

JEWISH LAW AND THE CONCEPT OF WAR

Compiled by Rabbi Billy Dreskin

Committing Acts of Violence

1. Genesis 4:10 ... Then God said, “What have you done? Your brother’s blood cries out to Me from the ground!”
 - *Talmud Sanhedrin* 37a ... Mishna: In the case of Cain, who killed his brother, it is written: “Your brother’s *bloods* cry out to Me.” Not blood, but bloods; i.e., his blood and the blood of his [potential] descendants. To teach you that whosoever destroys a single life, Scripture imputes [guilt] to him as though he had destroyed a complete world; and whosoever preserves a single life, Scripture ascribes [merit] to him as though he had preserved a complete world.
2. Genesis 9:6 ... Whoever sheds the blood of man, by man shall his blood be shed; for in God’s image did God make man.
3. Exodus 22:1-2 ... If a thief is caught while tunneling and is struck so that he dies, the defender is not guilty of bloodshed; but if the sun has risen on him, he is guilty of bloodshed.
 - “After sunrise.”
 - Nachmanides: After dawn.
 - Rashi: Metaphorical. Clear as day there’s no violent intent (e.g., father stealing from son).
 - “While tunneling.” *Va-makh-te-ret*. Can’t be sure what this means.
 - Rashbam (12th cen): Night versus day. Greater threat at night. Potential murderer versus cattle-rustler.
 - Hizkuni (13th cen): In the act. While “sun has risen on him” denotes “after he has left the building. Moment of greatest threat versus reduced threat.
 - Onkelos (2nd cen): No witnesses versus witnesses.
4. *Talmud Sanhedrin* 72a ... Rava said, “Why is the killer of a thief found breaking in not subject to prosecution? The answer is that there is a presumption that no man will tolerate the loss of his possessions without resistance. Knowing this, the thief reckons that the homeowner will stand his ground and resist the intruder. Faced with this resistance, he intends to kill the homeowner. Accordingly, the Torah has said, “If a man comes to kill you, you kill him first.”
 - Rashi ... The words, “is not guilty of bloodshed” (Exodus 22:2), teach that insofar as he comes to kill you, you should kill him first.
5. Leviticus 19:16 ... Do not stand idly by the blood of your neighbor, I am Adonai.

Mandatory Wars (*Milchemet Chovah* or *Milchemet Mitzvah*)

6. Maimonides' *Hilchot Melachim* 5:1 ... A king should not initiate war unless it is an obligatory war (*milchemet chovah* or *milchemet mitzvah*). And what is an obligatory war? This is a war against the seven nations, war against Amalek, or to assist Israel from trouble that has come upon them (see Num. 10:9).
7. Deuteronomy 7:1-2 ... When the Lord your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you — the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you — and the Lord your God delivers them to you and you defeat them, you must doom them to destruction: grant them no terms and give them no quarter.
 - *Sefer HaChinuch* (anonymous, 13th cen Spain) – Mitzvah #425 ... The Mitzvah of Destroying the Seven Nations. We are commanded to put to death the Seven Nations that held our land before we captured it from them, and to eliminate them wherever we may find them. At the root of the precept lies the reason that these Seven Nations are the ones that started to perform all kinds of idol worship, and every abomination which God detests. Therefore, since they were a root element of idolatry and its first foundation, we were commanded about them to uproot and eliminate them from under heaven, that they not be remembered or recalled in the land of the living. And in this precept of ours a benefit will result for us: we will eliminate their remembrance from the world, and thus we will not learn from their actions. It is, moreover, for us to learn a moral lesson from this – that we should not turn towards idol-worship. For when we pursue every man in this evil family [of nations] to kill him, because they occupied themselves with idolatry, the thought will not arise in the heart of any man to do acts like theirs under any circumstances.
8. Deuteronomy 25:17-19 ... Remember what Amalek did to you on your journey, after you left Egypt — how, undeterred by fear of God, he surprised you on the march, when you were famished and weary, and cut down all the stragglers in your rear. Therefore, when the Lord your God grants you safety from all your enemies around you, in the land that the Lord your God is giving you as a hereditary portion, you shall blot out the memory of Amalek from under heaven. Do not forget!
9. From the *Steinsaltz Talmud* ... A mandatory war (*milchemet chovah*) is one which is waged for the sake of conquering the Land of Israel from the Canaanites, or destroying the nation of Amalek, or defending Israel from attack by its other enemies. Mandatory war (*milchemet chovah*) may be waged without prior permission from the Sanhedrin, and all Jews are required to participate.
10. *Talmud Sotah* 44b ... Mishna: In obligatory wars (*milchemet chovah*) , all go forth, even a bridegroom from his chamber and a bride from her *chuppah*.

Discretionary or Optional Wars (*Milchemet R'shut*)

11. *Talmud Sanhedrin* 2a ... Mishna: The people may not be sent to an optional war (*milchemet r'shut*) except by a court of seventy-one.
- From the *Steinsaltz Talmud* ... A discretionary war (*milchemet r'shut*) is one waged in order to enlarge the territorial boundaries of Israel, to subjugate the neighboring nations, or to resolve a conflict between neighboring nations; it may only be waged with prior permission of the court of seventy-one judges, the Great Sanhedrin.
12. *Talmud Sanhedrin* 20b ... Mishna: The king sends the people out to an optional war (*milchemet r'shut*) with the permission of a court of seventy-one. Gemara: We learned this once ... “The people may not be sent to an optional war (*milchemet r'shut*) except by permission of a court of seventy-one”! Since it taught all matters relating to a king, it also taught that they send the nation out to an optional war (*milchemet r'shut*).
- From the *Steinsaltz Talmud* ... The king may send the people out to fight an optional war (*milchemet r'shut*) to enlarge the boundaries of Israel or to subjugate the neighboring nations only with the prior permission of the High Court of seventy-one judges, the Great Sanhedrin.
 - From the *Steinsaltz Talmud* ... The Gemara seeks clarification. The first clause of the Mishna appears to be superfluous, for we already learned it once before in a Mishna in the first chapter (2a): “A Jewish king may not send the nation out to fight an optional war (*milchemet r'shut*) unless he receives the permission of the High Court of seventy-one judges.” The Gemara explains: Indeed, it was unnecessary to state this law in both places. But since the Mishna in this chapter teaches all the matters relating to a king, it also teaches that he may only send the people out to an optional war (*milchemet r'shut*) with permission of the Sanhedrin.
 - From the *Steinsaltz Talmud* ... *Rabbenu Yonatan*: The king must inform the Sanhedrin that he is taking the people out to an optional war (*milchemet r'shut*), so that its members will pray for his success in battle.
 - *Rambam* (*Hilchot Sanhedrin* 5:1, *Hilchot Melakhim* 8:2): The king may not send the people out to an optional war (*milchemet r'shut*) without receiving prior permission of the Great Sanhedrin.

Wars of Self-Defense

13. *Talmud Sotah* 44b ... Rava said: “The wars waged by Joshua to conquer Canaan were obligatory (*milchemet chovah*) in the opinion of all; the wars waged by the House of David for territorial expansion (*revachah*) were voluntary (*milchemet r'shut*) in the opinion of all. Where they differ is with regard to [preemptive] wars to prevent the enemy from marching against them. One authority says it is *mitzvah*; another says it is *r'shut*.”

14. Maimonides' *Hilchot Melachim* 5:1 ... A *milchemet mitzvah* (*milchemet chovah*) is a defensive war which one only fights in response to an already launched attack.
 - From CCAR Responsum, "Preventive War" ... [Note that] the Rambam does not mention preventive war at all. *Lechem Mishneh* (16th cen commentary on the *Mishneh Torah*) explains that the Rambam includes preventive war in the category of wars fought by the king "to enhance his greatness and reputation."
15. The *Meiri* (13th cen France), commenting on Sotah 44b: One may launch a preemptive strike against an enemy amassing forces on a border. Such an attack is sufficiently defensive to be categorized as a *milchemet mitzvah* (*milchemet chovah*).
16. *Talmud Shabbat* 54b ... Rav and Rabbi Hanina, Rabbi Yohanon and Rabbi Habiba taught, "Whoever can stop a member of his household from doing wrong, and does not, is accountable. Whoever can stop a fellow citizen from doing wrong, and does not, is accountable. Whoever can stop the whole world from doing wrong, and does not, is accountable."
17. *Palestinian Talmud Sotah* 8:10 (23a): "A *milchemet reshut* is when we attack them; a *milchemet chovah* is when they attack us."
 - Does this passage reject the notion that preemptive attack is one of self-defense?
 - From CCAR Responsum, "Preventive War" ... While a war fought in direct self-defense is clearly necessary and therefore "commanded," a war initiated against a nation that *might* attack some day does not fall into this category.
 - Or is preemptive attack implicit in "a *milchemet chovah* is when they attack us"?
18. Maimonides' *Mishneh Torah, Hilchot Rotzeiach* 1:6ff ... All Israel is commanded to save a person being pursued for his life, even if it means killing the pursuer, even if the pursuer is a minor. [...] If a person sees another pursuing his fellow to kill him and can save the victim but chooses not to, such a person has negated three commandments: 1/2) Deuteronomy 25:11-12, "If two men get into a fight with each other, and the wife of one comes up to save her husband from his antagonist and puts out her hand and seizes him by his genitals, you shall cut off her hand; show no pity." 3) Leviticus 19:16, "Do not stand idly by the blood of your fellow."
19. The *Meiri* on *Talmud Sanhedrin* 72a ... Where does the Torah state that "if a man comes to kill you, kill him first"? In the *Midrash Tankhuma* (5th cen Torah commentary), it is explained as coming from the verse (Numbers 25:16), "God spoke to Moses, saying, 'Assail the Midianites and defeat them — for they assail you.'" That is, they habitually attack you, hence you may attack them in view of the fact that they are disposed toward attacking you.

20. *Shulchan Aruch* (16th cen, Rabbi Yosef Karo of Safed), *Hoshen Mishpat* 425:1 ... A homicidal pursuer who continues to pursue after he has been warned, even though he be a minor, all Israel is commanded to stop him by injuring his limb. And if that cannot be done without killing the pursuer, then the killer can be killed, even though he has not yet killed.
- *Mappah* (“Gloss” on the *Shulchan Aruch* by 16th cen Rabbi Moses ben Isserles, the *Rema*) ... A thief who is found breaking in has the status of a *rodef* (pursuer). But if it is known that he came only for financial reward, so that if the homeowner should offer resistance he will not kill the homeowner, it is forbidden to kill the thief.

The Conduct of War

21. Maimonides’ *Hilchot Melachim* 6:1 ... One does not wage war with anyone in the world until one seeks peace with him. Thus is true both of authorized wars (*milchemet r’shut*) and obligatory wars (*milchemet chovah*), as it says [in the Bible] “when you approach a city to wage war, you must first call out for peace.” If they respond positively and accept the seven Noachide commandments, one may not kill any of them and they shall pay tribute.
- Note: *Talmud Sanhedrin* 56a lists the seven Noachide laws as: acknowledging God; prohibition of idol worship; prohibition of murder; prohibition of theft; prohibition of incest and adultery; prohibition of eating the flesh of still living animals; and the obligation to enforce these laws.
22. Maimonides’ *Hilchot Melachim* 6:5... Joshua, before entering the land of Israel, sent three letters to its inhabitants. The first one said that those that wish to flee [the oncoming army] should flee. The second said that those wishing to make peace should make peace. The third letter said that those that want to fight a war should prepare to fight a war.
23. Deuteronomy 20:10-14 ... When you approach a town to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people present there shall serve you at forced labor. If it does not surrender to you, but would join battle with you, you shall lay siege to it; and when the Lord your God delivers it into your hand, you shall put all its males to the sword. You may, however, take as your booty the women, the children, the livestock, and everything in the town—all its spoil—and enjoy the use of the spoil of your enemy, which the Lord your God gives you.
- From CCAR Responsum, “Preventive War” ... According to the interpretation of Rambam (*Yad, Melakhim* 6:1), although the *Sifre* (commentary on Numbers and Deuteronomy, 2nd cen BCE - 2nd cen CE) to the verse restricts the commandment to discretionary war (*milchemet r’shut*), Nachmanides, in his commentary to the verse, offers a strategy for reading the *Sifre* as speaking to both commanded war (*milchemet chovah*) and discretionary war (*milchemet r’shut*).

24. *Talmud Sanhedrin 74a* ... Rabbi Yonatan ben Shaul said: When a person can stop a homicidal pursuer by disabling part of his body, but does not do so, he is subject to the death penalty. What is the source for this? The Torah says (Exodus 21:22-23): “When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman’s husband may exact from him, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life.”
25. Deuteronomy 20:19-20 ... When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the ax against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the city that is waging war on you, until it has been reduced.
- *Hilchot Melakhim* 6:10 (commenting on Deut 20:19-20) ... One who (during an attack) smashes household goods, tears clothes, demolishes a building, stops up a spring of water, or destroys articles of food with destructive intent, transgresses the commandment, “You shall not destroy.”
26. During the 1982 *Sh’lom haGalil* ... *Peace for the Galilee* military campaign into Lebanon, the Israel Defense Forces sent a message to her soldiers regarding their conduct during the war. These are excerpts from that message:
- It is forbidden to fire unless fired upon.
 - It is forbidden, without any exception, to take booty from any source.
 - Do not harm, do not disturb, the peaceful civilian population.
 - Treat women with respect; they are not to be molested.
 - You are not to disturb any cultural center, any antiquities, museums, art galleries, churches, mosques or sacred places.
 - Every war arouses in people lust, hate, contempt for life, and feelings of vengeance against the enemy. Despite these perfectly natural emotions and sentiments, you must remember that you are a human being.
 - Though you are fighting a vicious enemy that has resorted to terror against innocent people ... you are not to engage in any vengeful act against your enemy if you take him prisoner.
 - Whatever you do will reflect upon the people of Israel. Any act of desecration, taking of booty or desecration of holy places, mistreating your enemy, will reflect badly upon the army.
 - Above all, you must remember to value the Jewish tradition that, even in times of war, you remember that man to man – *k’adam l’adam hu* – you are a human being.
27. Isaiah 2:4 ... They shall beat their swords into ploughshares and their spears into pruning hooks: nation shall not lift up sword against nation, neither shall they learn war any more.