

Civilian Casualties in War

In the Book of Deuteronomy, Parshat *Shoftim*, we read:

כִּי־תִקְרַב אֶל־עִיר לְהִלָּחֶם עָלֶיהָ וְקִרְאתָ אֵלֶיהָ לְשָׁלוֹם

When you approach a town to attack it, you shall first offer it terms of peace.

[Deuteronomy 20:10]

So we learn that war must be avoided whenever possible. War always means civilian casualties, intentionally or not. So we ask: What is the Jewish view of civilian casualties in war? Obviously, they must be avoided whenever possible. (This may be obvious to us, but not to our enemies.) But what should we do if it is not possible to avoid them?

Needless to say, this discussion is motivated by current events. The terrorist group Hamas, operating from the Gaza strip, just massacred at least 1,400 Israelis, wounded 4,000 and took 200 hostage. For years they have targeted Israeli cities with rockets, trying to kill as many Jews as possible, and dug more than 1,000 tunnels reaching into Israel to murder Jews. Israel retaliated by targeting the rockets and their launchers. Hamas protected these rockets with their civilians, forcing Israel to kill civilians to destroy the rockets, so they can claim Israel is bloodthirsty. Israel always warned the civilians to flee the locations of the targets before they are bombed. They do this by phone, by messages, by tracts and by warning shots. Hamas always forces them to stay put and die. Israel sometimes cancels the mission, or puts its soldiers at greater risk, to avoid civilian casualties.

Three questions arise, in order of growing controversy:

- May one kill in self-defense?
- May one kill civilians inside military targets in war?
- May one place oneself at greater risk just to reduce enemy civilian casualties?

Let us consider the first: May one kill in self-defense? The answer is yes. The basic law of self-defense is laid out in four places in the Talmud:

וְהַתּוֹרָה אֲמָרָה: אִם בָּא לְהַרְגֶּךָ — הַשָּׂכֶם לְהַרְגֶּךָ.

Ve-hattorah amrah: Im ba l'horgekha, hashkem l'horgo.

The Torah has said: If someone comes to kill you, rise early and kill him [first].

[Berakhot 58a and 62b, Sanhedrin 72a, Yoma 85b]

It is not mere permission, but rather a duty, an obligation, even almost a commandment. If the *only* way to stop a potential murderer is to kill him, then you *must* kill him. You may *not* be a pacifist or a martyr and allow yourself to be killed rather than kill. [Derived from Ex. 22:1, allowing the killing of an intruder prepared to murder.]

However, the Talmud adds:

If a man can stop a murderer by maiming one of his limbs, but kills him instead, [the man] is [guilty of murder and must be] executed. [Sanhedrin 74a]

Now, the potential “murderer” conjures up an image of a man in his twenties with an evil face running towards you with a knife. But that is not how it’s understood. The pursuer, called the *rodef* in Hebrew, does not have to be malicious. He is anyone who stands between you and life. Here are three examples.

First, the Mishnah says that if the life of a pregnant mother is in danger, abortion is required, because the baby becomes a pursuer. [Oholot 7:6]

Second, smothering a child so his crying doesn’t reveal the presence of a group pursued by murderers is permitted. This happened during the Holocaust and in Israel. It’s the child or the child and everybody around him.

Third, if a besieged group is told: “Give us So-and-So or we’ll kill all of you”, we must deliver So-and-So to them. He becomes a pursuer. However, if they do not specify *who* is to be delivered to them, we may not do it.

Tosefta says:

But if they are told: “Give us [any] one of you or we’ll kill all of you”, we may not, because it is not up to us to decide who lives and who dies. [2 Samuel 20; Tosefta on Terumot 7:23]

The second question is: May one kill civilians along with soldiers in war?

There is no ancient commentary on causing civilian casualties in a just war.

[Rav J. David Bleich, Contemporary Halakhic Problems 3, p 277] Some interpret that to mean

the answer is obvious: Yes, civilians may be killed with soldiers if it is unavoidable in a defensive war. The Talmud notes:

Once permission has been granted to an angel to destroy, it does not distinguish between righteous and wicked. [Bava Kamma 60a]

Thus, the default position is that the innocent perish with the guilty. Indeed, before the Exodus, we were commanded to act to distinguish ourselves from the Egyptians to make sure the Angel of Death did not kill our own firstborn along with the Egyptians' – that it "passed over" the houses of the Israelites. Also, Abraham had to ask God to save Sodom and Gomorrah for the sake of the righteous in it. [Gen. 18:23-32] It was not an automatic thing. Finally, the Talmud says, "kill him first", without adding "but with no collateral damage". The Maharal of Prague, a great 16th-century commentator, concludes:

The Torah allows war when we are attacked, and in responding, we are allowed to not distinguish between the guilty and the innocent. [Gur Aryeh to Gen. 34:13]

However, warning may be given. As mentioned, the Torah says:

When you approach a town to attack it, you shall first offer it terms of peace.
[Deuteronomy 20:10]

In commenting, the Midrash tells us:

Rav Shmuel bar Nahman said: What did Joshua do [when he was about to enter the Promised Land]? He would publish an edict in every place [of the Land] on which he wrote: "Whoever wants to go, let him go; whoever wants to make peace with us, let him make peace; and whoever wants to make war shall make war."

-The Gergashites vacated and departed from there, and the Holy One, blessed be He, gave them a land as beautiful as their native land, namely Africa.

-The Gibeonites desired to make peace with Israel, and Joshua made peace with them.

-However, the 31 Canaanite kings came to battle with Joshua, and the Holy One blessed be He caused them to fall. [Deut. R. 5:14]

Likewise, King Saul advised the Kenites to leave their homes to avoid being harmed in the war with Amalek:

And Saul said to the Kenites, "Go, depart, get down from among the Amalekites, otherwise I might destroy you with them; for you showed kindness to all the people of Israel, when they came out of Egypt." So the Kenites departed from among the Amalekites... And Saul defeated the Amalekites... [1 Samuel 15:6-7]

So Saul was prepared to endanger civilians in the course of war, and he was not censured for this.

Some may object: What about international law? International law prohibits collective punishment, and we Jews must obey the law of the land (*dina d'malchuta dina*). There are two answers. First, the Fourth Geneva

Convention, written in 1949, recognizes that civilian casualties or property damage may be unavoidable:

-Article 28: The presence of [civilians] may not be used to make certain areas immune from military operations.

-Article 53: Any destruction of property is prohibited, except when absolutely necessary [for] military operations.

Second, international law must be followed as practiced, not as written.

Rav Moshe Feinstein argues that the obligation to obey the law of the land applies to the law as it is practiced, not as it is written. For example, if the law says the speed limit is 60 mph, but only 65 mph is enforced, Jews may drive close to 65. The United States and allies were forced to cause thousands of civilian casualties in many conflicts. They also used Mutual Assured Destruction, the threat of massive collective punishment, to deter a Soviet nuclear attack during the Cold War.

This does not mean we do not care. We care. The Midrash notes that after Abraham fought against the four aggressor kings and won [Gen. 14:1-12], he was traumatized by the fact that he had to kill people. [Gen. R. 44:5]

However, he expressed this anguish only *after* the war. Before and during the war, he focused on doing what he had to do to win the war. In modern times, many analysts have observed that no one ever took as much care to avoid civilian casualties as the State of Israel does. If war *had* to be carried out without civilian casualties or not at all, no country would be able to defend itself, and aggression would be rewarded.

Also, it must be noted that many civilians are not innocent. Contemporary Rabbi David Samson writes:

When the father of a young suicide bomber proudly holds up his son's picture and says "I am honored that my son murdered Jews," is he an innocent civilian? When the mother of a 17-year-old girl who blew herself up in a crowded Jerusalem market says that she wishes all of her children would grow up to be suicide bombers, is she an innocent civilian?

In the same vein, contemporary Rabbi Shaul Yisraeli writes:

Every community is responsible for uprooting its murderers. If a community is against the terrorists among them, but does nothing out of fear, they must not be harmed during an attack [to the extent possible]. However, if the community encourages terrorism, educates their children to hate Jews and carry out terror, supports the terrorists, and agrees with their murderous aims, then they too must be considered as part of the enemy. [Amud HaYimenu 16]

Also, the enemy must feel the pain of war. Some say if the enemy does not feel the pain of war, that is, dead or wounded loved ones and property

destroyed, he has no incentive to stop his aggression. Eisenhower once said that war is “the ugly business of killing until someone cries uncle”.

Our third question is the hardest: May one place oneself at greater risk just to reduce enemy civilian casualties?

First, we note that Israel has been doing just that. For example, in 2002, Israel pursued terrorists in Jenin, going house-to-house to hunt them down, and lost 23 soldiers in the process. These soldiers would not have died if Israel had attacked only from the air and caused hundreds of civilian casualties. Second, Hamas and Hezbollah fired tens of thousands of rockets at Israeli cities. Israel could have leveled Gaza and Southern Lebanon long ago to eliminate these threats, but hasn't, and lost a lot of soldiers in the process. Third, Israel has cancelled many anti-terrorist missions because their targets were mixed with civilians.

Here, there is no halacha (Jewish law) to guide us. No halacha exists that requires or even permits this. Again, many interpret this to mean the answer is obvious: Many modern prominent rabbis have ruled that it is forbidden to risk Israeli lives just to spare Arab civilians.

However, they added, one must look at the big picture. If it is felt that Arab casualties will *later* endanger Israeli lives because of Arabs seeking revenge, risking Israeli lives may be permitted. The Talmud says that a ruler is allowed to risk the lives of up to one-sixth of his population to secure his nation in war:

Shmuel... said: A government that allows one out of six [of his own people] to die [by going to war] is not punished. [Shevuot 35b]

What do we conclude? First, Jewish law permits killing in self-defense, if that is the only way to stop a murderer. Second, Jewish law allows waging a defensive war that causes enemy civilian casualties, if they cannot be avoided. However, warning may be given to allow the civilians to flee before the attack. Third, Jewish lives may not be put at greater risk just to reduce enemy civilian casualties, but account must be taken of enemy reaction.

We are not pacifists. We will defend ourselves. World, take note.

Shabbat shalom.