

# The Jewish view of civilian casualties in war

## Motivation

- Hamas targets Israeli cities with rockets, trying to kill as many Jews as possible.
- Israel retaliates by targeting the rockets and their launchers.
- Hamas protects these rockets with their civilians, forcing Israel to kill civilians to destroy the rockets, so they can show the world Israel is bloodthirsty.
- Israel warns the civilians (by phone, messages, tracts and warning shots) to flee the locations of the targets before they are bombed.
- Hamas forces them to stay put.
- Israel sometimes cancels mission, or puts its soldiers at greater risk, to avoid civilian casualties.

## Three Questions

In order of 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?

### 1-May one kill in self-defense?

**Yes:**

The basic law of self-defense is laid out in four places in the Talmud:

*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]. [Berachot 58a and 62b, Sanhedrin 72a, Yoma 85b]

It is not a mere permission, but rather a duty, an obligation, even 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 martyr and allow yourself to be killed rather than kill. [Derived from Ex. 22:1, allowing killing 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] executed. [Sanhedrin 74a]

### **The pursuer (*rodef*) does not have to be malicious:**

He is anyone who stands between you and life. Three examples:

-Mishna: If the life of a pregnant mother is in danger, abortion is required, because the baby becomes a pursuer.

If a woman is in [life-threatening] labor, one [must] cut up the child in her womb and bring it out limb by limb, because her life comes before the life of [the child]. But if the greater part [of the child] has come out, one may not touch it, for one may not sacrifice one person's life for another person's life. [Oholot 7:6]

Nevertheless, again, one must first try to save the mother by maiming the fetus, such as by amputating a limb.

-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.

-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 is a pursuer.

But if they are told: "Give us 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. [2Samuel 20; Tosefta on Terumat 7:23]

## **2-May one kill civilians along with soldiers in war?**

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.

### **Yes, given a defensive war and if it cannot be avoided:**

The Talmud notes:

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

The default position is that the innocent perish with the guilty:

-Before the Exodus, we had to distinguish ourselves from the Egyptians to prevent our firstborn from dying.

-Abraham had to ask God to save Sodom and Gomorrah for the sake of the righteous in it. [Gen. 18:23-32]

-The Talmud says, "kill him first", without adding "but with no collateral damage".

The Maharal of Prague, 16<sup>th</sup>-century commentator:

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 Bereishit 34:13]

### **Warning may be given:**

The Torah says:

When you draw near to a city to wage war against it, you shall call out to it for peace. [Deut. 20:10]

In commenting, the Midrash tells us:

Rav Shmuel bar Nachman 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 of Canaan] he went to conquer, 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]

More specifically, 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... [1Sam. 15:6-7]

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

### **International law must be followed as practiced, not as written:**

International law prohibits collective punishment, and we must obey the law of the land ("*dina d'malchuta dina*").

-However, the 4th Geneva Convention (1949) also states:

-The presence of a [civilian] may not be used to render certain points or areas immune from military operations. [Article 28]

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

-Rav Moshe Feinstein: The obligation to obey the laws of the land applies to the law as it is practiced, not as it is written.

-If law says speed limit is 60 mph, but only 65 mph is enforced, Jews may drive close to 65.

-US carpet-bombed Germany, launched atomic weapons on Japan, had to cause thousands of civilian casualties in other conflicts.

-US used Mutual Assured Destruction (MAD), i.e. the threat of massive collective punishment, to deter a Soviet nuclear attack during the Cold War.

### **We care:**

Midrash: 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 so many 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.

-No one ever took as much care to avoid civilian casualties as Israel.

If war *had* to be carried out without civilian casualties, no country would be able to defend itself and aggression would be rewarded.

### **Many civilians are not innocent:**

-Contemporary Rabbi David Samson:

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?

-Contemporary Rabbi Shaul Yisraeli:

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 [to the extent possible] during an attack. 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 HaYimeni 16]

### **Enemy must feel the pain of war:**

Some say if enemy does not feel the pain of war (death of civilians and destruction), he has no incentive to stop aggression.

### **3-May one place oneself at greater risk just to reduce enemy civilian casualties?**

#### **Israel has been doing it:**

- In 2002, Israel pursued terrorists in Jenin, going house-to-house to hunt for them down, and lost 23 soldiers. These would not have died if Israel had attacked only from the air and caused hundreds of civilian casualties.
- Hamas and Hezbollah fired thousands of rockets at Israeli cities. Israel could carpet-bomb Gaza and Southern Lebanon to eliminate the threat, but doesn't, and loses a lot of soldiers in the process.
- Israel cancelled many anti-terrorist missions because their targets were mixed with civilians.

#### **No halacha to guide us:**

No halacha exists to require or even permit this.

-Again, many interpret this to mean the answer is obvious: No.

Many rabbis rule it is forbidden to risk Israeli lives to spare Arab civilians.

#### **Look at the big picture:**

However, if it is felt that Arab casualties will later endanger Israeli lives because of Arabs seeking revenge, risking Israeli lives may be permitted. Talmud: A ruler is allowed to risk up to one-sixth of his population to secure his nation in war:

Shmuel... said: A government who kills only one [of his own people] out of six [by going to war] is not punished. [Shavuot 35b]

### **Conclusion**

- Jewish law permits killing in self-defense, if that is the only way to stop a murderer.
- Jewish law permits waging a defensive war that causes enemy civilian casualties, if that cannot be avoided. Warning may be given.
- Jewish lives may not be put at greater risk to reduce enemy civilian casualties, but account must be taken of enemy reaction.