

## **Israeli Defence Forces**

### **Order Number 1754**

#### **Order Regarding Security Provisions (Amendment no. 45) (Rules of liability for an offense) (Judea and Samaria) (No. 1754) 2015**

**[Unofficial translation]**

As part of my authority as the commander of IDF forces in the region, and since it is my belief that this is required for the purpose of maintaining security in the region, public order in the region and public peace in the region, I hereby decree:

#### **Adding a heading to Article 1.a**

1. In the Security Provisions Order [consolidated version], 2009 (referred to as "**The Order**") , following the headline in Section 6 - "Rules of liability for offense", the (sub) heading:

**"Article A - General Provisions"**

will be added.

#### **Amendment to Article 187**

2. In article 187 of The Order, following the definition of "offense", the following will be added:

"Authorized Authority" - IDF authorities, as well as any other organ acting with authorization by the commander of IDF forces in the region. For the purpose of clarification, the Palestinian Authority, as defined by the publication regarding the implementation of the Interim Agreement (Judea and Samaria) (no. 7) 1995, or other organs acting under its authorization, will not be regarded as an authorized authority. "

#### **Amendment to article 188**

3. In article 188 of The Order, article 188(a) is hereby annulled.

#### **Adding articles 188a and 188b**

4. Following article 188 of The Order, the following will be added:

**"No penalty unless by law or by security legislation**

188 a. There is no offense and no penalty for said offense unless these have been stipulated by law or by security legislation.

### **No retroactive penalty**

188b.

- (a) Any security legislation which constitutes an offense will not apply to acts which had been committed before it was signed or before the day on which said legislation came into effect, according to the later of the two dates.
- (b) Any security legislation which stipulates for an offense a penalty which is more severe than the one which had been in effect at the time in which it was committed, will not apply to an offense committed before said legislation was signed or the day on which it came into effect, according to the later of the two dates; however, an update of the sum to be paid by a fine will not be regarded as an increase in the severity of the penalty.

### **Chapter b - applicability by the date and place in which the offense has been committed".**

#### **Replacement of articles 190 to 199**

- 5. Instead of articles 190 to 199 of the Order, the following will be written:

#### **"Annulment of an offense after the time in which it was committed**

- 190. If an offense has been committed and the security legislation has annulled the ban on the act - criminal liability for the act will be annulled; procedures which had already begun will be stopped; if a verdict has been issued - its implementation will be stopped; and there will be no additional future consequences following a conviction.

#### **A change in the security legislation after an offense is committed**

191

- (a) If an offense has been committed, and before a court ruling is issued in the case, a change takes place with respect to the definition of said offense, liability for it or the penalty set for it, the applicable security legislation will be the one which is more lenient on the perpetrator; "liability for this offense" - including the applicability of restrictions to criminal liability for the act.
- (b) If a person is convicted of an offense in a conclusive decision, and the penalty set for this offense by later security legislation is more lenient than the penalty initially imposed on said convict - the penalty will be the maximal penalty set by the security legislation, as if this penalty were imposed in the first place.

#### **Time-dependent instructions**

192. The instructions of articles 190 and 191 will not apply to an offense by law or security legislation, if these had been set to be valid for a certain period, or if it follows from their very nature that they are subject to change from time to time.

**Chapter C1 - The criminal offense and liability for it - The conduct element (actus reus) - Structure of the conduct element**

193.

- (a) "Detail", with respect to an offense - the act according to this definition, as well as a circumstance or an outcome brought about by the act, provided that these are included in the definition of this offense.
- (b) "Act" - including omission, unless stated otherwise.
- (c) "Omission" - abstention from acting, when an action is mandatory according to the law, the security legislation or a contract.

**Chapter C2 - The criminal offense and liability for it - the mental element of an offense**

**The mens rea requirement**

194. A person can commit a criminal offense only if it is committed in a state of mens rea, unless:
- (1) It has been stipulated in the definition of the offense that negligence is the required mental element required for constituting the offense; or:
- (2) The offense is of the strict liability type

**Mens Rea**

195.

- (a) Mens Rea - awareness of the nature of the act, the existence of the circumstances and the possibility of causing the outcomes of the act, as included in the details of the offense, and for the purpose of outcomes, one of the following as well:
- (1) Intent - the intention of causing these outcomes;
- (2) Recklessness in one of the following:
- (2a) Indifference - equanimity towards the possibility of bringing about the relevant outcomes.
- (2b) Lightheadedness - Taking an improbable risk upon oneself, regarding the possibility of bringing

about the relevant outcomes, and hoping that these outcomes will be successfully prevented.

- (b) For the matter of intent, the foreseeing of the occurrence of the outcomes, as a possibility which is close to certainty, is tantamount to the intent of bringing about these outcomes.
- (c) For the purpose of this article –
  - (c1) A person who suspects, as to the nature of a certain conduct or as to the possibility of the existence of the circumstances, will be regarded as one who was aware of these, if he failed to enquire as to these.
  - (c2) It is of no relevance whatsoever whether the act was perpetrated against another person or the property of another person, and not against the one or the property of the one at whom the act should have been targeted.

## **Negligence**

196.

- (a) Negligence - The failure to be aware of the nature of the act, the existence of the circumstances or the possibility of bringing about the outcomes of the act, insofar as these are included in the elements of the offense, when under the circumstances of the matter, a reasonable person could have been aware of the relevant elements, but only if -
  - (1) Regarding the rest of the elements, there was at least an element of negligence as stated above;
  - (2) The possibility of preventing the outcomes from being brought about was not within the limits of reasonable risk.
- (b) Regarding any offense by law or by security legislation in which the mental element required for the constitution of the crime is negligence, and when the prison sentence set for said penalty exceeds three years - the penalty for said offense will be three years of imprisonment.

## **Chapter C3**

### **The penal offense and liability for it - strict liability**

#### **Strict liability and its scope**

197.

- (a) A person will bear strict liability for an offense, if it has been stipulated by law or by security legislation that the offense does not require the

proof of mens rea or negligence; however, the instructions of this article do not annul any liability for offenses which had been enacted before this clause came into effect and, if it has been established by law or by security legislation, including a court ruling, that these offenses do not require the proof of mens rea or negligence.

- (b) A person will not be held liable according to this article if he did not act in a state of mens rea or negligence, and if he took any possible measure to prevent the offense; Anyone who presents this claim - the burden of proof lies on hm.
- (c) For the purpose of establishing liability according to this clause, a person will not be sentenced to imprisonment, unless mens rea or negligence have been proven.

## **Chapter D1 - Derivative offenses - the attempt**

### **What constitutes an attempt**

- 198. A person attempts to commit an offense if, in order to commit it, that person commits an act which amounts to more than mere preparation, and the perpetration of the offense is not completed.

### **The impossibility of committing the offense**

- 199. For the matter of an attempt, it is of no relevance whatsoever whether the perpetration of the offense was impossible due to the state of affairs, as to which the attempting offender was unaware or mistaken.

### **A special penalty for an attempted offense**

- 199a. An instruction in which it has been stipulated that an offense carries a mandatory penalty, or a minimum sentence has been stipulated, will not apply to an attempt to perpetrate this offense.

### **Exemption due to remorse over an attempted offense**

- 199b. Whoever attempts to perpetrate an offense, will not bear criminal liability for the attempt, if that person has proven that due to his own volition only and out of remorse, that person ceased from completing the act or contributed significantly to the prevention of the outcomes upon which the completion of the perpetration of the offense is conditional; however, this will not detract from that person's criminal liability for another offense which was completed as part of the act.

## **Chapter D2 - derivative offenses - parties involved in an offense**

### **Perpetrator**

199c.

- (a) A Perpetrator - including a co-perpetrator or a perpetrator by proxy.
- (b) Those who take part in the perpetration of an offense while taking action for the purpose of its perpetration, are co-perpetrators, and it of no relevance whatsoever if all the acts were committed together, or some of them were committed by one and some were committed by another.
- (c) A perpetrator by proxy is one who contributes to the perpetration of the offense by another person, with the latter acting as a tool in the hands of the former, and the latter being in a position such as one of the following positions, according to their meaning in this order:
  - (1) Being a minor or mentally insane
  - (2) Being in a position of a lack of control
  - (3) Being devoid of mens rea
  - (4) Being mistaken as to the state of affairs
  - (5) Being under compulsion, or having some justification
- (d) For the purpose of article (c), if the offense is conditional upon the existence of a special perpetrator, a person will also be regarded as the perpetrator of said offense when the special conditions apply only in the case of the other person.

### **Solicitation**

199D. Anyone who drives another into perpetrating an offense, through persuasion, encouragement, demand, beseechment or any manner which amounts to the exertion of pressure, will be regarded as a solicitor of the offense.

### **Accessory**

199E. Anyone who acts, prior to the perpetration of the offense or during its perpetration, in order to enable the perpetration, facilitate it or secure it, or in order to prevent the seizing of the perpetrator, the disclosure of the criminal act or the prize and gains obtained from this act, or anyone contributing in any other manner to the creation of the conditions for the perpetration of the offense, is an accessory.

### **Penalty for accessorial conduct**

199F.

- a. The penalty for accessorial conduct in an offense which is not a security related offense entails a penalty of half the penalty set by law or by security regulation for the material perpetration of this offense; however, in case the penalty set for this offense is -

- (1) The death penalty of life imprisonment - the penalty for accessorial conduct will be twenty years of imprisonment.
  - (2) A minimum penalty - the penalty for accessorial conduct will be no less than one half of the minimum penalty.
  - (3) Any mandatory penalty - this penalty will be the maximum penalty, and one half of it will be the minimum penalty.
- b. Accessorial conduct in the perpetration of a security related offense, the penalty will be the penalty set by law or by security regulation for its essential perpetration; however, an instruction in which a mandatory penalty or a minimum is set for an offense will not apply to accessorial conduct in its perpetration.

### **Attempted solicitation**

199G.

For an attempt to solicit a person to commit an offense, the penalty will be one half of the penalty set by law or by security regulation for its essential perpetration; however, if the penalty set for this offenses is -

- (1) The death penalty or life imprisonment - the penalty for accessorial conduct will be twenty years of imprisonment.
- (2) A minimum penalty - the penalty for accessorial conduct will be no less than one half of the minimum penalty.
- (3) Any mandatory penalty - this penalty will be the maximum penalty, and one half of it will be the minimum penalty.

### **Exemption granted to an accomplice or solicitor due to remorse**

199H.

An accomplice or a solicitor will not bear criminal liability for solicitation or for accessorial conduct, or for attempted solicitation, if he prevented the perpetration of the offense or the completion of its perpetration or if he informs an authorized authority ahead of time, for the purpose of preventing the perpetration of the offense or the completion of its perpetration, and said authority, by law or security regulation, has the legal authority to prevent the perpetration of the offense or the completion of its perpetration, or if the person doing so does all that he can in some other manner; however, this will not suffice to reduce criminal liability for another completed offense which is committed as part of the act.

## **A different or additional offense**

199I.

- (a) If during the perpetration of the offense, the perpetrator commits a different offense or an additional offense, and under the circumstances of the matter, a reasonable person could have been aware of the possibility of its perpetration -
  - (1) The other co-perpetrators will also bear liability for this offense; however, if the additional or different offense is committed deliberately, the other perpetrators will only bear liability for it as an offense of indifference.
  - (2) The solicitor of this offense, or the accomplice to it, will bear liability for it as an offense of negligence, if such an offense exists with the same factual element [actus reus].
- (b) If a court convicts a defendant, based on article (a)(1), of an offense for which a mandatory penalty has been set, this court may impose a more lenient sentence.

## **Relevant and personal data**

199J.

A parameter which is conditional to the constitution of the offense will apply to any party to said offense, even if this parameter does not exist in said party; however, in the case of a personal parameter which is valid by law or by security legislation for the purpose of increasing the penalty, reducing it, modifying it in any other manner or revoking it, this parameter will apply only to the party in which it exists.

## **Chapter D3 - Derivative offenses - instructions common to all articles**

### **Restrictions to attempted perpetration, solicitation and accessorial conduct**

199K. No penalty will be imposed for an attempted perpetration of an offense, solicitation of an offense, attempted solicitation of an offense or any conduct which is accessorial to an offense, in the case of an offense for which a prison penalty not exceeding three months has been set, or for which the penalty is only a fine, and that fine does not exceed the [maximal] sum which can be imposed by fine, for an offense for which the total fine has not been set -

## **The incidence of the law**

199L.

Unless specified by law or by any other security legislation, it is to be presumed, regarding an act, that it was committed under conditions in which there are no exceptions to criminal liability.

### **Replacement of articles 201 to 206**

6. Articles 201 to 206 of the Order will be replaced by the following:

**"Chapter E2 - Restrictions to criminal liability - restrictions to the criminality of the act"**

### **Minorhood**

201. A person will not be criminally liable for an act committed before that person reached the age of twelve.

### **Lack of control**

202. A person will not be criminally liable for an act he committed without being able to choose between committing the act or abstaining from it due to the lack of control over that person's bodily movements, for the matter of said act, such as an act committed due to physical coercion which the committing person could not overcome, an act committed in a spasmodic or reflexive response, an act committed during sleep, or an act committed in a state of automatism or a state of hypnosis.

### **Insanity**

203. A person, will not bear criminal liability for an act which that person committed if, during the act, due to a disease afflicting his mind or due to an impairment in his mental ability, that person did not have the effective ability of -

- (1) Understanding that which he was doing or the wrong nature of the act; or
- (2) Abstaining from committing the act.

### **The state of drunkenness**

204.

(a) A person will not bear criminal responsibility for an act which he committed in a state of drunkenness caused not by that person's controllable conduct, or an act caused not of that person's volition.

- (b) If a person commits an act in a state of drunkenness and he has brought about this situation through his controllable conduct and volition, that person will be regarded as the perpetrator of said offense in a state of mens rea, if the offense is a conduct offense, or as the perpetrator of said offense in a state of indifference, if the offense is also conditional upon an outcome.
- (c) If a person brings about the condition of drunkenness in order to commit the offense, that person will be regarded as one who has committed the offense in a state of mens rea if it is a conduct offense, or deliberately, if said offense is conditional upon an outcome.
- (d) For the purpose of this article, "a condition of drunkenness" - a condition in which a person is under the influence of an alcoholic substance or another narcotic substance and as a result of this he lacks the real capacity, during the act, of understanding the wrongdoing in the act, or abstaining from committing the act.
- (e) Articles (a), (b) and (c) will also apply to those who lacked the capacity as specified by article (d), but due to partial drunkenness, were not aware, during the act, of an element of the elements of the offense.

### **Self defense**

- 205. A person will not bear criminal liability for an act which was required in an immediate manner to fend off an illegal assault which constituted a real threat to the life, liberty, body or property of that person or another person; however, a person does not act out of self defense if his illicit conduct has brought about the assault and that person had anticipated the possibility of the developments which have taken place.

### **Need**

- 206. A person will not bear criminal liability for an act which was required in an immediate manner to to save the life, liberty, body or property of himself or of another person, from a real danger of grave harm stemming from a given state of affairs during the act, and that person had no alternative but to commit the act.

### **Duress**

206a.

- (a) A person will not bear criminal liability for an act which she/he had been ordered to commit under a threat which constituted a real danger of serious harm to the life, liberty, body or property of that person, or of another person, and he was compelled to commit the act as a result of this.

- (b) The instruction in article (a) will not apply in the case of an offense punishable by death and an offense according to article 209 of this order, as well as the attempt, solicitation, attempted solicitation or accessorial conduct in said offenses.

### **Justification**

206B. A person will not bear criminal liability for an act committed in one of the following cases:

- (1) That person was obliged or authorized, by law or security legislation, to commit the act;
- (2) That person committed the act by the order of an authorized authority which he were obliged to obey, by law or by security legislation, unless the decree is a flagrantly illegal order;
- (3) Regarding an act which by law or security legislation requires consent, when the act was necessary in an immediate manner for the purpose of saving the life or bodily integrity of a person, or for the purpose of preventing grievous harm to that person's health, and if under the circumstances of the matter the person who committed the act did not have sufficient time to obtain the consent;
- (4) The act was committed with legal consent on a person, during medical action or care intended to benefit that person or benefit another person;
- (5) The act was committed during a sports activity or a sportive game, which are not prohibited by law or by security legislation and do not run contrary to public policy, and the act was committed in accordance with the rules of these sports activities.

### **Entering a state through illicit conduct**

206C.

- (a) The instructions of articles 202, 206 and 206a will not apply if the person who committed the act was aware, or if, under the circumstances of the matter, a reasonable person in the position of that person, could have been aware, prior to the creation of the state in which he committed the act, that he may commit the act, and if the perpetrator placed himself in that situation by controlled illicit conduct; provided that the the purpose of the act which was committed in the situations described in article 206 or article 206a was not to save an interest of another person.

- (b) In any case described by article (a), a person will be regarded as one who has committed the act in a state of mens rea, if the offense is a conduct offense, or with indifference if the offense is also conditional upon an outcome; if a person enters a state in order to commit the offense, and this offense is also conditional upon an outcome, he will be regarded as one who has committed the offense deliberately.

#### **A duty to face a danger or threat**

206 D. The instructions of articles 206 and 206a will not apply when the person is under duty by law, by security regulation or by office to face a danger or threat.

#### **Exceeding that which is reasonable**

206E. The Instructions of articles 205, 206 and 206a will not apply when the act was not reasonable under the circumstances of the matter, for the purpose preventing the harm.

#### **Minor importance**

206F. A person will not bear criminal liability for an act, if, by the very nature of the act, its circumstances, outcomes and the public interest, the act is of minor importance.

#### **A mistake as to the state of affairs**

206G.

- (a) A person who commits an act while imagining a nonexistent state of affairs, will not bear criminal liability beyond the extent of his liability if the real state of affairs had been as he imagined it.
- (b) Article 206G(a) will also apply to offenses of negligence, but only if the mistake was reasonable, and in the case of an offense of strict liability, subject to the content of article 197(b).

#### **A mistake as to the legal state of affairs**

206H. For the matter of criminal liability, it is of no relevance whatsoever whether the perpetrator assumed that his act was not forbidden by law or by security legislation, due to a mistake as to the existence of a criminal prohibition set by law or by security legislation, or a mistaken understanding of said prohibition, unless the mistake could have been avoided in a reasonable manner.

### **Chapter F - Corporate criminal liability**

#### **The extent of a corporation's criminal liability**

206I.

- (a) A corporation will bear criminal liability –
- (1) According to article 197, when the offense was committed by a person during the fulfillment of his official role in the corporation;
  - (2) Regarding an offense which requires a proof of the existence of mens rea or negligence, if, under the circumstances of the matter and in view of said person's official role, his authority and his responsibility for managing the affairs of the corporation, his action in which the offense was committed, and his mens rea or negligence should be seen as the action of said corporation and the mens rea or negligence of said corporation.
- (b) Regarding a crime of omission, when the duty to take action lies directly on the corporation, it is of no relevance whatsoever whether the offense can also be ascribed to a certain official in the corporation, or not. “

#### **Addition of articles 207a to 207 c**

7. Following article 207 of the Order, the following will be added:

#### **Chapter F1 - Miscellaneous instructions**

##### **Interpretation**

207A. If a certain law or security legislation can be interpreted in several reasonable manners according to their purpose, the matter will be decided according to the interpretation which is the most lenient as to the person who is expected to bear criminal liability by the same law or security legislation.

##### **The relevance of doubt**

207B.

- (a) A person will not bear criminal liability for an offense unless it has been proven beyond reasonable doubt.
- (b) If doubts arise as to the existence of a restriction to criminal liability, and these doubts have not been alleviated, the restriction will apply.

##### **Interpretation of the law regarding the mental element in an offense**

207C. Wherever, in a law or in security legislation enacted prior to the date on which this article came into effect, and the mental element of the offense is explicitly expressed using the term –

- (1) “Malice” [Hebrew - Zidon or Mezid - ofer ] - the mental element required for the constitution of the offense will be awareness according to the prefix of article 195(a), and for the matter of the outcome of the act as specified by the definition of the offense - recklessness as well;
- (2) “Intentionally” [Hebrew - Be-khavana - ofer ] - If the term does not refer to the outcome of the act as specified by the definition of the offense, the term will be interpreted as the motive for the commission of the act or as the objective of attaining a goal as specified by the definition of the offense, according to the context;
- (3) “Knowingly” [Hebrew - Be-yodiin ofer ] or a term with a similar meaning - the term will be interpreted as mens rea, as specified by article 195(a);
- (4) “Has reason to assume” or an expression with a similar meaning - the expression will be interpreted as ‘a person who suspected’ as specified by article 195(C)(1);
- (5) “Negligence” [Hebrew Hitrashlut ofer] - the term will be interpreted as negligence [Hebrew Rashlanut ofer ], in accordance with article 196 “.

#### **Amendment to article 208**

8. In article 209 of the Order, the words “that his matter is within the realm of exemption, permit or justice to which he claims, or” will be deleted.

#### **Amendment to article 209**

9. In article 208 of the Order, following article 208(b), the following will be added:

“ (c) In this article - “He who deliberately causes the death of another person”, including:

- (1) He who deliberately causes the death of a person while committing an offense or during preparations for the commission of the act or in order to facilitate the commission of the act;
- (2) He who deliberately causes the death of a person while another offense is committed, in order to ensure, for himself or for whoever takes part in the commission of said offense, a getaway or an escape from punishment. “

#### **Amendment to article 246**

10. In article 246 of the Order –

- (a) In the margin heading the word “crime” will be replaced by “an offense which is punishable by a sentence term exceeding three years”.
- (b) In article 246(a) –
  - (1) The word “crime” will be replaced by “an offense which is punishable by a sentence term exceeding three years”;
  - (2) The word[s] “its commission” [masculine] will be replaced by “its commission [feminine];
  - (3) The words “will be sentenced to five years of imprisonment” will be replaced by “will be sentenced [according to the following criteria]:
    - (i) If the main offense is a security related offense - five years of imprisonment or the penalty set for the main offense, according the more lenient of the two.
    - (ii) If the main offense is not a security related offense - three years of imprisonment.”
- (c) In article (b), the words “a crime was committed” will be replaced by “an offense was committed”.
- (d) Following article (b), the following will be added:

“(c) The instructions of this article will not detract from the instructions of this order and from articles 254 to 256 of the Order, and the former will only add to the latter.”

#### **Amendment to article 254**

- 11. In article 254 of the Order, following article 254(c), the following will be added:

“(d) A person who conspires will bear criminal liability also for an offense for the sake of which he conspires, or an offense which is committed for the purpose of advancing his goal, only if he was a party to the commission of this offense, in accordance with articles 199c to 199e .”

#### **Amendment to article 213**

- 12. In article 213(d), the word "twenty" will be replaced by the word "thirty".

#### **Effect**

- 13. This order will come into effect starting 1 June 2015.

**Transitional instructions**

14. Article 191 of the Order, as specified by article 5 of this order, will not apply to the penal change in the case of an accessory to an offense or one who attempts the solicitation of an offense.

**The title**

15. This order will be titled "The Order regarding Security Provisions [Amendment no. 45] (rules of liability for an offense) (Judea and Samaria) (No. 1754), 2015"

Signed

General Nitzan Alon

Commander of the IDF forces in the Judea and Samaria Region

24 March 2015