

[From the Kol Torah Journal, Vol. 17, No. 17, Jan. 5, 2008, available online:  
[http://www.koltorah.org/ravj/Halachic\\_Perspectives\\_on\\_Civilian\\_Casualties\\_1.html](http://www.koltorah.org/ravj/Halachic_Perspectives_on_Civilian_Casualties_1.html)]

## **Halachic Perspectives on Civilian Casualties I**

by Rabbi Chaim Jachter

### **Introduction**

Perhaps the most critical Halachic/ethical issue facing the Jewish State and indeed the entire civilized world is the question of avoiding civilian casualties when battling terrorists. Groups such as Al Qaeda and Hezbollah take advantage of Western sensibilities by deliberately embedding themselves within civilian populations and cynically using them as human shields. The civilized world struggles to strike a balance between combating such evil groups on one hand and trying to limit civilian casualties on the other.

Israel in particular must confront this terrible challenge. In recent years, Israel has risked and lost many of its precious soldiers in order to reduce Arab civilian casualties. For example, after a series of horrific terrorist attacks in the first half of 2002 (including the bombing of the Park Hotel in Netanya in which 29 people partaking in a Pesach Seder were murdered by a homicide bomber), the Israeli army launched an operation with the goal of severely weakening terrorist groups. A hotbed of terrorists had been the Jenin refugee camp in the Northern Shomron. The Israeli army could have bombed this refugee camp, but instead it chose to send foot soldiers house to house to eliminate the terrorists located in the camp, by which it hoped to reduce civilian casualties. Such casualties certainly were kept to a minimum in this effort. However, 23 Israeli soldiers were killed in the Jenin operation who would have been spared had Israel attacked only from the air.

Similarly, in the summer of 2006 Hezbollah mercilessly pounded Northern Israel with hundreds of rockets. Israel could have responded by "carpet bombing" Southern Lebanon but instead it chose to attack Southern Lebanon with a combination of air attacks and ground forces hoping to reduce civilian losses. While Israel certainly reduced non-combatant deaths, more than one hundred Israeli soldiers were killed, and the stated goal of eliminating Hezbollah's presence in Southern Lebanon was not achieved. We must ask whether the Israeli government made an appropriate moral decision in both Jenin and Lebanon. In other words, does Halacha permit and/or require the sacrifice of our soldiers in order to reduce enemy civilian losses?

Rav Yuval Sherlow, the Rosh Yeshiva of the Hesder Yeshiva of Petach Tikvah and an advisor to the Israeli army on ethical matters, visited the Torah Academy of Bergen County in March 2007 and told the students of a specific issue in this regard that he was asked to resolve. The Israeli Air Force had located a very dangerous terrorist leader and had the opportunity to eliminate him. The terrorist noticed the plane and slipped into a taxi cab that had a passenger. The question was whether to bomb the cab despite the presence of non-combatants in the car.

In this series, we shall outline the Halachic and Hashkafic issues involved in resolving such critical issues. We will not address the political and military questions involved in making these decisions, leaving such considerations for experts in these areas. There has been extensive Halachic discussion of this issue, including a Teshuvah written by Rav Shaul Yisraeli (Teshuvot Amud HaYemini number 16 and BeTzomet HaTorah VeHaMedinah 3:253-289) and a lengthy essay written by Rav Dr. Neriah Gutel (Techumin 23:18-42). We will seek to discover a consensus approach that has emerged from the prominent Rabbanim who have addressed this issue, who include Rav Yisraeli, Rav Yaakov Ariel, Rav J. David Bleich, Rav Aharon Lichtenstein, Rav Hershel Schachter, and Rav Mordechai Willig.

### **Shimon and Levi at Shechem**

The point of departure for this discussion is the evaluation of Shimon and Levi's actions at Shechem (Bereishit 34). Subsequent to the kidnapping and rape of Dinah, Shimon and Levi attacked Shechem, killing not only the rapist Shechem and the town leader Chamor, but also all of the males of Shechem who had a Brit Milah. (For a discussion of whether they killed every male in the city, including those without a Brit Milah, see Megadim 23:14). We shall survey the three primary views: the respective approaches of the Rambam, the Ramban, and the Maharal. For a full analysis of this event, see Binyamin Mallek's essay that appears in Megadim (23:9-30). The Rambam (Hilchot Melachim 9:14) believes that Shimon and Levi acted appropriately at Shechem. He notes that Halacha demands of all of humanity to eliminate evil from its midst. This is the obligation of Dinim, one of the seven Noahide laws. The failure of the males in Shechem to protest and prevent the rape and continued abduction of Dinah was a violation of the Noahide Code punishable by death (see Sanhedrin 57a).

The Ramban (commentary to Bereishit 34:13 and 49:5-6) strongly disagrees with the Rambam's opinion. He believes that Shimon and Levi were justified in killing Shechem and Chamor. However, he argues that the killing of the males of Shechem was entirely unjustified. His basic argument is that it was wrong for Shimon and Levi to kill the males of Shechem, since they did nothing wrong to Yaakov's family. The Ramban asserts that the residents of an area do not deserve death for failure to control the evil actions of their leader. He adds that even if they deserved to die due to other violations of the Noahide Code, Shimon and Levi were not authorized to execute such punishment.

### **Proofs to the Rambam and the Ramban**

The Ramban supports his opinion from the fact that Yaakov Avinu strongly criticized Shimon and Levi's actions (Bereishit 34:30). The Rambam could answer that the Torah (ibid. verse 31) records Shimon and Levi's justification of their actions. Moreover, Yaakov Avinu does not respond to this justification, and the Torah gives the last word to Shimon and Levi. On the other hand, the Ramban could argue that Yaakov criticizes Shimon and Levi on his deathbed (Bereishit 49:5-7). Thus, the Torah in fact gives the last word to Yaakov Avinu. The Rambam might reject this proof by noting that Yaakov on his deathbed criticized Shimon and Levi for their leading roles in the sale of Yosef, not for killing the inhabitants of Shechem. (The Ramban

would disagree, since he believes that Yaakov never discovered that it was the brothers who sold Yosef; see his comments to Bereishit 45:27.) Indeed the words "Ish" and "Shor" used in Bereishit 49:7 fit Yosef, as he is referred to as a Shor in Moshe Rabbeinu's final blessing (Devarim 34:17) and as an Ish no less than fourteen times in Sefer Bereishit (as noted in Megadim ibid. 25-26).

I would suggest that the Rambam interprets Peshuto Shel Mikra as implicitly sanctioning the actions of Shimon and Levi at Shechem. In Devarim chapter 27, Moshe Rabbeinu describes the future placement of the Shevatim on Har Gerizim and Har Eival (located in Shechem) during the ceremony announcing the various Berachot and Kelalot that will come upon those who do/do not keep the Torah. The Berachah is given on Har Gerzim and the curse on Har Eival. It is interesting to note that of the three sons whom Yaakov criticized on his deathbed, Reuven alone was placed on Har Eival, while Shimon and Levi were placed on Har Gerizim. It is hardly surprising that Reuven was positioned on Har Eival for this ceremony, which included, "Cursed is the man who sleeps with his father's wife" (Devarim 27:20), a sin to which Reuven had connection (see Bereishit 35:22). However, it is quite noteworthy that Shimon and Levi were placed on Har Grizim despite the fact that the ceremony would occur in an area where their ancestors sinned (according to the Ramban). The positioning of Shimon and Levi on Har Gerizim might be interpreted as Hashem sanctioning the actions of Shimon and Levi at Shechem more than two hundred years earlier.

### **The Maharal and Twentieth-Century Applications**

The Maharal (Gur Aryeh to Bereishit 34:13) adopts a compromise of sorts between the Rambam and the Ramban. On one hand, he agrees with the Ramban that the people of Shechem cannot be held accountable for the actions of their leaders, for the leaders exercised a form of coercion. On the other hand, the Maharal justifies the actions of Shimon and Levi.

He argues that the Torah sanctions waging war when a nation has attacked us. In such circumstances, we are permitted and perhaps obligated to respond to the other nation's provocation. In responding, we attack the other nation and do not distinguish between the guilty and the innocent members of that nation. Shimon and Levi appropriately responded to Shechem's aggression. Once they responded, they were permitted to attack the entire nation, because this is the manner in which war is waged.

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.

Next week, we shall discuss how contemporary Poskim apply the dispute between the Rambam, the Ramban, and the Maharal to the awful challenges faced by Israel today.

## **Halachic Perspectives on Civilian Casualties II**

by Rabbi Chaim Jachter

Last week, we began a discussion of what might be the most important Halachic/ethical issue facing Medinat Yisrael and the civilized world: the question of harming civilians while attacking enemy forces. The survival of Medinat Yisrael and the entire civilized world might depend on this issue, as contemporary radical Islamic terrorists' modus operandi is to shelter themselves among civilians. In this way, they seek to take advantage of western sensibilities that are offended by harming civilians in battle. Our point of departure to resolving this quandary was the dispute between the Rambam, the Ramban, and the Maharal as to how to evaluate Shimon and Levi's killing the adult male population of Shechem in the wake of the capture and rape of Dinah (Bereishit chapter 34). The Rambam supports their action, arguing that the people of Shechem deserved to be punished due to their failure to punish their leaders for abducting and raping Dinah. The Ramban, on the other hand, maintains that Shimon and Levi were not justified, as the males of Shechem did not deserve capital punishment for this failure. The Maharal claims that although the males of Shechem were innocent, Shimon and Levi were justified in killing them, because in a war between nations, one does not distinguish between the innocent and the guilty.

### **Applying the Different Views**

The Rambam and the Ramban argue as to whether Halacha considers an entire population responsible for the evil perpetrated by its leaders. As we discussed last week, it is difficult to discern whose opinion is endorsed by the Chumash. Indeed, Rav Shaul Yisraeli (Teshuvot Amud HaYemini 16) concludes his discussion of this debate, "In practice, there is insufficient basis to permit action against an entire community that has failed to execute its duty and remove murderers from its midst so long as it is reasonable to excuse them with the claim of fear, pressure, and the like."

However, prominent Poskim such as Rav Yaakov Ariel (Arachim BeMivchan HaMilchamah p. 83), Rav Dov Lior (Techumin 4:186), Rav Hershel Schachter (BeIkvei HaTzon p. 207) and Rav Asher Weiss (Minchat Asher Devarim 217-222) rely upon the Maharal's interpretation of the Shechem episode to allow harming anyone who belongs to an enemy nation during wartime. Rav Yitzchak Blau (Tradition Winter 2006 p. 11) argues, though, that "Maharal is a decidedly minority viewpoint with regard to that story and thus is a shaky leg upon which to build a far reaching position." Rav Dr. Neria Gutel (Techumin 23:32) expresses similar reservations about applying the Maharal's principle in practice. We will seek to demonstrate why the Maharal is a most solid source and most definitely does not constitute a "shaky leg" upon which to base a resolution to our question.

## Support for the Maharal

The Maharal's approach to the Shechem incident is endorsed by Rav Zalman Sorotzkin (Oznayim LaTorah, Bereishit 34:25), a leading mid-twentieth-century Halachic authority and Torah commentator. Furthermore, Rav Gutel (Techumin 23:34-35) convincingly demonstrates that the Netziv (Bereishit 9:5 and Devarim 20:8) believes that one is not punished for killing non-combatants during the course of battle. Thus, although the Netziv does not seem to subscribe to the Maharal's interpretation of the Shechem episode, he nonetheless agrees with the principle regarding killing civilians during wartime. In addition, Rav Schachter (ad. loc.) argues that the Netziv (commentary to Kiddushin 45a) articulates a principle that accords with the Maharal's approach.

Thus, even if the various commentators do not share the Maharal's defense of Shimon and Levi, they do not necessarily reject the underlying principle. They may believe that killing Shechem and Chamor would have sufficed to rescue Dinah and that waging war against the entire town was therefore uncalled for. In other words, the war against Shechem was unjustified, but in a just war one may attack without distinguishing between the innocent and guilty if it is impossible to wage war effectively in another manner.

Furthermore, Rav Asher Weiss notes that the Radak (Divrei HaYamim 1:22:8) also subscribes to the Maharal's principle. In his explanation of why David was disqualified from building the Beit HaMikdash due to the "blood that he had shed," he writes that David had killed non-combatants in the course of battle. However, he adds that David was not held accountable for their deaths, "since his intention was to eliminate evildoers so that they would not harm our nation." For further explanation of why this nonetheless would disqualify him from building the Mikdash, see Rav Elchanan Samet's *Iyunim BeFarshiot HaShavua* (1:68-69).

Furthermore, Rav Schachter (ad. loc.) argues that a principle presented by the *Minchat Chinuch* (425:3) also accords with the Maharal's approach. The *Minchat Chinuch* asserts that the rules forbidding endangering oneself do not apply in a situation of war. If a war is mandated by the Torah, then by definition, explains the *Minchat Chinuch*, it demands from soldiers to endanger their lives since, unfortunately, this is the normal course of war. Similarly, argues Rav Schachter, the Torah expects that we endanger the lives of civilians while waging a just war if this is necessary to achieve success. Rav Schachter notes that Rav Yitzchak Zev Soloveitchik (in his commentary to the Haftarah of Parashat VaYishlach) and Dayan Ehrenberg (*Teshuvot Devar Yehoshua* 2:48) concur with the assertion of the *Minchat Chinuch*.

Rav Shaul Yisraeli (ad. loc.) notes that "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." Rav J. David Bleich (*Contemporary Halakhic Problems* 3 p. 277) echoes this observation: "Not only does one search in vain for a ruling prohibiting military activity likely to result in the death of civilians, but to this writer's knowledge, there exists no discussion in classical rabbinic sources that takes cognizance of the likelihood of causing civilian casualties in the course of hostilities legitimately undertaken as posing a halakhic or moral problem." The vast response literature and that an assertion such as this made by Rav Bleich carries great weight.

Accordingly, we see that far from being a "decidedly minority viewpoint," the Maharal constitutes a mainstream and normative concept that is appropriately applied by the aforementioned leading Poskim. This is hardly surprising in light of King Shaul's warning to the Keini to evacuate their homes lest they be harmed in the course of war with Amaleik (Shmuel 1:15:6). We see that Shaul was prepared to endanger civilians in the course of war (and therefore told them to leave), and he was not censured for this by either the Tanach or Chazal. Both Rav Ariel (Techumin 4:190) and Rav Bleich (ad. loc.) cite this as strong support for the principle articulated by the Maharal. Moreover, this precedent extends the principle to harming even another nation living in proximity to the enemy if no viable alternative exists.

### **The Maharal and Imitating Hashem**

We can further support the opinion of the Maharal from the principle of "Acharei Hashem Elokeichem Teileichu" (Devarim 13:5). This principle obligates us to imitate Hashem's actions. Chazal (Sotah 14a) offer such examples as "Just as Hashem visits the sick, we too should visit the sick" and "Just as Hashem buries the dead, we too should bury the dead." Rav Yosef Dov Soloveitchik in particular was fond of presenting further examples, such as "Just as Hashem is creative, we too should be creative" (see *Ish HaHalacha* pp. 84-85).

I would suggest that the Maharal's principle also constitutes an example of imitating Hashem. The Gemara (Bava Kama 60a) states, "When permission is given to an angel to destroy, it does not distinguish between good people and bad people." Rashi (commenting on Bereishit 6:13 s.v. Keitz Kol Basar) writes that whenever there is immorality, utter destruction comes to the world and kills the good with the bad. Note that had we not distinguished ourselves from the Egyptians (see Rashi to Shemot 12:6 s.v. VeHayah), our firstborns would have suffered the same fates as those of the Egyptians.

It seems obvious that Hashem, Who is good and merciful to all (Tehillim 145:9), would punish the good along with the bad only if no alternative exists. Similarly, when waging a legitimate war against a nation that has perpetrated evil, we may, or perhaps must, punish the innocent along with the guilty if no other viable alternative exists in order to wage a winning campaign.

### **The Maharal and the Geneva Convention**

Rav Yisraeli and Rav Gutel note that Halacha seems to require conforming to the Geneva Convention and the norms of civilized countries regarding the ethical manner of waging war. This appears to apply even if the convention contradicts Halacha, just as we were required to honor the treaty we signed with the Givonim (Yehoshua chapter nine) despite the fact that it violated Halacha (see Rambam Hilchot Melachim 6:5).

Rav Yisraeli notes, however, that this applies not to the theory or rhetoric of the Geneva Convention, but rather to the manner in which it is practiced by civilized countries. This is similar to the idea I heard Rav Mordechai Willig cite in the name of Rav Aharon Kotler and Rav Moshe Feinstein that the rule of Dina DeMalchuta Dina (the obligation to honor the laws of land

in which we reside) applies to the law as it is practiced and not as it is written. For example, Rav Kotler permitted driving sixty two miles-per-hour in a fifty five mile-per-hour zone, since the police did not issue a ticket for traveling at less than sixty three miles-per-hour.

Regarding warfare, liberal Harvard Professor Alan Dershowitz writes ("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."

We may add the following examples to Professor Dershowitz's list: The Allied blockade of the Central Powers to force them into submission via starvation and the doctrine of Mutually Assured Destruction, which prevented Soviet nuclear attack during the Cold War and which was predicated on the threat of collective punishment on a massive scale. I would argue that the practice of Allied forces during World Wars One and Two establishes the norm for how civilized nations should practice the principles articulated in the Geneva Convention when fighting an evil and tenacious enemy that is bent on annihilating its opponents. This standard is very much in harmony with the Maharal's principle of conduct during warfare.

## **Conclusion**

Rav Ariel, Rav Lior, Rav Schachter, and Rav Weiss are without a doubt fully justified in following the principle articulated by the Maharal, which has a rock-solid basis in Tanach, Chazal, Rishonim, Acharonim, and basic Hashkafic principle. Thus, Halacha permits waging war without regard for civilian casualties if the war is justified and no viable alternative exists with which to wage a successful battle. Next week, we shall discuss the application of this principle to the current struggle of Israel and the civilized world against militant Islamic terror. We will focus on the critically important question of whether we should sacrifice "small" numbers of our soldiers in order to avoid large numbers of enemy casualties.



## **Halachic Perspectives on Civilian Casualties III**

by Rabbi Chaim Jachter

### **Introduction**

This week, we shall conclude our discussion of avoiding civilian casualties in the course of war. In the past two weeks, we have presented the opinion of the Maharal that when a nation wages war against another nation, the war is waged without distinguishing between combatants and non-combatants. Of course, this applies only when the war is a legitimate one and only if victory cannot be achieved without risking civilian casualties. We concluded that the Maharal constitutes normative Halacha and fully conforms to Torah Hashkafah and ethics.

This week, we shall discuss the application of the Maharal to Medinat Yisrael's current struggle with Arab terrorism. We shall focus on three critical issues. Firstly, is the current struggle categorized as war? Next, is the struggle against a nation? Finally, must Israel risk the lives of its soldiers in an attempt to reduce civilian casualties?

### **Is the Current Struggle Defined as War?**

It is important to stress that the Torah sanctions the risk of harming civilians only during wartime. Rav Shaul Yisraeli notes (Teshuvot Amud HaYemini number 16) that an individual may not save his life by killing another human being. Thus, it is critical to determine if the current struggle against terrorism is defined as war. The intermittent battles against terrorists are fundamentally dissimilar to a "constant" war that Israel waged during, for example, the Yom Kippur War. Indeed, Rav Yuval Sherlow, in his address to TABC students, noted the shifting paradigms in determining ethical conduct during war. He commented that we cannot frame our policies using the same standards of war that were relevant in prior decades.

Rav Yisraeli (ibid.) and Rav Hershel Schachter (BeIkvei HaTzon number 32) argue that the fight against terrorism is defined as a war. Rav Yisraeli addressed a specific situation in 1953 when the Israel Defense Forces raided an Arab village named Kibiyeh in response to a series of attacks, including Arab terrorists killing a woman and her two small children in Yehud. The IDF killed sixty people, including women and children, in the operation. Rav Yisraeli defends the legitimacy of such action by defining it as an act of war, in which distinction is not drawn between guilty and innocent blood. We again stress that such permission applies only if the war is legitimate and the mission's success hinges upon risking the lives of civilians.

Rav Schachter cites from Rav Yaakov Kaminetzsky, who argues that Israel has been in a constant state of war from a Halachic perspective since the establishment of the state. Rav Yaakov accordingly ruled in 1970 that it was forbidden to ransom the great Rav Yitzchak Hutner, who was being held captive by Arab terrorists who had hijacked the airplane on which

he was a passenger. There was a suggestion to offer a huge sum to ransom Rav Hutner, since Tosafot (Gittin 58a s.v. Kol) permit paying an exorbitant sum to save a great Rav. Rav Yaakov ruled that Tosafot's permission applies only during peacetime. Since Israel's ongoing struggle with terrorism constitutes a war, Rav Yaakov felt it was forbidden to ransom even one as great as Rav Hutner.

Indeed, Rav Yuval Sherlow noted that terrorists wage war in a fundamentally different manner than mankind has heretofore experienced. The military response necessarily must also differ, and we cannot gauge the morality of such responses using the paradigms of "conventional wars." The bottom line, however, is that this struggle is defined as war even if it differs from wars waged in prior generations.

### **Are We Waging War Against a Nation?**

The Maharal's principle seems to apply only when waging war against a nation. Is the State of Israel regarded as waging a war against the Palestinian community? Rav Yitzchak Blau (Tradition Winter 2006 p. 17) argues, "Even after recognizing the evil done by terrorists, can it truly be said that modern Israel is in a state of war with the collective body of Palestinians when Israelis frequently hire Palestinian workers?" Nonetheless, Rav Kaminetzsky, Rav Yisraeli, and Rav Schachter answer a resounding "Yes!" to this question.

Rav Blau's question emerges from his inaccurate superimposition of the definition of war from a conventional war onto the war against terrorism. The fact that, for example, Americans did not hire Japanese workers World War Two is entirely irrelevant to the current war on terrorism. Indeed, Israelis' hiring of Arab workers is intended in part to motivate Palestinians to prefer the stability of peace. Moreover, Rav Blau's question seems to have become moot when the Palestinians elected Hamas to run the Palestinian Authority in 2006. How can one reasonably claim the innocence of the Palestinian people when they chose to elect a party that explicitly calls for Israel's destruction? Furthermore, the Gaza Strip that is now governed entirely by Hamas undoubtedly constitutes an enemy nation entirely analogous to the relationship between Japan and the United States during World War Two.

Moreover, perhaps even if one asserts that Israel is engaged in a war against the army or community of terrorists and not the Palestinian people, the Maharal's principle remains relevant. Recall from last week that Shaul warned the Keini people to move away from Amaleik, lest they be killed in the ensuing battle. We see that even though Shaul was waging war against Amaleik, he could risk harming another people living in proximity to the Amaleikim, regardless of whether the Keini were more or less numerous than the Amalekites. Similarly, the Israeli army may risk the lives of Palestinian civilians living near Palestinian terrorists. The same applies to Hezbollah terrorists embedded among the civilian population of Lebanon.

## **Placing Soldiers at Risk to Reduce Civilian Casualties**

The Israeli army clearly is entitled to risk the lives of civilians in its efforts to eradicate terrorists. The crucial question, though, is whether it must risk its soldiers' lives in order to reduce civilian casualties. The question is debated by leading Rabbanim of our generation. Rav Aharon Lichtenstein (Techumin 4:185) believes Israel must "absolutely consider the extent of the justification of killing a large group [of civilians mixed with enemy soldiers] in order to save the life of an individual [Israeli soldier]." He regards the amount of civilian casualties as a factor to consider when conceiving battle plans. Rav Avraham Shapira (Techumin 4:182) and Rav Dov Lior (Techumin 4:186), on the other hand, strongly disagree. Rav Lior writes, "In times of war, there surely exists firm Halachic basis for any action done in order to insure that not even one soldier should be, God forbid, harmed." Rav Schachter told me (in a conversation in June 2007) that he agrees with Rav Shapira and Rav Lior. In fact, he argues that Israel acted immorally when it risked its soldiers in Jenin and Lebanon in order to reduce civilian casualties. Rav Bleich (in a telephone interview conducted in July 2007) also told me that he agrees with Rav Shapira and Rav Lior. He agrees with Rav Schachter that it is forbidden to risk Israeli lives in order to save Arab civilians, as occurred in Jenin and Lebanon. My Talmid Avi Levinson reports that Rav Mordechai Willig told him that he also agrees with the approach of Rav Shapira and Rav Lior. We should note that neither side in this debate cited an explicit source regarding this matter. Rather, it appears to be a question of Halachic-moral intuitions. We should stress that we cannot say that one side is more stringent or maintains a higher moral standard, since each side believes the opposing position to be morally wrong. I simply would add that just as we cited from Rav Yisraeli and Rav Bleich last week that there is no Halachic source that "takes cognizance of the likelihood of causing civilian casualties in the course of hostilities legitimately undertaken," so too there exists no classic Halachic source requiring or even permitting risking Israeli soldiers to save Arab civilian lives. In the absence of explicit sources in either direction, it is fair to say that the consensus opinion of major rabbinic authorities does not accord with the approach of Rav Lichtenstein on this matter.

Rav Bleich cautions, though, that in certain situations it seems that Israel might be justified in risking Israeli lives in order to spare Arab civilians. One such instance would be if it feels that causing Arab civilian casualties will later endanger Israeli lives as a result of violence caused by Arabs seeking revenge. If Israel fears that Arabs will be incited by civilian casualties and endanger Israeli lives, perhaps risking Israeli soldiers to save Israeli lives is permitted. This would seem to be based on the Gemara (Shavuot 35b) that sanctions a king risking up to one sixth of the population in an attempt to secure his nation during a war. A leader may have the right to risk a small amount of soldiers in the short term in order to prevent much larger casualties in the long term. We stress, though, that in these cases, risking Israeli soldiers might be justified solely due to the consideration that it will save Israeli lives in the long run. The blood of the Israeli soldier is redder than the blood of the Arab whose brethren initiated violence against Israel, just as the blood of the American soldier was redder than the blood of Japanese civilians during World War Two.

## Conclusion

The Torah wishes us to have a degree of compassion even for our enemies. For example, the Ramban (positive Mitzvot that the Rambam omitted from his list of the 613 Mitzvot #5) cites the Sifri requiring that when besieging an enemy position we not completely encircle them. Rather, we should leave one side open in order to give the enemy a chance to escape. The Ramban explains one reason for this rule is that we should have mercy on the enemy soldiers. He also explains that it is our interest to do so, since it will encourage enemy soldiers to escape and thereby weaken the morale of our opponents. Thus, the obligation to have mercy on enemy soldiers applies only if the action taken does not impinge on waging a successful military campaign. It also would seem that the obligation to leave open a fourth side for escape applies only if it also serves to enhance our military strategy, as described by the Ramban, for why else would the Ramban mention the military benefit of leaving open the fourth side?

Nonetheless, as Rav Hershel Schachter and Rav Yuval Sherlow explain, winning a just war constitutes an ethical imperative. The compassion we must have for our enemies cannot impinge upon our ability to win a war. Indeed, Rav Sherlow argues that the first clause of the IDF's code of ethics should state that it is a moral obligation for the Israeli army to win. He believes that the failure to recognize victory as a fundamental moral principle significantly contributed to the lack of success in the Second Lebanon War in 2006. One may add that the Israeli secular Supreme Court's rulings (Public committee against torture vs. State of Israel, High Court of Justice 5100/94) requiring Israel to fight terrorism with one hand tied behind its back are also immoral according to the rabbinic consensus. What the Israeli Supreme Court argues is moral might very well be immoral.

Israel has made extraordinarily generous offers for peace towards its Arab neighbors throughout the past decades. It accepted the Peel Partition Plan of 1937 and the United Nations Partition Plan of 1947, offered to exchange land for peace immediately after the Six Day War in 1967, and offered stunning concessions to Yasser Arafat at Camp David in 2000. Arabs have rejected every one of these concessions and responded with wars intended to destroy the State of Israel and exterminate its citizens. Israel clearly is within its rights to defend itself and enjoys the ethical right, nay, obligation, to wage war successfully. Misplaced compassion for enemy soldiers and civilians cannot hamstring our efforts to effectively wage war. The failures of 2006 clearly demonstrate this point.

Avraham Avinu experienced moral anguish over the enemy soldiers that he killed in the war he successfully waged against the four Mesopotamian kings (see Bereishit Rabbah 44:5 cited by Rashi to Bereishit 15:1). However, this emotion was appropriately expressed - only after the war. Before and during the war, he focused on his moral obligation to wage war vigorously and properly against the Mesopotamian aggressors.

Avraham Avinu teaches timeless lessons about ill-timed compassion towards our enemies. It is improper to experience anguish over enemy loss during a legitimate battle. It would have been patently immoral for American soldiers during World War Two to anguish over the battle they were fighting against the Nazis and Japanese. Similarly, the consensus rabbinic opinion regards

the risking of Israeli soldiers and restraint from waging war properly in order to reduce Arab civilian casualties as blatantly immoral.

May Hashem send peace to His nation and the entire world.