openness was valued on the other side as it provided rich information, such as a letter of a soldier published: "We have not left Lebanon yet. We are in the middle of the war. We are surrounded, and the media is celebrating, looking for accusations, among the battles.

- It appears that it is necessary to re-examine the policy of live broadcasting.

- It seems appropriate to also examine communication. Criticism has been raised regarding the communication that was in favor of the government and in favor of the decision to go to war without asking many questions. The criticism is seen as justified to a certain extent, but not entirely. Questions were asked early in the war, but it seems that the country was not put under more pressure. Artist photographer Susan Zontag writes in her book "Looking at the Suffering of Others" that in the past the media showed only happy soldiers leaving for battle. Things changed. In the Lebanon War, at first we saw patriotic photos – smiling soldiers, after that – wounded soldiers, wounded, dead. There are no photos of victory. The well-known photo – a wounded soldier, symbolizing "V".

Task of communication after the war

- Struggle for the establishment of appropriate committees for investigating the war, such as a national governmental committee.

- Expressing widespread public sentiment.

1973–

- Report on demonstrations as a reaction to the war.

- Continuous monitoring of the recovery of the population and minorities.

- On the role of communication in war, a military commission and a council of journalists, with a chairwoman judge (in office) Dalia Dorner.

There is a real need for studies in various aspects.

Doctoral thesis

Things that are seen from there are not seen from here – the Holocaust, survivors of the Holocaust, recovery and collection in the cinema and the press of Jewish agencies in Israel and the United States, 1948-1945

By Lea Steir-Levini

Under the guidance of Professors Dina Porat and Nori Git, Tel Aviv University, 2006

The research project, conducted under the guidance of Lea Steir-Levini, the Holocaust, survivors of the Holocaust, recovery and collection in the cinema and the press of Jewish agencies in Israel and the United States, 1948-1945.

Research conducted by Tel Aviv University.

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