

## ***“Just” Wars, “Unjust” Wars, and the Treatment of Noncombatants in Wartime***

The Freehof Institute of Progressive Halakhah, 2023 / תשפ"ד

This essay was written during the period immediately following the murderous attack upon Israel by Hamas terrorists from the Gaza Strip on October 7, 2023. The attack was followed by the mobilization of *Tzahal* (the IDF, the Israel Defense Forces), which launched air and ground strikes upon Gaza with the express goal of destroying Hamas as a governing and warmaking entity. Given the circumstances, it is no surprise that questions about the law and ethics of war were much discussed. In particular, the conduct of Israel was examined against the backdrop of the long history of Western legal and moral thought concerning the prosecution of war. (For some reason, the conduct of Hamas did not receive nearly as much critical attention.)

This piece will consider these questions from the standpoint of *halakhah*, traditional Jewish law. While we shall not discuss the Western tradition in any depth – good resources are available for those who are interested<sup>1</sup> – we *can* draw upon that tradition for a helpful framework to structure our analysis. That framework, a familiar one in Catholic moral thought,<sup>2</sup> distinguishes between *jus ad bellum*, determining a just cause for going to war, and *jus in bello*, the ethical principles that ought to guide the conduct of a war. While some criticize that distinction,<sup>3</sup> it does allow us to focus upon two separate (if related) questions in Jewish law: what principles, if any, define a war as “just” or “unjust,” and what safeguard, if any, must be guaranteed to noncombatants – “innocent civilians” – during the conduct of a morally justified war?

### *“Commanded” and “Voluntary” Wars*

Does Jewish law recognize a doctrine of “just” and “unjust” war similar to that of the Catholic tradition? Opinions are divided.<sup>4</sup> Still, the halakhic sources do offer an approach that can be useful in clarifying the moral dilemmas surrounding modern warfare.

The classic halakhic discussion begins with the eighth chapter of *Mishnah Sotah*, which discusses the exemptions from military service specified in Deuteronomy 20:1-9. At the conclusion of the discussion we read:

---

<sup>1</sup> See the essays in Seth Lazar and Helen Frowe, eds., *The Oxford Handbook of Ethics of War* (New York: Oxford University Press, 2018). Perhaps the “classic” treatment is Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5<sup>th</sup> edition (New York: Basic Books, 2015).

<sup>2</sup> For the current statement, see *Catechism of the Catholic Church*, Part 3, Section 2, Chapter 2, Article 5, paragraph 2309, <http://www.vatican.va/archive/ENG0015/P81.HTM>.

<sup>3</sup> See the essay by Helen Frowe in Lazar and Frowe (note 1, above), pp. 41-58. Frowe argues that a single set of principles governs all thinking about the ethics of war: “there are no distinctive *ad bellum* and *in bello* principles” (p. 43). We should note that the book itself is organized around that distinction. It even adopts a third category for analysis: *jus post bellum*, justice in the aftermath of war.

<sup>4</sup> For a brief discussion see Mark Washofsky, “Is There a Jewish Version of the ‘Just War’ Doctrine? Some Notes on the Nature of Halakhic Interpretation,” *CCAR Journal* 66:2 (Spring, 2019), pp. 74-94, [https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/is\\_there\\_a\\_jewish\\_doctrine\\_of\\_just\\_war.pdf](https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/is_there_a_jewish_doctrine_of_just_war.pdf), especially at notes 9 through 19.

M. Sotah 8:7

במה דברים אמורים? במלחמת הרשות. אבל במלחמת מצוה הכל יוצאין אפילו (יואל ב') חתן  
מחדרו וכלה מחופתה.

אמר רבי יהודה: במה דברים אמורים? במלחמת מצוה. אבל במלחמת חובה הכל יוצאין  
אפילו חתן מחדרו וכלה מחופתה.

To what does all the above [i.e., the exemptions] refer? To voluntary wars/wars of state.

But in a commanded war, all must mobilize, even “a bridegroom from his chamber and a  
bride from her canopy” (Joel 2:16).

Rabbi Yehudah said: To what does all the above apply? To a commanded war. But in an  
obligatory war, all must mobilize, even “a bridegroom from his chamber and a bride from  
her wedding canopy.”

A word about the translation “voluntary wars/wars of state.” The Hebrew *r'shut* (רשות), often  
juxtaposed in the literature (as it is here) to *hovah* (חובה) or *mitzvah* (מצוה), carries the sense of  
“voluntary” or “optional.” But it can also refer to a sphere of authority, ownership, or control,<sup>5</sup>  
and in some cases it appears as a synonym for “the government.”<sup>6</sup> Thus, *milhemet har'shut*  
denotes a war of choice, a war that the state fights to achieve its economic, political, or  
diplomatic goals (*raison d'état*) – in short, a war that the state does not *have* to fight.

The Talmud explores the nature of the *mahloket* (dispute) between Rabbi Yehudah and the  
*Rabbanan* (or *tana kama*), the anonymous opinion that begins the *mishnah* and that is understood  
to express the majority opinion among the Sages.

B. Sotah 44b

א"ר יוחנן: רשות דרבנן זו היא מצוה דרבי יהודה, מצוה דרבנן זו היא חובה דרבי יהודה.  
אמר רבא: מלחמות יהושע לכבש - דברי הכל חובה, מלחמות בית דוד לרווחה - דברי הכל  
רשות, כי פליגי - למעוטי עובדי כוכבים דלא ליתי עלייהו, מר קרי לה מצוה, ומר קרי רשות.

Rav Yehudah said: What the *Rabbanan* call a “voluntary war,” Rabbi Yehudah calls a  
“commanded war”; what the *Rabbanan* call a “commanded war,” Rabbi Yehudah calls  
an “obligatory war.”

Rava said: Both opinions agree that the wars fought by Joshua to conquer the land were  
“obligatory” and that the wars fought by the house of David for expansion were  
“voluntary.” Where they disagree is over wars fought to prevent [literally, “to reduce”]  
other nations from attacking them: one (R. Yehudah) calls them “commanded,” the other  
(the *Rabbanan*) calls them “voluntary.”

According to Rav<sup>7</sup> Yehudah, the difference between the two opinions in *M. Sotah 8:7* is purely  
semantic. Rabbi Yehudah uses the labels *hovah* and *mitzvah* in place of *mitzvah* and *r'shut*, the

<sup>5</sup> As in *r'shut hayahid*, *r'shut harabim*, *r'shut hanizak*, etc.

<sup>6</sup> See *M. Avot* 1:10.

<sup>7</sup> The second-generation Babylonian *amora*, not to be confused with Rabbi Yehudah, the *tana* whose opinion is  
recorded in the Mishnah.

terminology favored by the *Rabbanan*. Rava, on the other hand, sees the dispute as one of substance. Both opinions agree that some wars (the example given here are the wars that Joshua was commanded to fight to conquer the land of Canaan) are *hovah*, “obligatory,” and both concur that the Davidic wars of state were *r’shut*, “voluntary.” Their dispute centers upon a third category of war – we’ll call it *preventive* war – fought against a potential enemy. Specifically, this means a political entity with which we are not now engaged in war but which may threaten us in the future. The attack is meant to defeat them now, to *prevent* them from increasing in strength to the point that that can defeat us.

Rambam, whose *Mishneh Torah*, section “The Laws of Kings and Their Wars” is the most (really the *only*) systematic statement of the classical Jewish law of war, codifies the *halakhah*:

*Rambam, Hilkhoh M’lakhim Umilhamoteihem 5:1*

אין המלך נלחם תחלה אלא מלחמת מצוה, ואי זו היא מלחמת מצוה זו מלחמת שבעה עממים, ומלחמת עמלק, ועזרת ישראל מיד צר שבא עליהם, ואחר כך נלחם במלחמת הרשות והיא המלחמה שנלחם עם שאר העמים כדי להרחיב גבול ישראל ולהרבות בגדולתו ושמעו.

The king’s first duty is to fight a commanded war. What is a “commanded war”? That is the war to defeat the seven Canaanite nations, the war against Amalek, and (the war) to defend the Jews against enemy attack. Afterwards he may fight a voluntary war, that is, a war against other nations for the purpose of expanding the borders of the Jewish commonwealth and to increase his/its greatness and reputation.

Rambam rules in accordance with the *Rabbanan*, that is, the majority, against the individual opinion of Rabbi Yehudah.<sup>8</sup> There are but two categories of war: *milhemet mitzvah* and *milhemet har’shut*. The former includes, in addition to those wars explicitly commanded by the Torah, wars of communal defense. While defensive war is not mentioned in the *Sotah* passage, it is discussed in *B. Eruvin* 45a in connection with the laws of Shabbat observance. Here is how Rambam codifies the *halakhah* that emerges from the *sugya* in *Eruvin*:

*Rambam, Hilkhoh Shabbat 2:23*

גוים שצרו על עיירות ישראל אם באו על עסקי ממון אין מחללין עליהן את השבת ואין עושין עמהן מלחמה, ובעיר הסמוכה לספר אפיי לא באו אלא על עסקי תבן וקש יוצאין עליהן בכלי זיין ומחללין עליהן את השבת, ובכל מקום אם באו על עסקי נפשות או שערכו מלחמה או שצרו סתם יוצאין עליהן בכלי זיין ומחללין עליהן את השבת... (ועיין ערובין מה, א).

When an enemy nation besieges Jewish towns: if the cause of the conflict is monetary/economic, we do not violate Shabbat to fight them. But if the town lies on the border, we carry our weapons and violate Shabbat to defend it even if the enemy has come for nothing but straw and stubble. In any case, should they come with the intention to kill, or if they have declared war, or if they besiege the town for no stated reason, we carry our weapons and violate Shabbat to defend it...

---

<sup>8</sup> See his commentary to *M. Sotah* 8:7, where he reads *mitzvah* and *hovah* as synonyms. See also *Lehem Mishneh to Hil. M’lakhim* 5:1.

War fought to rescue our people from mortal danger is a clear case of *pikuaḥ nefesh*, the protection of human life, which overrides any prohibition of activity on Shabbat that might interfere with that goal. (Chapter 2 of *Hilkhot Shabbat* is where Rambam organizes the rules pertaining to *pikuaḥ nefesh*.) If we are *commanded* to fight a war of defense on Shabbat, it makes eminent sense that such a war is a *milḥemet mitzvah*, a war we are *commanded* to fight.<sup>9</sup> Meanwhile, a military operation to protect a border town is *by definition* a war of defense/*pikuaḥ nefesh*, regardless of the enemy's purpose in attacking it. Rashi explains the reason for this in his comment on the Talmudic passage that serves as Rambam's source:

Rashi, Eruvin 45a

לספר – עיר שמבדלת בין גבול ישראל לגבול האומות, יואחזן עליהם שמא ילכדוה ומשם תהא נוחה  
הארץ ליכבש לפניהם.

“(A town that) lies on the border” – when a town sits on the line dividing the Jewish commonwealth from that of other nations, we mobilize (on Shabbat) because should the enemy capture that town, it will be easier for them to conquer the rest of the country.

### *The Relevance for Our Time*

The halakhic texts that deal with war and its conduct quite obviously speak to a time and to a sociopolitical context quite different from our own. They presume a Biblical setting, with institutions such as king, priests, Sanhedrin, and prophets. Alternatively, they may relate to a future messianic commonwealth in which those institutions are reestablished. The question of relevance is therefore spot on: does this tradition of halakhic thinking about warfare have anything substantive to teach *us*? We think the answer is “yes.” It is true that the literal sense of these texts is hardly applicable to our day and age. But as is *always* the case, if we seek guidance from the sources for our own lives and questions, we must interpret them – that is, consciously look past and through their historically contingent features to uncover meaning that is timeless or, at least, that the passage of time has not rendered outdated.

In this case, we believe that the halakhic classification of wars as either *milḥemet mitzvah* or *milḥemet har'shut* is quite relevant to our moral thinking. A “commanded” war is one that is absolutely necessary, forced upon us, one we have no choice but to fight. The examples of such a war that we find in the sources fall into two categories. The first is wars explicitly required by the Torah, a category no longer relevant to our time. The second is wars fought to defend the nation or the community. That category, sadly, is all too relevant today. The first duty of any state is to protect its people, and there are times when it cannot achieve that security by any measure short of war. At such times it has no choice *but* to fight. A war of defense in our time is therefore a *milḥemet mitzvah*, a “commanded” war. It is morally justified; it meets the ethical requirements of *jus ad bellum*. While the designation of any particular war as “defensive” is

---

<sup>9</sup> It is a *mitzvah* – not an optional act – to violate the laws of Shabbat if such is necessary to save life; see *B. Yoma* 85b.

sometimes a matter of controversy,<sup>10</sup> Israel's war against Hamas is undoubtedly defensive, given that organization's bloody attack of October 7, 2023, which proves that its declared purpose of destroying the Jewish state and its people is more than simply words.

A *milhemet har'shut*, by contrast, is any war that can be defined as a war of choice. Since the classical *halakhah* permits the king to initiate such wars, presumably because that is what kings customarily do, we might think that those wars lie beyond ethical critique. But that is not so. An argument can be made (and has been made) that even a war of choice requires a justification on ethical grounds. That requirement possibly stems from the rule (stated in *M. Sanhedrin* 2:4) that the king must receive permission from the Sanhedrin in order to begin a war of choice:

Rambam, *Hilkhot M'lakhim* 5:2

מלחמת מצוה אינו צריך ליטול בה רשות בית דין, אלא יוצא מעצמו בכל עת, וכופה העם לצאת, אבל מלחמת הרשות אינו מוציא העם בה אלא על פי בית דין של שבעים ואחד.

The king does not need the permission of the *beit din* to fight a *milhemet mitzvah*. Rather, he may go to war on his own authority and compel the people to mobilize. But he may not mobilize the people for a *milhemet har'shut* unless he receives the approval of the court of seventy-one judges.

What is the nature of the “permission” or “approval” of the Sanhedrin, the court of seventy-one? Why is a judicial body, composed of Torah scholars, asked to weigh in on a question that the *halakhah* apparently leaves to the king's discretion? The argument is that the role of the Sanhedrin is to subject that discretion to an ethical test. While the king and his ministers can determine the feasibility of war from a military and economic standpoint, their power to initiate a war of state is bounded by the limits of right and good as understood by the sages of the Sanhedrin.<sup>11</sup> On this interpretation, “ethics” and “*halakhah*” are not two separate and opposing systems of normative thought. Rather, ethics is a necessary component of responsible halakhic decision when it comes to matters of war and peace.<sup>12</sup>

We would go farther. We would assert that any clear-eyed understanding of the ethics of war leads to the conclusion that, in this day and age, the *halakhah* actually *prohibits* the fighting of wars of choice. An argument to this effect is found in a Reform responsum written in 2002:

CCAR Responsum 5762.8, “Preventive War,” the section “Discretionary War in Our Time”

(A)lthough the Torah allows the king to engage in war for reasons other than national defense, it most certainly does not advocate that he do so. Indeed, the opposite is the case.

---

<sup>10</sup> All governments, of course, will claim that their wars are waged for defensive purposes; even brutal dictators hesitate to say otherwise. The fact that bad people can make hypocritical use of moral principles, however, does not render those principles meaningless. The task of ethical thinking, like that of halakhic thinking, is to apply the rules and principles to the facts *as they are*, not as the propagandists and spin doctors would have us imagine they are.

<sup>11</sup> See the discussion in Aviezer Ravitzky, *Herut al haluhot* (Tel Aviv: Am Oved, 1999), pp. 139-157, especially at pp. 144-148.

<sup>12</sup> See R. Aharon Lichtenstein in *T'humin* 4 (1983), pp. 184-185.

Jewish law offers but grudging approval of the state's military regime, and it places significant roadblocks in the path of the king who wishes to embark upon a discretionary war... although the Torah permits the state to resort to arms, it does not glorify war. Again, the opposite is the case. Peace, and not war, is our primary aspiration; we are commanded to seek peace and pursue it... From the Torah's exaltation of peace as a predominant social value and from the strict limitations it places upon the conduct of *milchemet hareshut*, we learn a somber lesson: war is at best a necessary evil, "necessary" perhaps but "evil" all the same. This lesson in turn leads us to conclude that the Torah's permit for the king to engage in war "to increase his greatness and reputation" is a political justification of such a policy but not a *moral* justification of it. This concession to the *realpolitik* of the ancient Near East cannot blind us to the reality of war as it is fought today, to the horrific price it exacts of soldiers and non-combatants alike, and to the prospect of massive and unfathomable destruction that its armaments have placed in our hands... A war fought *today* for anything other than defensive purposes must therefore be viewed as an *unnecessary* evil, as a transgression of the message of the Torah, and as a repudiation of our most cherished values and commitments.

The passage in *B. Sotah* 44b speaks of a third category of war: the "preventive" war, the war "fought to prevent other nations from attacking them." As we read there, Rabbi Yehudah calls such a war *milhemet mitzvah*, while the *Rabbanan*, the majority, define it as *milhemet har'shut*. And as we learn from Rambam in *Hilkhot M'lakhim* 5:1, the *halakhah* follows the majority: a preventive war is ultimately classified as "voluntary" and thus, if we accept the logic of CCAR Responsum 5762.8, it is not morally permitted to fight such a war in our time. But we should note, as does that responsum, the difference between a preventive and a *preemptive* war:

A preemptive strike, as we use the term, is one launched against an enemy that has mobilized or is engaged in obvious and active preparation for war. (In other words) there is clear *prima facie* evidence that the enemy is planning to attack. Given this state of affairs, national security is definitely threatened, and it serves no moral purpose for the nation to wait for the enemy to strike before undertaking measures of self-defense. A preemptive strike can in fact shorten the war and thus save many lives that would have been lost in a protracted conflict.

A preemptive strike against an enemy who is clearly planning to attack is a defensive – and morally justifiable – war. Israel's initiation of warfare against the mobilized armies of its Arab neighbors in June, 1967 falls into this category. An example of a *preventive* war, by contrast, would be an attack launched by the United States upon another power (say, China) that is growing in military strength but is not at this time planning imminent hostilities against the United States. While the goal of reducing the other nation's forces before they become a threat can seem rational, the codified *halakhah* does not define it as a *milhemet mitzvah*, a war of defense.

## *Protection of Noncombatants*

The Torah contains no explicit instruction concerning the treatment of innocent civilians during wartime. But the Rabbinic understanding of a Biblical verse opens a path for our thinking.

### Numbers 31:7

וַיִּצְבְּאוּ עַל־מִדְיָן כַּאֲשֶׁר צִוָּה ה' אֶת־מֹשֶׁה וַיִּהְרְגוּ כָּל־זָכָר.

They took the field against Midian, as Adonai commanded Moses, and killed every male.

### Midrash Sifrei Bamidbar

ויצבאו על מדין, הקיפוח מארבעה רוחותיה. ר' נתן אומר נתן להם רוח רביעית כדי שיברחו.

“They took the field against Midian” – meaning that they surrounded it on all four sides. Rabbi Natan said: they left one side open, so that (those inside the town) could escape.

This is puzzling: what do the words “they took the field against Midian” have to do with the way the Israelite army surrounded the enemy town? Rambam explains:

### Rambam, *Hilkhot M'lakhim Umilhamoteihem* 6:7

כשצריך על עיר לתפשה, אין מקיפין אותה מארבע רוחותיה אלא משלש רוחותיה, ומניחין מקום לבורח ולכל מי שירצה להמלט על נפשו, שנאמר [במדבר לא, ז] “ויצבאו על מדין כאשר צוה ה' את משה”. מפי השמועה למדו שבכך צוהו.

When the army besieges a town, they should not surround it on all four sides but on three sides, allowing all who wish to escape and save their lives to do so, as it is said: “They took the field against Midian, as Adonai commanded Moses.” The Rabbis received a tradition that this is what God commanded Moses.

That is, the phrase “as Adonai commanded Moses” suggests that God had communicated a special instruction (צוואה, *tz'va'ah*) as to *how* the Israelite army was supposed to conduct its campaign against the enemy. But this, of course, raises another question: why does Rambam rule here according to Rabbi Natan in the *Sifrei* passage and *against* the *s'tam* (anonymous, majority) opinion? R. Barukh Halevi Epstein, in his *Torah T'mimah* commentary to Numbers 31:7, points to a text in the *Talmud Yerushalmi*:

### Y. *Sh'vi'it* 6:1, 36c

אמר רבי שמואל שלש פרסטיניות שלח יהושע לארץ ישראל עד שלא יכנסו לארץ מי שהוא רוצה להפנות יפנה להשלים ישלים לעשות מלחמה יעשה.

R. Sh'muel said: Joshua sent three messages to the land of Israel before he invaded it: “Whoever wishes to escape should do so”; “Whoever wishes to make peace with us should do so”; “Who ever wishes to fight us, let them do so.”

The *Torah T'mimah* suggests that Rambam, who mentions this text in his *Hilkhot M'lakhim* 6:5, may have learned from Joshua's action that on this subject the *halakhah* follows Rabbi Natan and not the majority opinion: noncombatants<sup>13</sup> must be given the opportunity to flee the battle.

The requirement to provide an escape route for noncombatants implies a more general duty to protect noncombatants during wartime. This duty consists of two elements. First, in the negative sense: it is forbidden to intentionally target "innocent civilians," who are by definition *not* a legitimate military objective. Second, in the positive sense: the army must conduct its military operations in such a way as to safeguard the lives and property of noncombatants to the greatest extent possible.

The difficulty, of course, is that the goal of protecting civilians can frustrate the purpose of the military operation. Or to put it in reverse, the successful prosecution of the war necessarily and unavoidably endangers the lives of civilians who do not or cannot flee the battle. This problem is especially acute in the conflict between Israel and Hamas, which is taking place as of this writing. Hamas purposely locates its military installations in densely populated civilian areas, often in tunnels dug deep below hospitals, schools, and refugee camps. To be sure, prior to initiating its ground assault in Gaza, Israel warned civilians in the affected areas to escape to the south.<sup>14</sup> We could say, therefore, that in a literal sense Israel has met its obligations under the rule derived from Numbers 31:7. But of course, many Gazans *cannot* flee the battle and will remain in range of Israeli firepower. If so, the military objective to destroy Hamas's military capability, which we have defined as a morally legitimate war of defense, cannot be achieved without causing the deaths of many Gazan civilians. It appears that we must choose one goal over the other: either Israel fights the war at the unavoidable cost of civilian deaths, or Israel, must refrain from attacking Hamas in order to spare the lives of noncombatants.

Neither answer is perfect, impervious to ethical objection. But to aid us in our thinking, we present excerpts from the writings of two halakhic authorities representing the *Dati-Le'umi* (Orthodox Zionist) movement. We choose them because they take with all seriousness *both* the legitimacy of the existence of the state of Israel, including its right to self-defense, *and* the ethical demands that the *halakhah* places upon the conduct of war.

Rabbi Shaul Yisraeli was one of the outstanding halakhists of the *Dati-Le'umi* movement. He was a founder and editor of the journal *Hatorah v'hamedinah*, which from 1948 until the 1960s published articles and studies concerning the halakhic implications of Jewish national

---

<sup>13</sup> The *Torah T'mimah*, Numbers 31:7 note 9, understands this requirement as referring to the enemy army and justified on tactical grounds: if the besieging forces do not allow the enemy soldiers to escape, they will remain in the town, dig in, and fight harder against the surrounding Israelite troops. We would argue that his grasp of military tactics is faulty. The military goal of a siege is to force the surrender of the enemy army, not to let them escape and fight another day. It is more probable that the opportunity for escape of which this *halakhah* speaks involves noncombatants.

<sup>14</sup> We hardly need to note that Hamas did not provide such a warning prior to its slaughter of over 1400 Israelis on October 7, 2023. But then again, Hamas does not regard *any* Israel – or any Jew, for that matter – as an "innocent civilian."



sovereignty. Many of his extensive writings on those subjects are collected in his *Amud hay'mini* (1966), from which the following is taken:<sup>15</sup>

והיוצא מכל זה, שיש מקום לפעולות תגמול ונקם נגד צוררי ישראל, ופעולה כזאת היא בגדר מלחמת מצווה. וכל אסון ופגע שקורה לפורעים ולבעלי בריתם ולילדיהם, הם הם שעָרְבִים לזה, והם עוונם יישאו. ואין שום חובה להימנע מפעולות תגמול מחמת חשש שייפגעו בזה חפים מפשע, כי לא אנו הגורמים, כי אם הם עצמם, ואנחנו נקיים. אכן, לפגוע **לכתחילה** **בכוונה** בילדים, כזה לא מצינו ... על כן מן הראוי לשמור עצמם מלנגוע בהם.

It follows that the *halakhah* permits reprisal and revenge attacks upon the enemy, and such action falls within the category of “commanded war.” And they are held responsible for all death or injury that happens to the terrorists, their allies, and to their children; they bear the burden of their sin. We bear no obligation to refrain from reprisal operations out of fear that innocent civilians will be harmed thereby, for we are not the cause of that. They have brought it on themselves; we are innocent. However, the *halakhah* offers no justification for the **principled and intentional** harming of children... it is therefore important (for Israeli soldiers) to be careful to spare them.

Rabbi Sh'lomo Goren, a chief rabbi of the IDF and of the State of Israel, was the author of a treatise on the *halakhah* of war entitled *Meshiv milhamah*, the source of the following excerpt:<sup>16</sup>

על אף מצוות הלחימה המפורשת בתורה, מצווים אנו לחוס גם על האויב, שלא להרוג אפילו בשעת מלחמה, **אלא בזמן שקיים הכרח להגנה עצמית לצורך כיבוש ולניצחון**; ולא לפגוע באוכלוסיה בלתי לוחמת, ובוודאי שאסור לפגוע בנשים וילדים שאינם משתתפים במלחמה. פרט לאותן מלחמות המצווה שנצטוונו במפורש בתורה בימי קדם 'לא תחיה כל נשמה', באשר גם האויבים נהגו אז באכזריות, ולכן החמירה נגדם התורה. ואין ללמוד מהן חס וחלילה על מלחמות אחרות ועל זמננו.

Even though the Torah explicitly commands war, we are commanded to show mercy to the enemy, to avoid bloodshed even during wartime, **except when one must defend oneself for the purpose of conquest and victory**. We are forbidden to harm a noncombatant population, and we are certainly forbidden to harm women and children who do not take part in the war. The exception is those “commanded wars” in ancient times about which the Torah explicitly instructed us (Deuteronomy 20:16): “you shall leave no person alive.” That was because our enemies also behaved with cruelty, so the Torah dealt strictly with them. But *has v'halilah* we must not draw analogies from those wars to other conflicts and to our own time.

We can learn a number of things from these passages. We cite specifically Goren's warning not to derive our rules of military ethics literally from the wars of the Bible. He demands that we read the texts concerning those wars as relevant to those wars alone and to *their* historical context, not our own. This is a point that we progressive halakhists stress repeatedly when we study our texts, namely that *we* are responsible for their interpretation. What our texts mean for

<sup>15</sup> Shaul Yisraeli, *Amud Hay'mini*, ch. 16, p. 139.

<sup>16</sup> Sh'lomo Goren, *Meshiv Milhamah*, v.1, p. 14.

us is largely a product of how we determine to read them, the aesthetic and moral lens through which we seek to understand their words.

For our purposes here, though, the phrases highlighted in red are the most important. Both halakhists, each in his own way, tell us that while we not intentionally train our fire upon civilian populations and should do what we can to protect them,<sup>17</sup> that goal should not be allowed to jeopardize the military mission. Yisraeli writes that we must not harm innocent civilians *l'hatkhilah*, “in principle,” as a stated objective of our military operation, and *b'khavanah*, intentionally. This, of course, means that should civilians be killed or injured *b'di'avad*, as an after-the-fact, unintended (though unavoidable) consequence of our military operation, that fact does not render the war immoral or unjustifiable. Indeed, he emphasizes that it is the enemy who, due to the attack they initiated against us, bears the responsibility for those civilian deaths. The application of this reasoning to Hamas is, sadly, all too obvious. Goren, for his part, emphasizes that must refrain from harming civilians, אלא, “except when one must defend oneself for the purpose of conquest and victory.” If the war is a *milhemet mitzvah*, it must be prosecuted. The morally justifiable goal of victory, to defend our people, must be achieved, even at the cost of *unintentional* harm to civilian populations, especially if we have given them fair warning and allowed them an avenue of escape. Again, the comparison to Hamas, which offers *no* such protection to civilians – on *either* side of the conflict – is instructive.

We might compare these halakhic essays with the section of *Ruah Tzahal*, the ethical platform of the Israel Defense Forces, that describes the principle of *tohar haneshek*, the purity of arms:<sup>18</sup>

**טוהר הנשק - החייל ישתמש בנשקו ובכוחו לביצוע המשימה בלבד, אך ורק במידה הנדרשת לכך, וישמור על צלם אנוש אף בלחימה. החייל לא ישתמש בנשקו ובכוחו כדי לפגוע בבני אדם שאינם לוחמים ובשבויים, ויעשה כל שביכולתו למנוע פגיעה בחייהם, בגופם, בכבודם וברכושם.**

**Purity of Arms-** A soldier will use his weapons and his power solely to accomplish the assigned mission, only to the extent the mission requires, and he must preserve human dignity even while fighting. The soldier will not use his weapons and his power to inflict harm upon persons who are noncombatants or upon prisoners, and he will do everything in his power to protect their lives, their bodies, their dignity, and their property.

Once again, the obligation to protect the lives and property of noncombatants is tempered by the responsibility “to accomplish the assigned mission.” If that mission is morally justifiable, in other words, it must be successfully prosecuted even at the expense of unintentional harm to civilian populations.

---

<sup>17</sup> This raises obvious questions about the conduct of military operations on both sides during the Second World War. We will not discuss that subject here, but it is clearly an appropriate one for debate. Nor will we address the claim that the civilian population of an enemy state, precisely because it contributes to the economic and military strength of that state, is not truly “innocent” and therefore deserves to be classified as a legitimate military target. We *will* say that while the claim has some merit (for example, civilians work in munitions plants and other industries vital to the enemy war effort), it can easily (and hypocritically) be exaggerated to provide cover for some reprehensible targeting during war.

<sup>18</sup> Available [here](#) (accessed November 5, 2023).

## *Conclusion*

The *halakhah* requires that armies take active steps to protect noncombatants during wartime. It also permits a nation to fight a *milhemet mitzvah*, a war of defense, even though the prosecution of that war and its military objectives will necessarily – though unintentionally - lead to the death of innocent civilians. This conclusion may not satisfy all readers. Indeed, it doesn't satisfy *us*. we concede, is far from ideal. The ideal solution would be to outlaw *all* war. The very existence of war, especially given the deadly capacity of present-day weaponry, is an affront to our sense of morality. And as we've seen, the *halakhah*, too, condemns war.<sup>19</sup> But while the conclusion is not ideal, we think it is eminently realistic. A nation has the right to defend itself and its people from violent attack; it *must* have that right, even if that defense involves unintentional harm to noncombatants, provided that it takes reasonable and necessary measures to reduce the scope of that harm. To deny it that right is to counsel surrender. And that is too much to ask of any nation.

We pray for the time (may it arrive soon) that the subject of military ethics loses its practical relevance. Until then, the ethical test of warfare is to demand that a state and its military do the utmost to reduce harm to civilian populations *while* they prosecute their defensive – their morally justifiable – war.

---

<sup>19</sup> For texts and discussion see [CCAR Responsum 5762.8](#) at notes 11 through 22.