Purpose

The purpose of this Directive is to clarify the relationship between the military legal system headed by the Military Advocate General and the general legal system headed by the Attorney General; to emphasize the independent legal status of the Military Advocate General, as well as the framework for professional guidance provided by the Attorney General to the Military Advocate General. In addition, the Directive is meant to serve as a link between the military legal system and the general legal system, in order to ensure harmony between the two systems. This is based on the legal tradition in Israel that has developed in this spirit over many years and on the ruling of Israel's Supreme Court (see HCJ 4723/96 Atiyah v. Attorney General P.D. 56(3) 714 (hereinafter – *HCJ Atiyah*)).

General

1. The responsibilities of the Military Advocate General are enumerated in Article 178 of the Military Justice Law – 1955, which states the following:

   The Military Advocate General:

   (1) is an advisor to the Chief of the General Staff and the rest of the military authorities on all matters pertaining to the law;

   (2) oversees enforcement of the law in the military, except for oversight pertaining to the military courts and their administration;

   (3) oversees legal aspects of disciplinary proceedings;

   (4) may order that a preliminary investigation be conducted in any case with respect to which the Military Advocate General believes an offense triable by a military court has been committed;

   (5) will fulfill any other duty assigned to the Military Advocate General under law and under military orders.

The Military Advocate General is assisted in the fulfillment of all of these responsibilities by military prosecutors, by the Chief Military Prosecutor, by the Chief Military Defender and by other officers with legal training.
2. The Military Advocate General heads the military legal service, and, like the Attorney General with respect to the legal system in its entirety, the Military Advocate General wears a "dual hat" with respect to the military legal system:

   a) The Military Advocate General sets the law enforcement and investigation policy in the IDF. The Military Advocate General heads the military prosecution system and is responsible, via the Chief Military Prosecutor, for the indictments of military personnel and for providing professional guidance to the military prosecution on questions of policy, including determining priorities, the handling of sensitive enforcement matters and systemic issues, etc.

   b) The Military Advocate General serves as legal counsel to the Chief of the General Staff and all IDF bodies, directly or through his or her representatives, MAG Corps personnel in active and reserve duty (including the Legislation and Legal Counsel Department, the International Law Department and the Department of the Legal Advisor in the West Bank). The opinion of the Military Advocate General with respect to a legal matter determines the state of the law for all IDF authorities, and the Military Advocate General's interpretation of the law is the authoritative interpretation for all IDF authorities. However, even given the unique powers granted by law to the Military Advocate General as a competent authority, the Military Advocate General must, when exercising his or her authority in the course of his or her daily work, consider the general law enforcement policy in place, and must adopt the interpretation of the law given by the Attorney General.

3. When exercising his or her authority under Article 178 of the Military Justice Law as legal advisor and his or her power to oversee enforcement of the law in the military, the Military Advocate General operates independently, and is not subordinate to the Chief of the General Staff or any other command authority; and is guided by considerations pertaining to the rule of law – and these considerations only – when fulfilling his or her role.

4. As noted above, there are significant similarities between the authority granted to the Military Advocate General with respect to the military legal system and that of the Attorney General with respect to the civilian system. At the same time, as determined in HCJ 4723/96 Avivit Atiyah:²

   One should not conclude from the Military Advocate General's status within the military that when exercising his duty he is separate from the general law enforcement system. Like all governmental systems, the Military Advocate General is subject to the professional guidance of the Attorney General and to his legal opinion…There is no doubt that even given the unique powers granted to the Military Advocate General by law as a competent authority, the Military Advocate General must, when exercising his authority in the course of his daily work, consider the general law enforcement policy in place, and must adopt the interpretation given by the Attorney General to the law.

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¹ See Attorney General Directive 9.100 "Legal Advisors of Government Ministries".
² HCJ Atiyah, p. 732.
5. In general, the Military Advocate General will consult with the Attorney General for the purpose of establishing a legal position or prior to making a decision in matters which, in the Military Advocate General's opinion, are of special public interest, sensitivity or importance, or when he or she finds that their implications go beyond the IDF.

6. Similarly, with respect to general legal matters directly pertaining to the military (for example, approval of an activity to be carried out by the military), or matters that have a significant impact on the military (such as general legislation pertaining to military activity or that affects the rights and benefits of military personnel), or in cases of a legal dispute between a governmental ministry/agency and the military, which are brought before the Attorney General, the Attorney General will seek the Military Advocate General's position so that it is considered before making a final decision on the matter.

**The Attorney General's Involvement in Decisions of the Military Advocate General**

7. The opinions and decision of the Military Advocate General are subject, in various ways, to examination by the Attorney General, in the Attorney General's capacity as the head of the legal service in the State of Israel, as well as his or her authority as the head of the general prosecution and the officer responsible for the legality of the actions of the various government agencies.

8. Obviously, the Attorney General will not intervene in the Military Advocate General's daily work in a manner that disrupts the exercise of the Military Advocate General's duties and the exercise of his or her authority, nor will the Attorney General routinely involve himself or herself in the military legal system. In instances in which the Attorney General finds it appropriate to intervene in, or examine decisions made by the Military Advocate General, this will be done with consideration to the characteristics, needs and special status of the military legal system. In the course of such review, considerations and qualities that are unique to the military legal system will be taken into account.

9. The Attorney General will review decisions made by the Military Advocate General, as mentioned above, after hearing the Military Advocate General's position on the matter, in accordance with the following guiding principles:

   a) Decisions that the Attorney General believes are of special importance to the public or where the Attorney General finds that the implications go beyond the IDF. These will include, for example, decisions regarding policy aspects of the application of military force, where it is alleged that such policy is unlawful and constitutes a serious violation of international humanitarian law.

   b) All cases where the Attorney General believes that the decision of the Military Advocate General departs from accepted legal norms.

   c) Cases where the Attorney General believes that the Military Advocate General has not given proper weight to the general prosecution policy or to the need for uniformity and harmony between the various prosecution bodies.

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3 HCJ Atiyah, p. 733.
10. With respect to the Military Advocate General's decisions in criminal matters that carry particular public significance and sensitivity, as will be specifically detailed in a separate Directive – such as the Military Advocate General's decision pertaining to a case involving the death of a soldier as a result of a training accident (Attorney General Directive No. 4.5000), or the Military Advocate General's decision pertaining to the examination of an incident which resulted in the death of an individual in the course of IDF operational activity, when it is alleged that serious violations of customary international law occurred (Attorney General Directive No. 4.5003), a right of review to the Attorney General will be available, as detailed in the aforementioned Directives.

**Representation of IDF Authorities in a Court of Law**

11. Under law, the Military Advocate General's Corps (hereinafter: MAG Corps) represents IDF authorities before military courts. In addition, with the consent of the Attorney General, the MAG Corps will also provide representation before specialized tribunals pertaining to career and retired service members (such as the Boards of Appeal established under the Career Service in the Israel Defense Forces Law (Pension) – 1985 and the Payment of Stipends to Career Service Members and their Families – 2002; the Board of Appeals established under the Career Service in the IDF Law (Procedures Pertaining to Decisions Regarding Career Service Members) – 2010; and the Permit Board established under the Public Service Law (Post-Retirement Restrictions) – 1969). Representation before these authorities will be in accordance with the Military Advocate General's guidance, taking into consideration the Attorney General's interpretation of the law and general legal policy.

The Attorney General and his or her representatives will represent IDF authorities in other civilian instances, unless special authority has been granted to the MAG Corps to represent these authorities in such instances.

**Criminal Interrogation of a Member of the IDF Legal Service**

12. When a member of the IDF legal service (members of the MAG Corps in active or reserve duty, when the matter is related to their official capacity in the MAG Corps) is likely to be the subject of a criminal interrogation, the Military Advocate General will be informed of the matter prior to the interrogation and—should the circumstances prevent it—at the very latest immediately following the interrogation. This is akin to the notice given to the Attorney General with respect to the interrogation of a member of the [civil] legal service, in accordance with Attorney General Directive No. 9.1000.