Ethics of the Battlefield: War in Jewish Law

Is it Ever Permissible to Kill?

בראשית פרק ט פסוקים ו

שֹׁפֵךְ דַּם הָאָדָם בָּאָדָם דָּמוֹ יִשָּׁפֵךְ כִּי בְּצֶלֶם אֱלֹהִים עָשָׂה אֶת הָאָדָם:

Genesis 9:6

Whoever sheds the blood of man through man shall his blood be shed, for in the image of God He made man.

העמק דבר על בראשית פרק ט פסוק ה

מיד איש אחיו .פירש הקב"ה אימתי האדם נענש בשעה שראוי לנהוג באחוה .משא"כ בשעת מלחמה ועת לשנוא אז עת להרוג ואין עונש ע"ז כלל .כי כן נוסד העולם ...

Rabbi Naftali Tzvi Yehudah Berlin (Netziv, d. 1893), HaEmek Davar on Genesis 9:5

**From the hand of a man, his brother.** The Holy One blessed is He explained: when is man punished [for killing another man]? At a time when is it proper to behave in a brotherly manner. That is not the case in times of war and hatred, for then one can kill and not be punished at all. This [principle] is established across the world...

תלמוד בבלי מסכת סנהדרין דף עג עמוד א

משנה. ואלו הן שמצילין אותן בנפשן: הרודף אחר חבירו להרגו ...

Babylonian Talmud Tractate Sanhedrin 73a

And these are the ones whom one must save even with their lives [meaning by killing the wrongdoer]: one who pursues his fellow to kill him...

רמב"ם הלכות רוצח ושמירת הנפש פרק א הלכה ה - ו

**[ה]** רוצח שהרג בזדון אין ממיתין אותו העדים ולא הרואים אותו עד שיבא לבית דין וידינוהו למיתה, שנ' (במדבר ל"ה י"ב) ולא ימות הרוצח עד עמדו לפני העדה למשפט, והוא הדין לכל מחוייבי מיתת בית דין שעברו ועשו שאין ממיתין אותן עד שיגמר דינם בבית דין. **[ו]** במה דברים אמורים בשעבר ועשה העון שחייב עליו מיתת בית דין, אבל הרודף אחר חבירו להרגו אפילו היה הרודף קטן הרי כל ישראל מצווין א להציל הנרדף מיד הרודף ואפילו בנפשו של רודף.

Rambam (d. 1204) Mishnah Torah Laws of Murder 1:5-6

**Halacha 5** When a murderer kills wilfully, he should not be killed by witnesses or observers until he is brought to court and sentenced to death, as implied by Numbers 35:12 "A murderer should not be put to death until he stands before the congregation in judgment." This law applies to all those liable for execution by the court, who transgressed and performed the forbidden act. They should not be executed until their trial is completed by the court. **Halacha 6** When does the above apply? When the person has already transgressed and performed the transgression for which he is liable to be executed by the court. When, however, a person is pursuing a colleague with the intention of killing him - even if the pursuer is a minor - every Jewish person is commanded to attempt to save the person being pursued, even if it is necessary to kill the pursuer.

 טוהר הנשק – Purity of Arms

**Scenario 1**: The Israeli Air Force located a very dangerous terrorist leader and has the opportunity to eliminate him. At the critical moment, the terrorist notices the IAF plane and slips into a taxi cab that is carrying a civilian passenger together with the driver. Should the IAF bomb the cab despite the presence of non-combatants in the car?

**Scenario 2**: The IDF are aware that Hamas rocket launchers are situated on top of a civilian building. Their rockets have threatened the lives of Israelis living in towns near the Gaza strip. They could bomb the building and remove the threat immediately. Nevertheless, the likelihood of this causing a significant number of civilian casualties is very high. They could reduce civilian casualties by sending ground troops in but this action risks the lives of IDF soldiers, especially as it is also likely that the building is booby trapped.

**Scenario 3**: A Palestinian ambulance approaches a checkpoint with its siren and blue lights on. There is a heavily pregnant woman in labour in the back in desperate need of medical attention in Israel. Do you (a) allow the ambulance to pass immediately or (b) prioritise a check of the ambulance and personnel, knowing that the delay poses a risk to the mother and unborn child?

Ethics of the Battlefield: Collateral Damage

If one applied the law of the self defence (*rodef*) to the modern battlefield, even when self defence is mandatory or permissible and one may kill a person or group of people who are seeking to kill one who is innocent, one would not be able to (i) kill an innocent third party, (ii) compel a person to risk his life to save the life of another, (iii) kill the pursuer after his evil act is over as a form of punishment or (iv) use more force than minimally needed.

While each issue demands attention, let us focus on the first question: even in a war of self defence, how can an army take action that will result in the deaths of innocent civilians?

A Jewish Approach to Civilian Casualties

בראשית פרק לב פסוק ח

וַיִּירָא יַעֲקֹב מְאֹד וַיֵּצֶר לוֹ וַיַּחַץ אֶת הָעָם אֲשֶׁר אִתּוֹ וְאֶת הַצֹּאן וְאֶת הַבָּקָר וְהַגְּמַלִּים לִשְׁנֵי מַחֲנוֹת:

Genesis 32:8

Jacob became very frightened and was distressed; so he divided the people who were with him and the flocks and the cattle and the camels into two camps.

רש"י בראשית פרק לב פסוק ח

(ח) ויירא ויצר - ויירא שמא יהרג, ויצר לו אם יהרוג הוא את אחרים:

Rashi on Genesis 32:8

**Jacob became very frightened and was distressed** – He was frightened that he might be killed (Genesis Rabbah 75:2, Tanchuma, Vayishlach 4), and he was distressed that he might kill others.

A Biblical Case Study: The Massacre of Shechem

Subsequent to the kidnapping and rape of Dinah, her brothers, Shimon and Levi attacked the town of Shechem, killing not only the rapist (also called Shechem) and the town leader Chamor, but all of the males of Shechem who had recently had a Brit Milah.

בראשית פרק לד פסוק יג

וַיַּעֲנוּ בְנֵי יַעֲקֹב אֶת שְׁכֶם וְאֶת חֲמוֹר אָבִיו בְּמִרְמָה וַיְדַבֵּרוּ אֲשֶׁר טִמֵּא אֵת דִּינָה אֲחֹתָם:

Genesis 34:13

Thereupon, Jacob's sons answered Shechem and his father Hamor with cunning, and they spoke, because [after all] he had defiled their sister Dinah.

רש"י בראשית פרק לד פסוק יג

(יג) במרמה - בחכמה: אשר טמא - הכתוב אומר שלא היתה רמיה, שהרי טמא את דינה אחותם:

Rashi on Genesis 34:13

**with cunning:** Heb. בְּמִרְמָה, with cunning. — [from Targum Onkelos] because [after all] he had **defiled:** Scripture states that this was not trickery because [after all] he had defiled their sister Dinah. — [from Genesis Rabbah 80:8]

רמב"ם הלכות מלכים פרק ט הלכה יד

וכיצד מצווין הן על הדינין, חייבין להושיב דיינין ושופטים בכל פלך ופלך לדון בשש מצות אלו, ולהזהיר את העם, ובן נח שעבר על אחת משבע מצות אלו יהרג בסייף, ומפני זה נתחייבו כל בעלי שכם הריגה, שהרי שכם גזל והם ראו וידעו ולא דנוהו...

Rambam (d. 1204) Mishnah Torah Laws of Kings and their Wars 9:14

How must the gentiles fulfil the commandment to establish laws and courts? They are obligated to set up judges and magistrates in every major city to render judgement concerning these six mitzvot [to not (i) deny God, (ii) blaspheme, (iii) murder, (iv) engage in illicit sexual relations, (v) steal or (vi) eat from a live animal] and to admonish the people regarding their observance of these mitzvot. A gentile who transgresses these seven commandments shall be executed by the sword. For this reason, all the inhabitants of Shechem were liable to die. Shechem kidnapped [Dinah and raped her]; they all saw this and were aware of his deeds, but did not judge him.

רמב"ן בראשית פרק לד פסוק יג

(יג) ויענו בני יעקב את שכם ואת חמור אביו במרמה - ... ורבים ישאלו, ואיך עשו בני יעקב הצדיקים המעשה הזה לשפוך דם נקי. והרב השיב בספר שופטים (רמב"ם הלכות מלכים פ"ט הי"ד) ואמר שבני נח מצווים על הדינים, והוא להושיב דיינין בכל פלך ופלך לדון בשש מצות שלהן, ובן נח שעבר על אחת מהן הוא נהרג בסייף, ראה אחד שעבר על אחת מהן ולא דנוהו להרגו הרי זה הרואה יהרג בסייף. ומפני זה נתחייבו כל בעלי שכם הריגה שהרי שכם גזל, והם ראו וידעו ולא דנוהו:

Ramban (d. 1270), Commentary to Genesis 34:13

Now many people ask: “But how did the righteous sons of Jacob commit this deed, spilling innocent blood?” The Rabbi (Rambam) answered in his Book of Judges, saying that non-Jews are commanded concerning Laws, and therefore they are required to appoint judges in each and every district to give judgment concerning their six commandments which are obligatory upon all mankind. “And a gentile who transgresses these seven commandments shall be executed by the sword. For this reason, all the inhabitants of Shechem were liable to die. Shechem kidnapped [Dinah and raped her]; they all saw this and were aware of his deeds, but did not judge him.”

ואין דברים הללו נכונים בעיני, שאם כן היה יעקב אבינו חייב להיות קודם וזוכה במיתתם, ואם פחד מהם למה כעס על בניו וארר אפם אחר כמה זמנים, וענש אותם וחלקם והפיצם, והלא הם זכו ועשו מצוה ובטחו באלהים והצילם: ... אלא שאין הדבר מסור ליעקב ובניו לעשות בהם הדין:

But these words do not appear to me to be correct for if so, our father Jacob should have been the first to obtain the merit of causing their death, and if he was afraid of them why was he angry at his sons and why did he curse their wrath a long time-after that and punish them by dividing them and scattering them in Israel? Were they not meritorious, fulfilling a commandment and trusting in God Who saved them? ... Rather, it was not the responsibility of Jacob and his sons to bring them to justice.

רמב"ן בראשית פרק מט פסוק ה

(ה) שמעון ולוי אחים - יאמר בעלי אחוה, כי יחם לבם על אחותם. ילמד עליהם זכות כי בקנאתם על האחוה עשו מה שעשו, לומר שאין ראוים לעונש גדול, ולא החטא ראוי לימחל כי הוא חמס. והנכון בעיני שאמר כי שמעון ולוי אחים גמורים דומים ומתאחים זה לזה בעצתם ומעשיהם:

Ramban (d. 1270), Commentary to Genesis 49:5

**Simeon and Levi are brothers.** Jacob is saying that they possess the attribute of kinship for their hearts were inflamed concerning their sister. He is thus stating in their defence that they acted as they did out of their brotherly zeal, therefore suggesting [that were it not for this extenuating circumstance], they would have been deserving of great punishment and their sin would have been unforgivable since what they did to the people of Shechem was an act of violence. The correct interpretation appears to me to be that he is saying that Simeon and Levi are real brothers, uniting in fraternity and brotherhood in counsel and deed.

רמב"ן בראשית פרק מט פסוק ו

(ו) וטעם כי באפם הרגו איש וברצונם עקרו שור - שעשו החמס באפם שכעסו על שכם, וברצונם, שהם חפצים בו, לא פשע המומתים ולא חטאתם:

Ramban (d. 1270), Commentary to Genesis 49:6

**for in their wrath they killed a man, and with their will they disabled an ox.** The meaning of this is that they committed violence in their wrath in that they were angry at Shechem, and it was to satisfy their own desire and not because of the guilt or sins of the slain.

**The Ramban therefore strongly disagrees with the Rambam’s position that the people of Shechem were all liable for the death-penalty by not having brought Shechem to justice.**

ספר גור אריה על בראשית פרק לד פסוק יג

[ב] הכתוב אומר כו'. ... אך קשה אם שכם חטא כל העיר מה חטאו להרוג, ותירץ הרמב"ם (הלכות מלכים פ"ט הי"ד) דבני נח מצווים על הדינין, ועבירה אחת שעובר - נהרג על ידו, וכאן ראו המעשה הרע הזה ולא דנוהו, לכך היו חייבין מיתה שלא היו דנין אותם. ...

Rabbi Yehudah Loew ben Betzalel, Maharal (d. 1609) on Genesis 34:13

**Scripture states etc.** – ... Yet there is a question: while Shechem sinned, what was the sin that justified the notion that the entire city should have been killed? The Rambam answered (Laws of Kings and Their Wars 9:14) that non-Jews are obligated to appoint judges, and a gentile who transgresses one of these seven commandments shall be killed. Here they [the people of the city] saw this evil act and did not judge [Shechem]. Therefore, they were liable for death for not judging him. ...

ובאמת דבר תימה הם אלו הדברים, כי איך אפשר להם לדון את בן נשיא הארץ (פסוק ב), כי היו יראים מהם, ואף על גב שנצטוו על הדינין - היינו כשיוכלו לדון, אבל אונס רחמנא פטריה (ב"ק כח ע"ב), ואיך אפשר להם לדון אותם: ...

In truth, these words are a wonder, for how are the people meant to judge the son of a prince of the land (verse 2) for they would have been afraid of him? Even so, they were commanded to appoint judges - meaning those who were able to judge. Yet God forgives those who acted by force (Bava Kamma 28b), and so how was it possible for them to judge them. ...

...ואף על גב דאמרה התורה (דברים כ, י) "כי תקרב אל עיר להלחם עליה וקראת אליה לשלום", היינו היכי דלא עשו לישראל דבר, אבל היכי דעשו לישראל דבר, כגון זה שפרצו בהם לעשות להם נבלה, אף על גב דלא עשה רק אחד מהם - כיון דמכלל העם הוא, כיון שפרצו להם תחלה - מותרים ליקח נקמתם מהם.

... Even though the Torah says (Deuteronomy 20:10) “When you approach a city to wage war against it, you shall propose peace to it” this applies in a case where the nation has not done anything to harm the Jewish people. But where the nation has done something to harm the Jewish people, such as this breach which caused an act of outrage, even though it was only carried out against one of them [Dinah] for it includes the entire people and their violation was carried out first, it is permitted to carry out revenge against them.

והכי נמי כל המלחמות שהם נמצאים כגון "צרור את המדיינים וגו'" (במדבר כה, יז), אף על גב דהיו הרבה שלא עשו - אין זה חילוק, כיון שהיו באותה אומה שעשה רע להם - מותרין לבא עליהם למלחמה, וכן הם כל המלחמות:

This also applies to all wars that are found, for example (Numbers 25:17) “Distress the Midianites, [and you shall smite them]” even though there were many [Midianites] who did not act [against the Jewish people] - we do not differentiate, for it is that nation which carries out evil against them and therefore it is permitted to act against them all in war, and so too in all wars.

Rabbi Chaim Jachter, Halachic Perspectives on Civilian Casualties

It would appear obvious that the Maharal does not sanction frivolous attacks on civilian members of an enemy nation. When the proper execution of battle plans necessitates killing non-combatants, though, he would permit doing so. For example, it appears that the Maharal would sanction the dropping of atomic bombs on Hiroshima and Nagasaki in 1945 despite the Japanese babies who were killed in this attack. He also would sanction the unrelenting Allied bombing of Germany towards the end of World War Two despite the killing of German babies in towns such as Dresden.

I should stress that many people probably would not be alive today had it not been for these attacks. My father, for example, served as a combat soldier in the Pacific during World War Two and might not have survived an American invasion of Japan. Many Holocaust survivors owe their survival to the relentless Allied bombing of Germany, which brought that evil nation to its knees. The Maharal believes that my father's blood was "redder" (see Pesachim 25b) than the blood of the Japanese babies who perished in the bombings of Hiroshima and Nagasaki in 1945. This is the price of being a member of an aggressor nation.

דברי הימים א פרק כב פסוק ח

וַיְהִי עָלַי דְּבַר יְקֹוָק לֵאמֹר דָּם לָרֹב שָׁפַכְתָּ וּמִלְחָמוֹת גְּדֹלוֹת עָשִׂיתָ לֹא תִבְנֶה בַיִת לִשְׁמִי כִּי דָּמִים רַבִּים שָׁפַכְתָּ אַרְצָה לְפָנָי:

Chronicles I 22:8

But the word of the Lord was upon me, saying: 'You have shed much blood, and you have waged great wars; you shall not build a House in My Name because you have shed much blood to the ground before Me.

רד"ק דברי הימים א פרק כב פסוק ח

ובאמרו דמים לרוב שפכת ארצה כי דם נקיים היה בדמים אשר שפך כמו דם אוריה וזה לפני ,גם בדמי הכהנים היה הוא הסבה כמו שאמר הסיבותי בכל נפש בית אביך ,גם בדמי הגוים אשר שפך אותם שלא היו בני מלחמתו אפשר שהיו בהם אנשים טובים וחסידים אעפ"י כן לא נענש עליהם כי כוונתו לכלות הרשעים שלא יפרצו בישראל ולהציל עצמו כשהיה בארץ פלשתים לא יחיה איש ואשה . אבל כיון שנזדמן לו שפיכות דמים לרוב מנעו מלבנות בית המקדש שהוא לשלום ולכפרת עון ולעטרת תפלה ,כמו שמנעו להניף ברזל במזבח ובבית המקדש לפי שהברזל עושים ממנו כלי הריגה לא יעשו ממנו כלי שלום ברוב:

Rabbi David Kimchi (d. 1235) Radak on Chronicles I 22:8

**You have shed much blood** - ... When it says that [David] spilled much blood to the ground it was referring to the innocent blood which was spilt, for example the blood of Uriah, the Kohanim [from the city of Nov whose death was indirectly] caused by David as it says (Samuel I 22:22) ‘[And David said to Abiathar, "I knew on that day that Doeg the Edomite was there, and that he would tell Saul.] I brought about the death of every person of your father's household!’ It also applies to the blood which was spilt of the non-Jews who were not combatants. It is possible that they were good people and pious. Nevertheless, David was not punished on their account because his intent was to destroy the wicked so they were not able to breach the Jewish people and to save himself as it was when he was in the land of the Philistines when not a man or woman survived. However, once he had been responsible for shedding so much blood, he was prevented from building the Temple for it is a place of peace, atonement for sin and crowning with prayer in the same way that it was forbidden to use iron to hew [the stones for] the altar and the Temple for iron is also used to make weapons and so it cannot be used to make objects of peace.

שו"ט עמוד הימיני סימן ט"ז פרק ה

... ההלכה מתירה מלחמה עם הנכרים ואז בהכרח יורד איסור זה של פגיעה בנפשות. ולא מצינו במלחמה גם חובה לדקדק ולהבדיל ביזן דם לדם ... במהלך המלחמה כשצרים על העיר וכיי"ב אין שום חובה ואין גם אפשרות לדקדק בדבר.

Rabbi Shaul Yisraeli (d. 1995), Responsa: Amud HaYemini 16:5

Jewish law permits war with non-Jewish nations which forces the issue of attacking other people. We do not find the obligation in war to distinguish between blood and blood (combatants and non-combatants). ... In the course of war, when laying siege to a city and the like, there is no obligation to make such distinctions and it would also be impossible to be precise in such matters.

Harvard Professor Alan Dershowitz, "The Case for Israel" p. 167

Although collective punishment is prohibited by international law, it is widely practiced throughout the world, including the most democratic and liberty-minded countries. Indeed, no system of international deterrence can be effective without some reliance on collective punishment. Every time one nation retaliates against another, it collectively punishes citizens of that country. The American and British bombings of German cities punished the residents of those cities. The atomic bombings of Hiroshima and Nagasaki killed thousands of innocent Japanese for the crimes of their leaders. The bombing of military targets inevitably kills civilians.

Int'l Legal Experts Slam IDF - For Over-Warning Gazans

Experts from US, Germany warn IDF 'legal zeal' sets dangerous precedent tying hands of democracies fighting terror.

The IDF went to extraordinary lengths last summer to prevent civilian casualties while fighting Hamas terrorists in Gaza, achieving a remarkable 1:1 civilian to combatant ratio, but according to international legal experts it went too far in avoiding casualties among the enemy population.

Willy Stern of Vanderbilt Law School, in an article to be published next Monday in the Weekly Standard, details what he found while spending two weeks with attorneys in the IDF's international law department dubbed "Dabla" as well as front-line commanders, and documents the IDF's "legal zeal" which as he notes has not stemmed the deluge of international criticism against it. Stern listed how the IDF bombarded Gaza residents with thousands of telephone calls, leaflet drops, TV and radio messages, as well as calls to influential citizens urging them to evacuate residents, and in doing so gave the terrorist enemy detailed information about its troop movements.

"It was abundantly clear that IDF commanders had gone beyond any mandates that international law requires to avoid civilian casualties," writes Stern. He reported how Dabla attorneys have to sign off on a "target card" for each airstrike on terror targets, with the cards enumerating all of the relevant data about the planned strike. In contrast, the Hamas "doctrine manual" captured by the IDF in the Shejaiya neighborhood early last August documents how the terror group urges its fighters to embed themselves among civilians in hopes that the IDF will kill civilians. "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," reads the article.

**"IDF harming fight against terror"**

Indeed, international legal experts quoted in the article argued that the IDF's actions do go to inappropriate measures, and may end up harming the ability to fight terrorist organizations. Wolff Heintschel von Heinegg, a military law expert at European University Viadrina in Frankfurt, Germany, was brought by Dabla to train IDF commanders about armed conflict laws.

Heinegg was quoted saying the IDF went to "great and noble lengths" to avoid civilian casualties, but warned the IDF is taking "many more precautions than are required." As a result, he expressed his fear that the IDF "is setting an unreasonable precedent for other democratic countries of the world who may also be fighting in asymmetric wars against brutal non-state actors who abuse these laws."

Sharing his assessment was Pnina Sharvit Baruch, a senior researcher at the Institute for National Security Studies (INSS) and former Dabla chief. She said legal advisers from other militaries around the world confront her with "recurring claims" 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 organized armed groups."

Michael Schmitt, director of the Stockton Center for the Study for International Law at the US Naval War College, also agreed that the IDF is creating a dangerous state of affairs that may harm the West in its fight against terrorism. "The IDF’s warnings certainly go beyond what the law requires, but they also sometimes go beyond what would be operational good sense elsewhere," he warned. "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," said Schmitt.

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