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# Norms of war in Judaism

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*Jack Bemporad*

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The discipline of ethics is concerned with applying norms to behaviour, so, when the capacity to act destructively in war rises exponentially or we encounter war-like and war situations that have little or no precedent, one can only enquire whether past discussion of war in the major religious traditions still has relevance today.

War in the contemporary world raises a number of ethical questions that cry out for discussion and resolution. These questions arise from nation-states' expanded power, which allows them to inflict lethal damage on adversaries. In nuclear war this damage may extend to the whole world – to all sentient life. Today, weapons of mass destruction (atomic, biological and chemical weapons) threaten civilian populations, and terrorist attacks concentrate on inflicting fear and terror on civilians. Modern warfare also seems to blur certain fundamental distinctions that have traditionally been recognized – the most significant of which is the distinction between combatants and non-combatants – through acts such as the saturation bombing of German cities and Tokyo; the atomic bombing of Nagasaki and Hiroshima; Germany's forced labour in conquered territories, and the killing of millions of civilians in death camps. If one were to chart the percentage of combatants killed as opposed to non-combatants it would be apparent that the trend in warfare is toward more non-combatant than combatant casualties.

Today, the very distinction between a state of war and one of peace has been blurred. Whereas the Cold War involved vast spheres of influence pitted against each other that could quickly turn the fragile peace

into seething war, the recent rise of terrorism and its continuing threat have created a twilight zone where it becomes hard to distinguish between conditions of peace and war.

Although the killing of civilians was not uncommon in pre-modern war, especially religious wars, the basic premise of conventional war and the foundation of all just war theories is the separation of combatants from non-combatants. It is the moral lynchpin of what makes a war a just war: extreme care must be taken to ensure that those killed in battle are soldiers – those fighting the war and not people who are not directly engaged in battle. The Geneva Conventions and organizations such as Human Rights Watch make this the essential factor in determining human rights violations in warfare.

This has been complicated by the way weapons themselves have changed and how they are used. Suicide bombers are the most recent and most effective weapons in the increasingly predominant form of post-modern war – asymmetric war, war that concentrates on the killing of civilians. Suicide bombers in asymmetric war can be considered the equivalent of the most destructive weapon in conventional warfare because they turn conventional warfare and its rules and ethics on their head.

Just war traditions arose for two main reasons. First, it was believed that there would always be war. Secondly, it was believed that civilized nations and individuals must impose moral standards with respect to what is proper and improper behaviour in warfare.

The two alternatives to just war traditions – realpolitik and pacifism – ultimately abandon any ethic of war. Realpolitik claims that moral categories simply do not apply to war, whereas pacifism claims that, since the deliberate killing of innocent human beings is immoral and no individual can act so as to do what is immoral, war, which by definition involves such killing, must be entirely disallowed on moral grounds. Proponents of the necessity for the category of just war claim that both of these alternatives are indefensible, and that a third alternative, a just war tradition, is necessary.

Although the Jewish tradition does not operate with the just war categories of *jus ad bellum* and *jus in bello*, many aspects of the discussions in biblical and rabbinical sources parallel these considerations. One can roughly categorize certain statements as contributing to right reasons for going to war as well as for engaging in war.

What is significantly different between Judaism and just war theory is the biblical and later Jewish belief that war is *not* a natural condition and that universal peace will become reality. Both biblical and rabbinical sources stress this point; the texts and Jewish tradition are much more concerned with peace and its importance than they are with war.

## The Bible

In reviewing biblical texts, we must always keep in mind that the Bible did not create the reality it describes. Judaism emerged out of a tribal society that had its own rules and practices with respect to war. These practices often led to annihilation and enslavement, as evidenced in the historical books of the Bible. From the numerous descriptions of such biblical wars one might come to the conclusion that the Hebrew Bible endorses such practices. However, what is important in reading the texts is to see how the biblical authors tried to distinguish themselves from those ambient values and practices and introduced new ideas and ideals that are foundational for our understanding of society and humanity.

The most significant text related to war and peace in the Bible is Deuteronomy 20. In this chapter a number of the issues concerning war in the Jewish tradition are present. These include God as the Warrior for the Israelites:

- 1: When you take the field against your enemies, and see horses and chariots – forces larger than yours – have no fear of them; for the LORD your God, who brought thee up out of the land of Egypt is with you.
- 2: Before you join battle, the priest shall come forward and address the troops,
- 3: He shall say unto them: “Hear, O Israel, you are about to join battle with your enemy; let not your courage falter. Do not be in fear or in panic, or in dread of them;
- 4: for it is the LORD your God marches with you to do battle for you against your enemy, to bring you victory.”

In essence, this passage states that God is the warrior in Jewish battle. He alone is the executor of warfare. This is brought out in the verses that follow listing all those exempted from military service. The list is so extensive that it becomes seemingly impossible to mount an army to make war and reinforces the belief that it is God who fights for Israel and not man.<sup>1</sup>

- 5: Then the officials shall address the troops as follows: “Is there anyone who has built a new house but has not dedicated it? Let him go back to his home lest he die in battle and another dedicate it.”
- 6: “Is there anyone who has planted a vineyard but never harvested it? Let him go back to his home lest he die in battle and another harvest it.”
- 7: “Is there anyone who has paid a bride-price for a wife, but who has not yet married her? Let him go home lest he die and another marry her.”
- 8: The officials shall go on addressing the troops and say, “Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flags like his.”

Those who built new houses, farmers (those who planted vineyards), bridegrooms, and those who were afraid or emotionally susceptible to compassion during battle were all exempt from going to war. In the Bible it thus appears that the primary need is to provide continuity of life even during war. These verses are then followed by the command to sue for peace before beginning hostilities. Verse 10 reads: “When you approach a town to attack it, you shall offer it terms of peace.” Deuteronomy 20 then ends with a caution against wanton destruction:

- 19: 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 axe against them. You may eat of them, but you must not cut them down. Are the trees of the field human to withdraw before you into the besieged city?

Weinfeld describes Deuteronomy 20 as “orations of an idealizing character”, and states that much of Deuteronomy, including Deuteronomy 20, is the product of speculative thoughts that do not derive from cultic reality.<sup>2</sup> Boecker writes that an essential feature of Deuteronomy is “the theologization of older legal prescriptions”.<sup>3</sup> Although modern biblical scholars such as Millard C. Lind, Martin Buber, Moshe Greenberg and Gerhard von Rad disagree about how much has been correctly attributed to the past in biblical narratives, they all agree that war is something God wages on behalf of Israel, and that Israel is, in the main, a passive recipient of God’s wondrous deeds. As described in Joshua 23:3–13, “A single man of you put a thousand of them to flight, for it is YHWH your God who has fought for you.”

The concept that everyone goes to war was not characteristic of the period of the judges, and going to war with soldiers and mercenaries happens only when a monarchy is established. Until the time of Samuel, the establishment of a monarchy was not in the Jewish tradition, for the biblical definition of God and His Law makes God the ultimate ruler, the ultimate king.

The Samuel narrative is clear in its description of the evils of kingship where a human king usurps the rule of God. I Samuel 8:19–20 reads, “Where they [the people] said, ‘No, we will have a king over us that we may also be like all the nations, that our king will govern us and go out before us and fight our battles’”, and Ezekiel 20:32 elaborates on this same point, maintaining that being like other people entails idolatry. When the prophet says “What is in your mind shall never happen – the thought, ‘Let us be like the nations, like the tribes of the countries, and worship wood and stone,’” he is connecting the Israelites’ desire for a monarch to pagan kingship and the temptation for hubris and idolatry, and the idea that idolatry, defined as self-aggrandizement and the rejection of God’s will, inevitably leads to war.

As the years passed, however, and the threat of attack by the neighbouring Philistine nation increased, the people called for the coronation of a king to represent them in the halls of rulers (Assyria, Egypt) and to lead them in battle should there be a need. This loss of faith in God as Warrior would lead to their ultimate downfall. Under duress, God sanctioned the establishment of a Jewish monarch.

It is important to understand what it is about the kingship of the surrounding peoples that made the biblical authors contrast it with the kingship of God. Tsevat states:

The meaning of the kingship according to the Bible is the denial to man of the concentration and permanence of power. Power in society is God's; He is the only source of might, authority, command, and ownership of the land; He is the author of morals, law, and judgment; He guarantees freedom and a measure of equality; He is the leader of journeys in the desert and campaigns in the towns. By the eighth century [BCE] the consequences of the idea of divine kingship had been ever more ignored by the rulers of the people, and reality had come ever more into conflict with it. It was then that the great prophets rose to adjust the reality of their day to the standards of the idea.<sup>4</sup>

Buber explains that the kingship of God archetype was decisive for biblical history. Everything is viewed through a theological lens that establishes God as the ultimate king and His law as the ultimate law. It is His law that is to predominate over the idolatrous practices of the surrounding peoples. Indeed, the justification that the Bible gives for the destruction of the Canaanites is to avoid Israel's falling into idolatry and practising its most horrendous aspect – child sacrifice. And Samuel clearly states (Chapter 12) that the people have done evil in rejecting God as their king and insisting on a human ruler, because a human king's ways will enlist them in war and open them to idolatrous temptation.

Why is this so crucial? Because the problem with idolatrous nations is that their gods engage in the very same injustices as their followers, and the logical consequence of such idolatrous action is war. This is why, for example, only God could bring judgement on the gods of Egypt. God waged war on Pharaoh, who was the embodiment of the worst elements of self-deification and pride (Exodus 12:12).

From the perspective of Psalm 82:6–7, it appears that the failure of the pagan gods was their intrinsic injustice and that the rule of the One God was needed to establish righteousness and justice in the world. War was seen as a horrendous evil most likely to occur when human rulers took on absolute unrestricted power. Knowing the devastation of war, the literary prophets (those who have books named for them) give us the vision of universal peace. Micah 4 repeats Isaiah's words (2:4): "And they shall

beat their swords into ploughshares and their spears into pruning hooks; Nation shall not take up sword against nation; they shall never again know war.” This is reaffirmed in Hosea 2:18–20, where the prophet quotes God: “And I will make for you a covenant on that day with the beasts of the field, the birds of the air and the creeping things of the ground; and I will abolish the bow and sword from the land and make you lie down in safety.”

God also advises his people not to trust their weapons or alliances. Hosea 14:3 states it plainly: “Assyria will not save us, we will not ride upon horses; and we will say no more, ‘Our God’ to the work of our hands.” God’s rule will bring about a reign of peace: “In that day, Israel shall be a third partner with Egypt and Assyria as a blessing on earth, for the Lord will bless them, saying, ‘Blessed be my people Egypt, my handiwork Assyria and my own people Israel.’” (Isaiah 19:25).

In light of the Hebrew Bible’s emphasis on peace, why then does Deuteronomy 20:16ff. contain an injunction to destroy the seven idolatrous nations?

In the towns of the latter peoples, however, which the Lord your God is giving you as a heritage, you shall not let a soul remain alive . . . lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the Lord your God.

Many biblical texts illustrate that monotheism was superimposed on tribal practices that constituted the biblical environment and that, despite the passages that indicate the total murder of the Canaanites, historically that was not the case. Later biblical texts make it very clear that there was no genocide and the idolatrous tribes targeted for genocide continued to exist after Joshua’s war of conquest and later wars waged by the Israelite kings. Evidence is present in the first chapter of Judges and numerous other places, as checking a concordance clearly shows.<sup>5</sup>

It is therefore possible that even during biblical times the assertion of the murder of the Canaanites was a projection to the distant past, with the purpose of justifying the principle that all the Israelites at the time of the compilation of Deuteronomy and the Torah were descendants of those who had been present at Sinai with Moses. Furthermore, the Torah does not insist on perpetual holy war against the Philistines, the Phoenicians or other peoples in the immediate orbit of the Israelites – i.e. you were not to marry Moabites, etc., but you were also ordered not to destroy them. Witness the Book of Ruth; Ruth the Moabite even becomes the maternal ancestor of the Jewish Messiah.<sup>6</sup>

In the Bible, war is seen as an aberration and peace for all of humankind is the ideal. As such, Israel has no special status and is judged by the

same standards set for all others. If it does not reject the idolatrous practices of the Canaanites and if it does not abide by the covenant, it will suffer the same fate as other nations. This is illustrated when the prophet Amos states in 3:2, “You only have I known. Therefore I will punish you for all your iniquities”, and in Hosea 13:9–11: “I will destroy you, O Israel, who can help you? Where now is your king, to save you? Where are all your princes, to defend you – those of whom you said, ‘Give me a King and princes’? I have given you kings in my anger, and I have taken them away in my wrath.”

This is because a Jewish sovereign, unlike pagan sovereigns, is bound by the Torah, the law of the One God. The laws of Deuteronomy 17:14–20 state:

[I]f after you have entered the land that the Lord your God has assigned you and taken possession of it and settled in it, you decide, “I will set a king over me as to all the nations about me”, you shall be free to set a king over yourself, one of your own people; you must not set a foreigner over you, one who is not your kinsman. Moreover, he shall not keep many horses, or send people back to Egypt to add to his horses, since the Lord has warned you, “You may not go back that way again.” And he shall not have many wives, lest his heart go astray; nor shall he amass silver and gold to excess. When he is seated on his royal throne, he shall have a copy of this teaching written for him on a scroll by the Levitical priests. Let it remain with him and let him read it all his life, so that he may learn to revere the Lord his God. To observe faithfully every word of this Teaching as well as these laws and not act haughtily toward his fellows or deviate from the Instruction to the right or to the left to the end that and his descendants will reign long in the midst of Israel.

Pagan rulers were not required to adhere to any moral or ethical codes that in any way resembled those in the Torah. For them, war was inevitable since the purpose of kingship is conquest. For the Israelites, according to the Torah, war was to be avoided. Israelite kings needed to be accountable to God. In rabbinic interpretation other elements were added – the Sanhedrin acted as the people’s representatives and weighed in to maintain the system of checks and balances – to prevent any political or religious entity from running amok with power.<sup>7</sup>

Ravitzky summarizes the rabbinical belief that peace was the ultimate purpose of the Torah, quoting as his proof texts *Tanhuma Shoftim* 18 (“All that is written in the Torah was written for the sake of peace”) and *Bamidbar Rabah* Naso 11, which says: “The prophets have planted in the mouth of all people naught so much as peace” and “God announceth to Jerusalem that they [Israel] will be redeemed only through peace.”<sup>8</sup>

## The rabbis and war

In order to gain a better understanding of the Talmudic and rabbinical discussions of war, it must first be noted that the two-fold law – the notion of a written and an oral tradition, the Mishnah and the Talmuds, – was codified after the destruction of the Temple and the devastation of Jerusalem by Rome, when the rabbis, in the course of transferring religious authority to themselves, had experienced the war and therefore had a horror of war. Solomon writes that, by the time the Mishnah and the Talmuds were compiled, the Jews had lost their political independence, and the legislation based on Deuteronomy 20 is a historical reconstruction of Messianic speculation, not operational law.<sup>9</sup>

The rabbis' thoughts and discussions were primarily directed to peace. "Sayings of the Fathers", a late tractate in the Mishnah, repeatedly discusses peace and its significance, and Leviticus Rabbah 9:9 contains a dictum of the rabbis on peace.

"And Grant you peace" – R. [Rabbi] Mani D'Sha'av and R. Yehoshua D'Sichnin in the name of R. Levi. Great is peace since all blessings, goodnesses and comfortings that the Holy One, Blessed Be He, brings upon Israel conclude with peace ... Great is peace, for of all the commandments it is written ... In relation to peace, "seek peace, and pursue it" – seek it in your own place, and pursue it even to another place as well.

The rabbis, who had religious authority but no sovereignty, did everything in their hermeneutic power to make the waging of war impossible. A parallel can be seen in their treatment of capital punishment – a sentence that is virtually impossible to carry out because the legal conditions can be met only in extraordinary circumstances.

The rabbis defined different kinds of war, using the rules of war in the Hebrew Bible as proof texts to create conditions that could never be met. These definitions of war, the exemptions and conditions are found in many rabbinical works that have been analysed and interpreted through the centuries.<sup>10</sup> Whereas many of the discussions in the rabbinical tractates deal with day-to-day existence, even down to the banalities of life, when it comes to the subject of war, all rabbinical discussion in the Talmud and the literature until the twentieth century is purely theoretical. We know this because the rabbis never published a tractate named "War".

The tractates of the Talmud are encompassing and contain a multitude of tangential materials on a multitude of subjects. Because of that, there are difficulties sorting out specific Halachot (rabbinic laws). Therefore Maimonides (1138–1204), trying to create some order out of the Talmud,

wrote the Mishneh Torah, a codex that evolved into a premier reference for contemporary traditional Judaism and Jewish thought. Yet even he did not manage to present everything about war in one book or code – statements about war are scattered throughout his works.

Without a specific rabbinical code on how or why to fight a war, many issues are open to question. Nowhere are there detailed and minute discussions on war that compare to the tractates “Nashim” (women) or “Tohoroth” (purity and cleanliness). Instead, a variety of rabbinical writings and biblical texts are used for extrapolation. The discussion in both the Talmud and subsequent rabbinical writings is based on Mishnah “Sotah”, Chapter 8, a tractate dealing with suspected adulteresses, not war. War is discussed there because it is part of a discussion on what laws need to be explained in Hebrew, the Holy Tongue (*Lashon Kodesh*), instead of the vernacular. In any event, the discussion there returns to the concept of God as Warrior for his people. The statement in Sotah 8 reads in part:

“Let not your heart be faint at the neighing of the horses and the flashing of the swords; fear not at the clashing of shields and the rushing of the tramping shoes; nor tremble at the sound of the trumpets, neither be ye affrighted at the sound of the shouting; for the Lord your God is he that goeth with you. They come in the strength of flesh and blood, but ye come in the strength of the Almighty” reinforces the notion of war being fought by God on behalf of his people, who remain passive while He fights for them. The High Priest’s battle cry, after all, is “Hear Oh Israel, Adonai is your God, Adonai is One.”<sup>11</sup>

In declaring the One God, by praying, even twice a day, you will be delivered from the hand of the enemy. The Babylonian Talmud, in Sotah 42a, expands this:

And [he, the high priest] shall say unto them, “Hear, O Israel.” Why must he just [open with the words] “Hear, O Israel?” – R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, said to Israel, Even if you only fulfilled morning and evening the commandment to recite the Shema’ [ed. this also opens with “Hear, O Israel”], you will not be delivered into [the enemy’s] hand.

“Let not your heart faint; fear not” etc. Our Rabbis taught: He addresses them twice: once on the boundary [before marching into the enemy’s territory] and once on the battle-field.

Sotah 8 describes two kinds of war: (1) obligatory war (*Milchemet Mitzvah*; also called in some instances *Milchemet Chova* – Hebrew for obligation), and (2) discretionary war (*Milchemet Reshut*). Wars of obli-

gation are physical wars fought for the conquest of Canaan or fought in self-defence. Wars of free will (discretionary wars) are wars for the glory of the king and for the purposes of expansion.

Reading carefully one notices that, following Deuteronomy 20, the Mishnah in Sotah 8:2–7 exempts just about everyone from fighting in a discretionary war. In a later discussion in the Babylonian Talmud (500 CE), Sotah 42b–44b, these categories of exemption are expanded even further. This can be interpreted to mean that the wars the Mishnah considers – in addition to, or instead of, physical wars – were wars of persuasion for the Unity of the One God against idolatry. Rabbi Jose describes as exempt those who are afraid owing to the fact that they have sinned, and he makes that point a number of times. Are the sinners afraid they will die? Or are they afraid that they are not learned enough to persuade idolaters to believe in the One God? If they are not strong enough mentally to persuade, then they too are exempt from going to war,<sup>12</sup> for the rabbis were adamantly against wars of conversion.

In order for discretionary war to be declared they needed the existence of a Jewish sovereign state, a sovereign, the High Priest and his vestments (the Sanhedrin of 71 and the Urim and Thummim – the High Priest's oracle). The oracle of the Urim and Thummim, housed in the High Priest's breastplate, was of particular importance. Without it, war could not be declared. According to Kimelman, discretionary war requires the involvement of the Sanhedrin for its role as the legal embodiment of popular sovereignty, “understanding this to imply that the high court was the legal equivalent of ‘the community of Israel as a whole’”.<sup>13</sup>

Most rabbis maintain that to declare any war, obligatory or discretionary, *even in self-defence*, there needed to be a sovereign state for the Israelites, and in discretionary wars the High Priest is needed to declare war using the oracle, the Urim and Thummim. Rabbi Bleich takes this literally: “In the context of a discussion about discretionary war, the Gemarah Berachot 3B and Sanhedrin 16a declare that the king may not undertake military action other than upon the approval of the Urim ve [and] Thummim.”<sup>14</sup>

Yet Josephus noted in Antiochus 3:218 that the oracle had not been used for at least 200 years. Ezra 2:63 and Nehemia 7:65 stated that those who returned from the first exile were disqualified from becoming priests and would not be able to “eat of the most holy things until a priest with Urim and Thummim should appear”. In other words, to use the expression that the Urim and Thummim were required to deal with an issue really meant that discretionary war was inoperative. The Talmud notes that the oracle had not been used since the death of the pre-exilic prophets. So, when the rabbis say that you cannot declare a war without an Urim and Thummim, they mean any war.<sup>15</sup>

In continuity with the teaching of the Bible, the rabbinical literature, above all, demands the prerequisite to seek peace. As stated in Mishnah Shabbat 6:4:

A man may not go out [on the Sabbath] with a sword or a bow or a shield or a club or a spear; and if he went out [with the like of these] he is liable to a sin-offering. R. Eliezer says these are his adornments. But the Sages say: They are naught save a reproach, for it is written, *And they shall beat their swords into plowshares and their spears into pruning-hooks/nation shall not lift up sword against nation, nor learn war anymore* [Isaiah 2:4].

In point of fact, no Jewish leaders encoding the law after the destruction of the temples and the exile dreamed that the issue of real war, defensive or otherwise, would come up. Their goal, perhaps for the safety of a people who were now dispersed among the nations, was to make peace paramount.

In consonance with this concept, Norman Solomon enumerates three ways in which the rabbis toned down Deuteronomy 20 so that it would not become a warrant for genocide. The rabbis concluded, “against the plain sense”, that offers of peace were to be made to the enemy even as a siege was being laid. The Babylonian Talmud (Yoma 22b) and also Midrash Rabba (on Deuteronomy 5:12) describe Moses taking the initiative to seek peace with Sihon, a move confirmed and praised by God.<sup>16</sup>

Midrash Tehillim on Psalm 120:7 ascribes a similar initiative to the Messiah. The rabbis also ruled that, in wars other than those of the original conquest of Canaan, you must provide an escape route when you lay siege to a town (Rabbi Nathan, Sifre on Numbers 31:7). To reinforce how the genocidal implications of Deuteronomy 20 were very clearly viewed as inoperative by the rabbis, Solomon further proves this weakening of the injunction by quoting Joshua Ben Hananiah in Mishnah Yadayim, who noted that, since the time of Sennacherib, those nations had been dispersed and it was not possible to identify them, so that you could not kill them.<sup>17</sup> In a similar vein, Maimonides (in his chapter on “Kings” in the Mishneh Torah), referring explicitly to the injunction of Deuteronomy 20, reiterates that we do not know who the seven nations are, with the clear implication that for this very reason the injunction cannot apply.<sup>18</sup>

Everything we read about war in the Jewish tradition until the establishment of the Jewish settlements in Israel in the late nineteenth century is essentially theoretical, because the people of Israel had not been permitted or able to fight wars for almost two millennia. Elliot Dorff says that war is not oracular and that defensive war does not fall into either of the two categories of war as described in Deuteronomy 20 or in Sotah

8. Permission to conduct wars of self-defence is extrapolated from the criminal codes that state an individual is permitted to rise up and kill his attackers – *sheh ba aleichem* (those that are coming at you)<sup>19</sup> – before they get a chance to kill him. Dorff describes Rabbi Judah’s discussion of what happens when foreigners besiege Israelite towns on the Sabbath, and asks whether or not one can bear arms to defend oneself. Not if these attackers come only to plunder, say the rabbis. But if they come to kill you, rise up and defend yourself, even if it is Shabbat – and if your town is on the border, you can defend yourself on Shabbat, even if they come only to plunder.<sup>20</sup>

Norman Solomon notes it is the duty of the sovereign state to protect its citizens from destruction: “A war of self-defence is designed to defend society as a whole or its most cherished values, for a crime within a society is subject to government control, whereas in war there is no overriding sovereign state to adjudicate conflicts.” In other words, a nation has a right to protect itself from attack, but again, as Maimonides makes patently clear, the nation of Israel must, above all, pursue peace first, as referred to above.<sup>21</sup>

Maimonides is a rationalist in his discussions of war and peace. In the tractate “Kings”, he reiterates that (i) violence is not a means of convincing anyone to change their religion, (ii) wars are really fought for ideological reasons, and (iii) peace is the ultimate goal. He reinforces the points already made in the Torah and the Talmud; one must sue for peace first [*jus ad bellum*], a siege must leave one side of the city open [*jus in bello*], and exemptions from service are made. In the Mishneh Torah tractate on Kings (6:1), Maimonides is concerned that nations that make peace with the Israelites accept the seven commandments of the sons of Noah and become “tributary to the king”. Maimonides makes it very clear that the severity of these assertions is mitigated by noting that “before he [Joshua] entered the land, he said whoever wants to make peace should leave first”, implying that the making of peace is the most important result [*jus post bellum*].<sup>22</sup>

Maimonides concludes his chapter on kings and war with a description of the Messiah and peace. The arrival of the Messiah is in different ways a universal dream of all the Abrahamic faiths – a dream we must all strive for as we live in the world God created for us. He writes that peace is the penultimate wish of the Jewish people. The goal that is yearned for is the end to all war and a reign of global prosperity and peace, where the lion shall lie down with the lamb and swords will be beaten into ploughshares – in other words, the true peace of Messianic times. Perhaps the most interesting part is what he says the Messiah will bring and how he will bring it. Jewish tradition is filled with stories of the coming of the Messiah – how he will arrive to the sound of the ram’s horn; how he will

be preceded by Elijah the prophet, with signs and wonders; and how all the Jews will be gathered on a flying carpet from the far-flung corners of the earth and brought to Zion. But what does Maimonides say?

One should not entertain the notion that the King Messiah must work miracles and wonders, bring about new phenomena within the world, resurrect the dead, or perform other similar deeds. This is [definitely] not true . . . He will then perfect the entire world, [motivating all the nations] to serve God together, as it is written [Zephaniah, 3:9], "I will make the peoples pure of speech so that they will all call upon the Name of God and serve Him with one purpose." . . . The world will continue according to its pattern. He will not come [in order] to declare the pure, impure, nor to declare the impure, pure; . . . Rather, [he will come in order] to establish peace in the world . . . In that [the Messianic] Era there will be neither famine nor war, neither envy nor competition, for good things will flow in abundance and all the delights will be as freely available as dust. The occupation of the entire world will be solely to know God.<sup>23</sup>

## Modern Israel

Hitherto, all Judaic conceptualization of war was derivative and hypothetical, since there was no Jewish nation or Jewish military to actually engage in a war. With the creation of the State of Israel in 1948, however, engaging in war was no longer a subject solely for intellectual debate. Yaron made the point: "The moral question of waging war is not a new problem for states and peoples, *but it is new and revolutionary for the Jewish nation.*"<sup>24</sup> Therefore, whatever Jewish factors are to be involved in thinking about war, they must primarily be those of ethical Judaism, since there is no framework that applies Halachic principles to modern warfare or the wars engaged in by the state of Israel.

And this is the dilemma of the modern state of Israel. Forged in a tradition where peace was the Messianic ideal toward which the faithful strove, constantly at the mercy of a world that readily used them as scapegoats and that forced Jewish acquiescence on all issues as an existential survival tactic, the creation of a homeland suddenly confronted the Jewish people with problems never before experienced. "Throughout the many centuries of Diaspora life, Jews were not faced with the necessity to decide in matters of state. The fundamental question is therefore how the traditional ethical teachings of Judaism can guide Jews in deciding upon the new state problems."<sup>25</sup>

For millennia, Jews have been subjected to discrimination, persecution and, most recently with the rise of Nazism, extermination.

Walzer describes a realpolitik attitude toward war: "War is a world apart, where life itself is at stake, where human nature is reduced to its

elemental forms, where self-interest and necessity prevail. Here men and women do what they must to save themselves and their communities, and morality and law have no place.”<sup>26</sup> Despite this acknowledgement that war is cruel and destructive – and in reality devoid of morality – Walzer and others believe that rules and morality must be applied to war. Civilized humankind has sought to rationalize the behaviour of men going to war (*jus ad bellum*) and the behaviour of those in war (*jus in bello*). We would add the necessity of planning for peace (*jus post bellum*) – meaning that we must establish conditions that would preserve peace once the fighting stops.

Essentially, the fundamental construct for justifying war has been:

1. There exists an international society of independent states . . .
2. This international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty. . . .
3. Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act. . . .
4. Aggression justifies two kinds of violent response: a war of self-defence by the victim and a war of law enforcement by the victim and any other member of international society [against terrorist groups such as al-Qaeda, Hizbollah, and other non-sovereign entities that attack sovereign states]. . . .
5. Nothing but aggression can justify war. . . .
6. Once the aggressor state has been militarily repulsed, it can also be punished.<sup>27</sup>

Regardless of the conceptualizations concerning just war, a singular principle remains – that of self-defence. Rabbinic exegesis on the issue is derived from Exodus 22:1. “As the Talmud puts it, ‘[I]f someone comes to kill you, get up early in the morning to kill him first’ (Berakhot 58a; Yoma 85b; Sanhedrin 72a). Because each individual has both the right and the obligation of self-defence, one might reasonably infer that the community does likewise.”<sup>28</sup>

Richard Norman writes: “Self-defense, by the individual or the community, is justified as a defense of rights. The most fundamental rights of individuals are the right to life and the right to liberty. The collective analogues of these are the right to territorial integrity and the right to political sovereignty.”<sup>29</sup> Other social critics concur: “The development of international law from Grotius onwards, and its institutionalization through the League of Nations and subsequently the United Nations, have established the position that the only permitted wars are defensive wars.”<sup>30</sup> This is indeed codified by the United Nations in Article 51 of its Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a

Member of the United Nations.”<sup>31</sup> Thus, essentially, “In international law, the doctrine of self-defence provides the state with a legal basis for actions taken in response to the illegal use of force by another state, in the absence of effective action by the international community.”<sup>32</sup>

The Jewish people and the founding fathers of Israel and Zionism understood what it meant to be strangers in a strange land, and what it meant to be nationally homeless and unprotected. They knew what it felt like to be victims, and, with the creation of a sovereign Jewish nation, defensive war was, for the first time in millennia, a real issue. On the day of its birth Israel was already engaged in a defensive war for its survival – without benefit of the Sanhedrin or the Urim and Thummim. Obviously, ancient oracular formulas no longer pertained. Therefore, Zohar could claim:

Facing the challenges of a renewed Jewish polity, we ought to steer clear of the moral pitfalls entailed by an oracular halakhic philosophy. If the halakhic tradition is to be a source of inspiration for political thought in contemporary Israel, it must be guided by the classical eschewal of heavenly voices in favor of reasoned deliberation. This by no means implies that the study of Torah ought to be abandoned in favor of pervasive Western norms. Rather, it requires that we avoid using the forms of halakhic discourse as a medium for promulgating mysterious decrees.<sup>33</sup>

Thus, based on an ethical system that incorporated the best of Western civilization coupled with traditional Jewish thought, the concept of purity of arms became the hallmark of the Israel Defense Forces (IDF). As Katznelson, one of the founders of modern Zionism announced in 1939, “[L]et our arms be pure. We are studying arms, bearing arms, we are facing up to those who attack us. But we do not want our weapons to be tainted with innocent blood.”<sup>34</sup>

Purity of arms as defined by the IDF is this:

The IDF servicemen and women will use their weapons and force only for the purpose of their mission, only to the necessary extent and will maintain their humanity even during combat. IDF soldiers will not use their weapons and force to harm human beings who are not combatants or prisoners of war, and will do all in their power to avoid causing harm to their lives, bodies, dignity and property.<sup>35</sup>

This ethic is rooted in both the Bible and Jewish tradition. As Israel’s Chief Rabbi Shlomo Goren (1917–1994), who served in the IDF as a paratrooper and chief chaplain, reiterated: “Since we are enjoined to imitate the moral qualities of God, we too should not rejoice over the destruction of the enemies of Israel.”<sup>36</sup>

Solomon describes the “purity of arms” concept as emerging back in the 1930s and lists the following rationales: the pan-denominational Jewish stress on the ethical and moral values of Judaism; taking the Jewish perspective on personal relationships and applying it to international relations; a search for approval and therefore political support from the rest of the world, combined with “the naïve belief that military restraint would attain these objectives”. Solomon’s discussion on the Jewish state traces the application of these ethical ideas in Jewish tradition to what eventually became the *modus operandi* of the IDF.<sup>37</sup>

In the late nineteenth century, a Zionist Orthodox rabbi, Zevi Hirsch Kalischer, suggested that the settlements protect themselves with militias when he witnessed the clash for independence among the nations being born in Europe. By the turn of the century, Vladimir Jabotinsky, a veteran of Jewish units in World War I, called for the creation of a Jewish Legion in Palestine as a guarantee against Arab attacks. This led to the formation of the Haganah in 1920 (which became the IDF).<sup>38</sup>

At the same time, the Chief Ashkenazic rabbi of Palestine prior to the establishment of Israel, Abraham Isaac Kook, and the Chazon Ish in Europe (Rabbi Avrohom Yeshaya Karelitz) called for the establishment of the Jewish state by peaceful means only (they both maintained that it must be peaceful because there was no Urim and Thummim and only purely defensive wars would be permitted). Their thinking led to the establishment of a religious peace movement. This was exemplified by Moshe Avigdor Amiel, who wrote in 1938: “Even if we knew for certain that we could bring about the Final Redemption [by killing Arabs] we should reject such a ‘Redemption’ with all our strength, and not be redeemed through blood.”<sup>39</sup>

Kook’s own son, Rabbi Tzvi Yehuda Kook, interpreted this principle differently, demanding that no land within the biblical boundaries of Israel be given up voluntarily once settled by Jews, though he did not advocate aggressive conquest. His followers became the settler movement, and until 1930 they were allowed to defend themselves only by using restraint (*havlagah*), even during the Arab riots in 1920, 1921, 1929 and 1936. In the 1930s, after massacres and murders set a pattern of terror by the indigenous population, a military policy was set that demanded minimum force in the attainment of military objectives and discrimination between combatants and non-combatants.<sup>40</sup>

However, such a stance has its consequences. “[T]o the extent that people have power, they have a responsibility to use it wisely and justly. Unfortunately, this moral stance does not get us very far.”<sup>41</sup> What should one do when the conventional rules of war are rejected, when you have to cope with an aggressor whose norms are diametrically opposed to your own, who breaks the rules of engagement (the Geneva Conventions) and

wages asymmetric war with an utter disregard for human life? As Hirschfield notes:

If only we could fight a war in a manner that targets with such precision that only the guilty are afflicted while the innocent are spared. But in war there is no way to maintain that kind of precision. We should be horrified by the horrors of war, but must not be so horrified at the horrors of war that we come to the conclusion that no war is worth fighting because some wars are, indeed, worth fighting. As *Genesis* 9 tells us, sometimes we must kill because murderers cannot be allowed to go unpunished.<sup>42</sup>

### Proportionality

To preclude inordinate suffering, civilized society has determined that, when an aggression occurs, reciprocity is permitted but only within proportional levels.

The principle of proportionality specifies the level of collateral harm to civilians that is acceptable in achieving a specific military objective. The legal formulation of proportionality is contained in Protocol 1 to the Geneva Conventions, which states that it is prohibited for soldiers to engage in any attack “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>43</sup>

However, military historian Sir John Keegan has stated, “‘the experience of land war in two world wars must raise a question as to whether formal legal codification is necessarily superior to notions of custom, honour, professional standards, and natural law’ in making for battlefield decencies. . . . There is no substitute for honour as a medium of enforcing decency on the battlefield, never has been and never will be.”<sup>44</sup> But how can there be concerns for “honour” when present-day warfare does not recognize the term? As Solomon has stated:

Standards can be adopted unilaterally or set by international agreement, but the moral dilemma arises of whether a party that ignores those standards can be allowed to gain ascendancy, by perpetrating evil, over the moral side complying with them. . . . Though the religious principles for engagement in and the conduct of war seem clear, their application in practice is hard to determine. The acute questions that arise in modern warfare tend to be about the assessment of particular situations.<sup>45</sup>

It has already been established that it is within Jewish law to fight back when attacked and to fight back to win, since all wars are essentially con-

cerned with survival. For this reason, proportionality, though a consideration, must take into account not only the event at hand but contextual events as well. As IDF Major General Yaakov Amidror observed: “As a little country fighting terrorists, guerrilla organizations and other states, we cannot allow ourselves to react proportionally and that is a very important message to the people around us.”<sup>46</sup>

Thus, as Walzer noted in referring to the war in Lebanon in 2006:

A military response to the capture of the three Israeli soldiers wasn't, literally, necessary; in the past, Israel has negotiated instead of fighting and then exchanged prisoners. But, since Hamas and Hezbollah describe the captures as legitimate military operations – acts of war – they can hardly claim that further acts of war, in response, are illegitimate. The further acts have to be proportional, but Israel's goal is to prevent future raids, as well as to rescue the soldiers, so proportionality must be measured not only against what Hamas and Hezbollah have already done, but also against what they are (and what they say they are) trying to do.<sup>47</sup>

### Asymmetric war

Asymmetric war has a single goal: the “erosion of popular support for the war within the society of the enemy”.<sup>48</sup> The methodology of engagement is to demoralize the enemy to the point of creating personal and political dysfunction and disintegration of the enemy state. This involves using guerrilla warfare, human shields, mixing combatants with non-combatants – in short, any and all means to disrupt the tactical and ethical constructs of conventional military personnel and the populations that support them. Such tactics are morally reprehensible and in violation of all ethical standards. “Such sheltering among the civilian population (including sheltering by the use of human shields, voluntary or involuntary) for the purpose of rendering one's forces immune from attack is a violation of the laws of war.”<sup>49</sup> Nevertheless, such tactics have proven enormously successful for those for whom there is no moral compunction against the killing of non-combatants. Given the “on-the-ground” factors, the question of ethical action vis-à-vis non-combatants becomes a dubious point.

[T]here are few if any absolutes in the conduct of war. A document such as the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and the subsequent Protocols thereto may attempt to define categories of non-combatants, or may recommend that hospitals be situated as far as possible from military objectives (Article 18), but this is of little help where enemy combatants are targeting hospitals or deliberately siting their own military units in hospitals in order to use the sick as hostages.<sup>50</sup>

Though it is against “the law” to place non-combatants in jeopardy, those who engage in asymmetrical warfare do just that – for good reason. Whenever a conventional army kills human shields, it becomes a public relations nightmare for them and a positive factor for the “underdog” aggressor who placed the non-combatants in mortal peril in the first place. The media are incapable of distinguishing, or deliberately refuse to distinguish, between those who are justifiably attempting to destroy the enemy’s weapons and command and control centres and those who deliberately use civilians as their main weapon – whether as shields on their side or as targets on the other. So the question becomes: how should the conventional forces of a “Jewish” state or any state be expected to defend themselves in such a war?

There is nothing in Jewish law or in the Geneva Conventions to answer this question. The primary directive is that life must be preserved, but how do you defend yourself in such circumstances? The answer is that appropriate responsibility must be assigned so that proselytizing through the media is removed as a weapon of asymmetric war. The responsibility for the fate of non-combatants must reside in the hands of the offending party that has placed them in their precarious position. What must be challenged are the outcries of propagandized media that accuse conventional armies and excuse the perpetrators of the original crimes, who claim they have no choice but to kill innocent non-combatants because it is the only way they can wage successful wars against their enemies.<sup>51</sup> In short, if the media become propagators of propaganda, as opposed to being impartial providers of fair and accurate perspectives on the fighting (in words and pictures), then perhaps it becomes necessary to treat the offending media as part of the combatant infrastructure and react accordingly. This is not to deny the media their reporting power, but it is a call to hold them responsible and culpable.

The warfare Israel faces today from its active enemies is a problem that all nations face. Rules of conventional warfare are not observed by groups that resort to terrorism; they are responsible only to their organizations, and are officially unrelated to sovereign states.

How can Israel protect its own sovereignty and its non-combatants, while minimizing the deaths of its enemies’ non-combatants? The Israeli philosopher Asa Kasher tried to deal with this by creating a Code of Purity of Arms for the Israel Defense Forces. In a long and very legalistic rationale, he basically says that, in asymmetric warfare, when a nation is attacked by a non-sovereign element in someone else’s backyard and then uses the local inhabitants as human shields (via persuasion or extortion), minimizing the deaths of non-combatants is a priority. However, a sovereign state’s first priority is to its own non-combatants, not those of the enemy.<sup>52</sup>

The modern era's campaign of Jewish genocide also conditioned the mentality and psychology of how Israel wages its wars. Until the partisans in the ghettos and forests rebelled against the Nazis, it had been the Jewish practice to submit and suffer rather than contest those inflicting injury. The Holocaust convinced the Jews that, if their enemies say that they want to exterminate them and wipe them off the face of the Earth, it is usually not hyperbole. They believe it because the experience was real.

### Nuclear warfare

Such is the concern for the priority of life in Judaic law that the use of weapons of mass destruction is clearly condemned.

The World created by God was meant for life; it was given over to Man to rule, to preserve and cultivate, and not to destroy and mutilate. Man is committed to the construction of the world, and under no circumstances to its destruction. This founding principle is well established both in Halakhah and Aggadah . . . The prophet Isaiah stresses this point clearly: The Creator of heaven Who alone is God, Who formed the earth and made it, Who alone established it, did not create it for a waste, but formed it for habitation. (Isaiah 45:18)

As Broyde indicates, Judaic law would sooner mandate surrender than the use of such weapons. But Jewish law is one thing and Israel's concern about self-preservation is another. The Israelis have resorted to nuclear weapons (though not officially) because they are afraid of total destruction and have developed them as a preventative. However, this has set a dangerous precedent, since Iran and Korea now follow similar policies.

In a situation of Mutually Assured Destruction if weapons are used, it is clear that the Jewish tradition would prohibit the actual use of such weapons if such weapons were to cause the large scale destruction of human life on the earth as it currently exists. The Talmud explicitly prohibits the waging of war in a situation where the casualty rate exceeds a sixth of the population. Lord Jakobovits [the former Chief Rabbi of England], in an article written more than thirty years ago, summarized the Jewish law on this topic in his eloquent manner:

In view of this vital limitation of the law of self-defense, it would appear that a defensive war likely to endanger the survival of the attacking and the defending nations alike, if not indeed the entire human race, can never be justified. On this assumption, then, that the choice posed by a threatened nuclear attack would be either complete destruction or surrender, only the second may be morally vindicated.<sup>53</sup>

As Walter Reich, the former director of the United States Holocaust Memorial Museum, indicates: “All countries have an obligation to minimize the loss of civilian life, both on their own side and on the other. But no country has an obligation to allow itself to be destroyed or its people killed. Demanding that of any country is a perversion not only of the ethics of war but also of the ethics of life.”<sup>54</sup> This seems to be the rationale for the possible use of nuclear weapons.

## Conclusion

We have seen that, in the Bible, any human king – unless he abides by God’s law – will literally aggrandize himself, abuse his people, take them to war and lead them to idolatry, because this is what unbridled kingship entails. Such behaviour is the reason for the Torah’s limitation on kings, so that the law is above the kings, and the concept of a just king is one who embodies God’s virtues. The Messiah is the king who obeys God’s will. We also know that Deuteronomy is sermonical and that, until modern times, nothing is found in Jewish teaching that is any way practical or functional as regards strategies or theories of war. There is simply nothing in the law codes or texts.

Experience was Israel’s teacher. It was constantly invaded by Assyrians and Babylonians under Persian, Greek and Roman rule, and hundreds of thousands were killed and suffered greatly. Therefore, the rabbis had a horror of war and never had the authority to go to war. Instead, they interpreted stories about the leaders of Israel to make them students of the Torah.<sup>55</sup> However, upon close examination one finds that there is no applicable Halacha for war, so that when it comes to Israel, the modern Jewish state, there is a profound tension.

As a Jewish state, Israel cannot forsake the task of explaining its existence and behaviour in terms of Jewish tradition and heritage, and thereby in universal ethical categories. If Israel were a secular nation-state like other secular states, it would respond in terms of realpolitik, and ethics would apply secondarily – if at all – since all would be subsumed under the imperative of survival.

Israel’s dilemma becomes acute when dealing with asymmetrical war. Because it is so complicated, the concepts of restraint and purity of arms (which are noble and correct and were developed in the 1930s by what later became the State of Israel) are continually under review. In modern warfare, especially asymmetric war, maintaining doctrines to safeguard enemy non-combatants is problematic owing to: atomic/biological/chemical weapons; long-range missiles; guerrilla warfare; and terrorism/suicide bombing. Each of these systems is directed at non-combatants.

So what can Israel do when its civilian population is especially vulnerable? Many Israelis are Holocaust survivors who witnessed something categorically different during World War II, when Jews, almost all of them non-combatants, were marked for total destruction. At that time, the world was presented with an ideology that targeted every single Jew for extinction, but no one believed it, while others were complicit in their murder. Yet such governmental policies were indeed implemented and not one government did much to stop it. As a result, the continuity of Jewish existence can no longer be taken for granted and Israel lives with a siege mentality that looms large in its foreign policy. The Jews did not believe what Hitler said, but now they believe threats from anyone – however remote the possibility of extinction might be.

Under these conditions, the great challenge is to preserve Israel's ethics when it comes to war and not to accept the *realpolitik* approach, although that approach admits that there is no such thing as a just war. This is true; war cannot be viewed as just. The problem with just war theory is that, as defined by Clausewitz, it is subject to the proper, fair and prim rules of the duel. These rules are inapplicable to modern warfare, as are those of the Geneva Conventions, which apply to "fair wars", as if they are possible. *At best, one must try to make war not unjust; war is an evil that is necessary to prevent a greater evil.*

We must also recognize that the problems we face in carrying out ethical acts are immensely magnified during warfare. In war, we act without knowledge of all the variables and without control over the unforeseen consequences of our actions – consequences that may prove irreversible. What we have learned is that we need to develop resources to establish conditions that make for peace. *Jus post bellum* must become the most important element of just war theory.

The real challenge for Israel, then, is to take a tradition rooted in peace that has no real foundation for any concept of war, except for scattered tangential material and the history of its ancient tribes, and come to a *modus vivendi* that it can use to defend itself and establish a Jewish concept for the use of force that is understandable and not heinous. Then one could discuss what the proper Jewish attitude toward the use of force in war should be.

The ethical burden becomes one of justification, because immoral consequences are certain. The risks of war today are higher than they have ever been for the reasons enumerated above and also because we are not dealing solely with sovereign states. War is so terrible that we need an overwhelming burden of proof from anyone who wages war, even in self-defence, that what they are doing is justified. This means war cannot be glorified and its true brutality must be understood.

We know enough about what has happened since World War II to see

how wars are contrived and how leaders fool their people and even themselves into thinking they are fighting right, just and necessary wars, even when it simply is not the case. For war is too often exactly what the Bible says it is, the idolatrous actions of rulers. The media are manipulated by leaders and manipulate the public in turn – so what do the public really know? That is why we should be very suspicious of the reasons states offer for engaging in war and learn to distinguish between the reasons given for war and why governments actually engage in war.

Peace is the result of a lesson everyone has to learn and the State of Israel should be at the forefront of that effort. Israel and other nation-states must develop the resources and conditions to create peace. Peace is the reason the Bible was the first book to speak of the end of war and to insist that kings embody the virtue of peace. The rabbis overwhelmingly speak of seeking peace and pursuing peace; peace is the ultimate Jewish tradition and perhaps the most unattainable one – unless we all make it possible.

## Appendix A: Sotah 8:2–7<sup>56</sup>

1. When the Anointed for the Battle speaks unto the people, he speaks in the Holy Language, for it is written<sup>i</sup> *And it shall be when ye draw nigh unto the battle, that the priest shall approach* (this is the priest anointed for the battle) *and shall speak unto the people* (in the Holy Language), *and shall say unto them, Hear, O Israel, ye draw nigh unto battle this day against your enemies – and not against your brethren, not Judah against Simeon, and not Simeon against Benjamin, for if ye fall into their hands they will have mercy upon you, for it is written, And the men which have been expressed by name rose up and took the captives and with the spoil clothed all that were naked among them, and arrayed them and shod them and gave them to eat and to drink and anointed them and carried all the feeble of them upon asses and brought them to Jericho, the city of palm trees, unto their brethren: then they returned to Samaria.*<sup>ii</sup> Against your enemies do ye go, therefore if ye fall into their hands they will not have mercy upon you. *Let not your heart be faint, fear not nor tremble, neither be ye affrighted . . . Let not your heart be faint* at the neighing of the horses and the flashing of the swords; *fear not* at the clashing of shields and the rushing of the tramping shoes; *nor tremble* at the sound of the trumpets, *neither be ye affrighted* at the sound of the shouting; *for the Lord your God is he that goeth with you.* They come in the strength of flesh and blood, but ye come in the strength of the Almighty. The Philistines came in the strength of Goliath.<sup>iii</sup>

i. Deuteronomy 20:2 ff.

ii. 2 Chronicles 28:15.

iii. I Samuel 17:4.

What was his end? In the end he fell by the sword and they fell with him. The children of Ammon came in the strength of Shobach.<sup>iv</sup> What was his end? In the end he fell by the sword and they fell with him. But not so are ye, *for the Lord your God is he that goeth with you, to fight for you* . . . This is the Camp of the Ark.

2. *And the officers shall speak unto the people, saying, What man is there that hath built a new house and hath not dedicated it, let him go and return to his house* . . . It is all one whether he builds a house for straw, a house for cattle, a house for wood, or a house for stores; it is all one whether he builds or buys or inherits [a house] or whether it is given him as a gift. *And what man is there that hath planted a vineyard and hath not used the fruit thereof* . . . It is all one whether he plants a vineyard or plants five fruit-trees, even if they are of five kinds. It is all one whether he plants vines or sinks them into the ground or grafts them; it is all one whether he buys a vineyard or inherits it or whether it is given him as a gift. *And what man is there that hath betrothed a wife* . . . It is all one whether he betroths a virgin or a widow, or even one that awaits levirate marriage, or whether he hears that his brother has died in battle – let him return home. These all hearken to the words of the priest concerning the ordinances of battle; and they return home and provide water and food and repair the roads.

3. And these are they that may not return: he that builds a gate-house or portico or gallery, or plants but four fruit-trees, or five trees that do not bear fruit; or he that takes back his divorced wife; or<sup>v</sup> a High Priest that marries a widow, or a common priest that marries a woman that was divorced or that performed *halitzah*,<sup>vi</sup> or an Israelite that marries a bastard or a *Nethinah*, or a bastard or a *Nathin*<sup>vii</sup> that marries the daughter of an Israelite – these may not return. R. Judah says: He also that rebuilds his house as it was before may not return. R. Eliezer says: He also that builds a house of bricks in Sharon<sup>viii</sup> may not return.

4. And these are they that stir not from their place: he that built a house and dedicated it, he that planted a vineyard and used the fruits thereof, he that married his betrothed wife, or he that consummated his union with his deceased brother's wife, for it is written, *He shall be free for his house one year: for his house*<sup>ix</sup> – this applies to his house; *he shall be* – this is [to include also] his vineyard; *and shall cheer his wife* – this applies to his own wife; *whom he hath taken* – this is to include also his deceased brother's wife. These do not provide water and food and do not repair the roads.

iv. II Samuel 10:16.

v. Cf. Yeb. 2:4.

vi. App. I 12.

vii. App. I 29.

viii. Where bricks were unsubstantial and not suited for building houses.

ix. Deut. 24:5.

5. *And the officers shall speak further unto the people [and they shall say, What man is there that is fearful and fainthearted?]* R. Akiba says: *Fearful and fainthearted* is meant literally – he cannot endure the armies joined in battle or bear to see a drawn sword. R. Jose the Galilean says: *The fearful and fainthearted* is he that is afraid for the transgressions that he has committed; wherefore the Law has held his punishment in suspense [and included him] together with these others, so that he may return because of his transgressions. R. Jose says: If a widow is married to a High Priest, or a woman that was divorced or that had performed *halitzah* is married to a common priest, or a bastard or a *Nethinah* to an Israelite, or the daughter of an Israelite to a bastard or a *Nathfn* – such a one it is that is *fearful and fainthearted*.

6. *And it shall be when the officers have made an end of speaking unto the people that they shall appoint captains of hosts at the head of the people, and at the rearward of the people; they stationed warriors in front of them and others behind them with axes of iron in their hands, and if any sought to turn back the warrior was empowered to break his legs, for with a beginning in flight comes defeat, as it is written, Israel is fled before the Philistines, and there hath been also a great slaughter among the people.<sup>x</sup> And there again it is written, And the men of Israel fled from before the Philistines and fell down slain . . .<sup>xi</sup>*

7. What has been said applies to a battle waged of free choice (Milchemet Reshut); but in a battle waged in a religious cause all go forth, even the bridegroom out of his chamber and the bride out of her bridechamber. R. Judah said: What has been said applies to a battle waged in a religious cause; but in a battle waged in duty bound all go forth, even the bridegroom out of his chamber and the bride out of her bridechamber.

## Appendix B: Sotah 42b–44b<sup>57</sup>

### *Sotah 42b*

“Hear the words of the war-regulations and return home.”<sup>i</sup> What does he say to them on the battle-field? “Let not your heart faint; fear not, nor tremble, neither be ye affrighted.” [These four expressions] correspond to the four means adopted by the nations of the world [to terrorise the enemy]: they crash [their shields], sound [trumpets], shout [battle-cries] and trample [with their horses].

x. I Samuel 4:17.

xi. I Samuel 31:1.

i. Viz., those who are qualified for exemption. V. *ibid.* 5ff.

*Sotah 43a*

WHAT MAN IS THERE THAT HATH BUILT A NEW HOUSE? etc. Our Rabbis taught: “That hath built” – I have here only the case where he built; whence is it [that the law applies also to a case where] he purchased, inherited or somebody gave it to him as a present? There is a text to state, What man is there that hath built a house.<sup>ii</sup> I have here only the case of a house; whence is it that it includes a barn for straw, a stable for cattle, a shed for wood and a storehouse? There is a text to state “that hath built” – i.e., whatever [structure be erected]. It is possible to imagine that I am also to include one who built a lodge, loggia or verandah; there is a text to state “a house” – as “house” implies a place suitable for habitation so every [building for which exemption may be claimed must be] suitable for habitation. R. Eliezer b. Jacob says: [The word] “house” [is to be interpreted] according to its usual definition; [and the fact that Scripture does not read] “and hath not dedicated” but and hath not dedicated it<sup>iii</sup> is to exclude a robber.<sup>iv</sup> Is this to say that [this teaching] is not in agreement with that of R. Jose the Galilean?<sup>v</sup> For if it agreed with R. Jose the Galilean, behold he has said: Fainthearted<sup>vi</sup> i.e., he who is afraid ...

*Sotah 43b*

... because of the transgressions he had committed!<sup>vii</sup>

AND WHAT MAN IS THERE THAT HATH PLANTED A VINEYARD? etc. Our Rabbis taught: “That hath planted” – I have here only the case where he planted; whence is it [that the law applies also to a case where] he purchased, inherited or somebody gave it to him as a present? There is a text to state, And what man is there that hath planted a vineyard. I have here only the case of a vineyard; whence is it that it includes five fruit-trees and even of other kinds [of plantings]? There is a text to state “that hath planted”. It is possible to think that I am also to include one who planted four fruit-trees or five trees which are not fruit-bearing; therefore there is a text to state “a vineyard”. R. Eliezer says: [The word] “vineyard” [is to be interpreted] according to its usual definition; [and the fact that Scripture does not read] “one hath not used the fruit” but “and hath not used the fruit thereof<sup>vii</sup>” is to exclude one who bends or grafts [the vine]. But we have the teaching: IT IS ALL ONE WHETHER HE PLANTED, BENT OR GRAFTED IT! – R. Zera said in

- ii. This is understood as: whatever man built a new house, the present owner of it is exempt.
- iii. The suffix is superfluous.
- iv. A man who steals a new house is not exempt.
- v. Who exempts a sinner; v. *supra* p. 222.
- vi. Deut. XX, 8.
- vii. Consequently a robber may return home.

the name of R. Hisda: There is no contradiction, the latter referring to a permitted grafting and the former to a prohibited grafting.<sup>viii</sup> What is an instance of this permitted grafting? If I say a young shoot on a young shoot, it follows that he ought to return home on account of [planting] the first young shoot! It must therefore be [grafting] a young shoot on an old stem. But R. Abbahu has said: If he grafted a young shoot on an old stem, the young shoot is annulled by the old stem and the law of *'orlah*<sup>ix</sup> does not apply to it! – R. Jeremiah said: It certainly refers to a young shoot on a young shoot, and [the case of a permitted grafting is where], e.g., he planted the first [stem] for a hedge or for timber; as we have learnt: He who plants for a hedge or for timber is exempt from the law of *'orlah*.<sup>x</sup>

What is the distinction that a young shoot is annulled [when grafted] on an old stem<sup>xi</sup> but not [when grafted] on a young shoot?<sup>xii</sup> – In the former case if he reconsiders his intention with regard to it, it is incapable of retraction;<sup>xiii</sup> but in the latter case if he reconsiders his intention with regard to it, it is capable of retraction<sup>xiv</sup> since it is then analogous to [plants which] grow of themselves;<sup>xv</sup> for we have learnt: When they grow of themselves they are liable to “*'orlah*.” But let him explain [the Mishnah<sup>xvi</sup> as dealing with] the case of a vineyard belonging to two partners, where each returns home on account of his own [grafting]<sup>xvii</sup> – R. Papa declared: This is to say that in the case of a vineyard belonging to two partners, the war-regulations do not apply to it.<sup>xviii</sup> Why, then, is it different with five brothers, one of whom dies in battle,<sup>xix</sup> that they all return home? – In the latter illustration we apply the words “his wife” to

viii. Two different species.

ix. Lit., “circumcision”, the Law of Lev. XIX, 23 forbidding the enjoyment of the fruit of a tree during the first three years of growth. Since this regulation does not apply to a young shoot grafted on an old stem, it is not regarded as a new planting.

x. And similarly he would not have to return on account of it.

xi. And its fruit is not subject to *'orlah*.

xii. [Since it has been stated that one returns on account of a young shoot grafted on to another which has been planted for timber.]

xiii. An old stem can never become young again, consequently the young shoot grafted to it becomes annulled.

xiv. The planter can change his mind within the first three years, and determine the purpose of the young shoot, originally grafted for timber, to be for fruit, so that it becomes itself subject to *'orlah*.

xv. And at the time of their plantation there was no definite purpose in the mind of the planter whether it was for fruit or timber.

xvi. Which rules that one returns on account of grafting

xvii. [Instead of the far-fetched circumstance where the first young shoot was planted for timber.]

xviii. Lit., “they do not return on account of it from the army”. The partners do not have exemption for a new planting or grafting which belongs to them jointly, so that the Mishnah cannot deal with such a case.

xix. Leaving no offspring so that his wife is due to marry one of his brothers.

each one of them;<sup>xx</sup> but in the other we cannot apply the words “his vineyard” to each one of them.<sup>xxi</sup>

R. Nahman b. Isaac said: [The Mishnah deals with the] case where he grafted<sup>xxii</sup> a tree into vegetables, and this accords with the view of the teacher responsible for the following teaching: If one bends<sup>xxiii</sup> a tree into vegetables – Rabban Simeon b. Gamliel allows it in the name of R. Judah b. Gamda of Kefar Acco,<sup>xxiv</sup> but the Sages forbid it. When R. Dimi came [from Palestine to Babylon] he reported in the name of R. Johanan, Whose teaching is it?<sup>xxv</sup> It is that of R. Eliezer b. Jacob. Did not R. Eliezer b. Jacob declare above, The word “vineyard” [is to be interpreted] according to its usual definition? So here also “planted” [is to be interpreted] according to its usual definition; hence if he planted he does [return home], but if he bends or grafts he does not.<sup>xxvi</sup>

When R. Dimi came he reported that R. Johanan said in the name of R. Eliezer b. Jacob: A young shoot less than a handbreadth in height is liable for *'orlah* so long as it appears to be a year old;<sup>xxvii</sup> but this only applies where there are two plants with two other plants parallel to them and one in front.<sup>xxviii</sup> Should, however, the entire vineyard [consist of such shoots], then it is talked about.<sup>xxix</sup>

#### *Sotah 44a*

AND WHAT MAN IS THERE THAT HATH BETROTHED A WIFE? etc. Our Rabbis taught: “That hath betrothed” – it is all one whether he betrothed a virgin or a widow or a childless widow waiting for her brother-in-law; and even when there are five brothers, one of whom died in battle, they all return home.<sup>xxx</sup> [The fact that Scripture does not read] “and hath not taken” but “and hath not taken her” is to exclude a High Priest who married a widow, an ordinary priest who married a divorcee or a *Haluzah*, a lay Israelite who married an illegitimate or a Nethinah, or a daughter of an Israelite married to an illegitimate or a Nathin. Is this to say that [this teaching is] not in agreement with

- xx. Since it is not determined which one will marry her.
- xxi. Since it belongs to them jointly.
- xxii. [So Rashi. Rabina is answering the question in the Mishnah exempting one who grafts, cur. edd: “bent”.]
- xxiii. [Tosef. Kil. I, has “grafts”.]
- xxiv. [Being a permissible grafting it exempts the owner.]
- xxv. Viz., the statement above: is to exclude one who bends or grafts (the vine).
- xxvi. [Even in a permissible case of bending or grafting.]
- xxvii. Because if he uses its fruit, it might seem to others that he was doing what was forbidden.
- xxviii. Five plants so arranged are considered a vineyard, to which all agree that the law of *'orlah* applies, v. Ber. 35a.
- xxix. It is generally known that the vineyard has this peculiarity, and he may use the fruit.
- xxx. *V. supra* p. 214.

R. Jose the Galilean? For if it agreed with R. Jose the Galilean, behold he has said: “Fainthearted” i.e., he who is afraid because of the transgressions he had committed!<sup>xxxii</sup> – You may even say that it agrees with R. Jose the Galilean, and it is in accord with Rabbah; for Rabbah said: He is certainly not guilty until he has cohabited with her. For what is the reason [of the prohibition] shall he not take?<sup>xxxiii</sup> So that he shall not profane [his seed].<sup>xxxiii</sup> Hence he does not receive the punishment of lashes<sup>xxxiv</sup> until he has cohabited with her.

Our Rabbis taught: [The order of the phrases is] “that hath built”, “that hath planted”, “that hath betrothed”. The Torah has thus taught a rule of conduct: that a man should build a house, plant a vineyard and then marry a wife. Similarly declared Solomon in his wisdom, Prepare thy work without, and make it ready for thee in the field, and afterwards build thine house<sup>xxxv</sup> – “prepare thy work without”, i.e., a dwelling place; “and make it ready for thee in the field”, i.e., a vineyard; “and afterwards build thine house”, i.e., a wife. Another interpretation is: “prepare thy work without”, i.e., Scripture; “and make it ready for thee in the field”, i.e., Mishnah; “and afterwards build thine house”, i.e., Gemara. Another explanation is: “prepare thy work without”, i.e., Scripture and Mishnah; “and make it ready for thee in the field”, i.e., Gemara; “and afterwards build thine house”, i.e., good deeds. R. Eliezer, son of R. Jose the Galilean says: “Prepare thy work without,” i.e., Scripture: Mishnah and Gemara; “and make it ready for thee in the field,” i.e., good deeds; “and afterwards build thine house[’]”, i.e., make research [in the Torah] and receive the reward.

THE FOLLOWING DO NOT RETURN HOME: HE WHO BUILT A LODGE etc. A Tanna taught: If [when rebuilding the house] he adds a row [of fresh bricks] to it, he does return home.<sup>xxxvi</sup>

R. ELIEZER SAYS: ALSO HE WHO BUILT A BRICK-HOUSE IN SHARON DOES NOT RETURN HOME. A Tanna taught: [The reason is] because they have to renew it twice in a period of seven years.

THE FOLLOWING DO NOT MOVE FROM THEIR PLACE: HE WHO BUILT A NEW HOUSE AND DEDICATED IT etc. Our Rabbis taught: A new wife<sup>xxxvii</sup> – I have here only “a new wife”; whence is it [that the law applies also to] a widow and divorcee? There is a text to state “wife”, i.e., in every case. Why, however, does the text state “a new wife?” [It means] one who is

xxxii. If that is so, the men who contracted an illegal marriage should return home.  
xxxiii. Lev. XXI, 14, referring to the women forbidden in marriage to a High Priest.  
xxxiii. Ibid. 15.  
xxxiv. And but for the verse “and hath not taken her”, they would not be exempted where there was betrothal.  
xxxv. Prov. XXIV, 27  
xxxvi. It is then regarded as a new house.  
xxxvii. Deuteronomy XXIV, 5.

new to him, thus excluding the case of a man who takes back his divorced wife, since she is not new to him.

Our Rabbis taught: He shall not go out in the host<sup>xxxviii</sup> – and it is possible to think that he does not go out in the host, but he supplies water and food and repairs the roads [for the army]; therefore there is a text to state, “Neither shall he be charged with any business.” It is possible to think that I am also to include [among those who do not move from their place] the man who built a house but did not dedicate it, or planted a vineyard and did not use its fruit, or betrothed a wife but did not take her; therefore there is a text to state, “Neither shall he be charged” – but you may charge others.<sup>xxxix</sup> Since, however, it is written “Neither shall he be charged”, what is the purpose of “He shall not go out in the host?”<sup>xl</sup> So that a transgression of the Law should involve two prohibitions.

### *Sotah 44b*

**GEMARA.** What is the difference between R. Jose and R. Jose the Galilean?<sup>xli</sup> – The issue between them is the transgression of a Rabbinical ordinance.<sup>xlii</sup> With whom does the following teaching accord: He who speaks between [donning] one phylactery and the other<sup>xliii</sup> has committed a transgression and returns home under the war-regulations? With whom [does it accord]? With R. Jose the Galilean. Who is the Tanna of the following: Our Rabbis taught: If he heard the sound of trumpets and was terror-stricken, or the crash of shields and was terror-stricken, or [beheld] the brandishing of swords and the urine discharged itself upon his knees, he returns home? With whom [does it accord]? Are we to say that it is with R. Akiba and not R. Jose the Galilean?<sup>xliv</sup> – In such a circumstance even R. Jose the Galilean admits [that he returns home], because it is written: Lest his brethren’s heart melt as his heart.<sup>xlv</sup>

AND IT SHALL BE, WHEN THE OFFICERS HAVE MADE AN END etc. The phrase, BECAUSE THE BEGINNING OF FLIGHT IS FALLING should be, “because falling is the beginning of flight”! Read [in the Mishnah]: Because falling is the beginning of flight.

xxxviii. Ibid.

xxxix. E.g., who have built a house and not dedicated it or betrothed a woman and not taken her to wife.

xl. The former surely includes the latter.

xli. Since they agree in defining “fainthearted” as one afraid of his sins.

xlii. R. Jose does not consider this sufficient to warrant exemption; therefore in the Mishnah he instances marriages forbidden by the Torah as the kind of transgression for which exemption may be claimed.

xliii. Upon the arm and the forehead. It is forbidden to speak between the putting on of the two.

xliv. Since the latter does not understand “fainthearted” as relating to physical fear.

xlv. Deut. XX, 8.

## Appendix C: “Warfare and Its Restrictions in Judaism”<sup>58</sup>

Intermediate wars such as preventive, anticipatory, or preemptive [ones] defy so neat a classification. Not only are the classifications debated in the Talmud, but commentators disagree on the categorization of the differing positions in the Talmud.

The major clash occurs between the eleventh century Franco-German scholar Rashi and the thirteenth century Franco-Provencal scholar Meiri. According to Rashi, the majority position considers preemptive action to be discretionary whereas the minority position expounded by Rabbi Judah considers it to be mandatory.

... National self-defense is as much a moral right as is personal self-preservation. Whereas it is clear that offensive war cannot be subsumed under the inalienable right of self-defense, the moral status of pre-emptive attacks is not as clear. Is the moral category of self-defense limited to an already launched attack? The majority talmudic position, according to Rashi, and that of Rabbi Judah, according to Meiri, would answer in the affirmative. Their position is seconded by Article 51 of the United Nations Charter, which states: “Nothing in the present Charter shall impair the inherent right of individual of [sic] collective self-defence if an armed attack occurs against a member.”

The minority position of Rabbi Judah, according to Rashi, and the majority position, according to Meiri, however, hold that a preemptive strike against an enemy amassing for attack is close enough to a defensive counterattack to be categorized as mandatory. This position holds that to wait for an actual attack might so jeopardize national security as to make resistance impossible. . . .

According to Meiri, a preemptive strike, against an enemy who it is feared might attack or who is already known to be preparing for war is deemed mandatory by the majority of the rabbis, but discretionary by Rabbi Judah. Accordingly, Rabbi Judah defines a counterattack as mandatory only in response to an already launched attack. A similar reading of Maimonides also limits the mandatory classification to a defensive war launched in response to an attack.

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- David J. Forman, "Goodbye, 'Purity of Arms' – Goodbye, Morality", at [http://www.rhr.israel.net/pencraft/goodbye\\_purity\\_of\\_arms\\_goodbye\\_morality.shtml](http://www.rhr.israel.net/pencraft/goodbye_purity_of_arms_goodbye_morality.shtml) (accessed 7 October 2008).
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## Notes

1. The term "holy war" itself never occurs in the Bible, but the basic concept is that it is God who conducts war, as clearly expressed in the book of Exodus, which refers to Yaweh as a "man of war". It is the Exodus narrative that is the biblical paradigm for the understanding of warfare. In his commentary on the book of Exodus, Umberto (Moshe David) Cassuto refers to it as a great epic that details the deeds of Yaweh as the source of freedom and the liberator of the people from Egyptian slavery. Millard Lind, who wrote *YWHW is a Man of War*, calls this the Exodus paradigm. The Septuagint (the Greek translation of the Jewish Scriptures 300–200 BCE), concerned with

- anthropomorphism, translates the Lord as one who destroys war, and Onkelos, a nephew of the Roman emperor Titus, who converted to Judaism and wrote on the Bible, states the Lord is the victor over war.
2. Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*. Winona Lake, IN: Eisenbrauns, 1992, pp. 51–52.
  3. Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and the Ancient Near East*, translated by Jerry Mosier. Augsburg: Fortress, 1980, p. 183.
  4. Matitiah Tsevat, *The Meaning of the Book of Job and Other Biblical Studies*. New York: KTAV Publishing, 1980, p. 91.
  5. Take, for example, the Hittites. They appear in Joshua, Judges, both books of Samuel, Kings, Chronicles, Ezra, Nechemia and Ezekiel, as do the other nations.
  6. Personal communication with Robert Seltzer.
  7. A Sanhedrin (Hebrew: **סנהדרין**; Greek: **συνέδριον**, synedrion, “sitting together”, hence “assembly” or “council”) is an assembly of 23 judges biblically required in every city. The Great Sanhedrin is an assembly of 71 of the greatest Jewish judges, who constituted the supreme court and legislative body of ancient Israel. The Great Sanhedrin was made up of a chief justice (Nasi), a vice chief justice (Av Beit) and 69 general members, who all sat in the form of a semi-circle when in session. “The Sanhedrin” without qualifier normally refers to the Great Sanhedrin. When the Temple in Jerusalem was standing (prior to its destruction in 70 CE), the Great Sanhedrin would meet in the Hall of Hewn Stone in the Temple during the day, except before festivals and Shabbat.
  8. Aviezer Ravitzky, “Shalom”, posted 17 February 2007 on The Network of Spiritual Progressives; <<http://www.spiritualprogressives.org/article.php?story=20070218062058498>> (accessed 6 October 2008).
  9. Norman Solomon, “The Ethics of War: Judaism”, in Richard Sorabji and David Rodin (eds) *The Ethics of War: Shared Problems in Different Traditions*. Burlington, VT: Ashgate, 2006, pp. 108–110, p. 110.
  10. See, for example, *The Babylonian Talmud*, London: Soncino, 1969. Tractate Sanhedrin, pages 16a–b (available at <<http://www.come-and-hear.com/talmud/index.html>>, accessed 7 October 2008):

WAR OF FREE CHOICE etc.

Whence do we deduce this? – Said R. Abbahu: Scripture states, And he shall stand before Eleazar the Priest [who shall inquire for him by the judgment of the Urim before the Lord. At his word shall they go out and at his word they shall come in, both he and all the children of Israel with him even all the Congregation] {Num. XXVII, 21–22}. “He”, refers to the King {Joshua, who had regal authority}; “And all the children of Israel with him,” to the Priest anointed for the conduct of war {and whose call to war must be heeded by all Israelites}; and, “all the Congregation,” means the Sanhedrin {V. p. 3, no. 4}. But perhaps it is the Sanhedrin whom the Divine Law instructs to inquire of the Urim and Tummim? {I.e., that none but the Sanhedrin (also the King and the Priest anointed for war) may enquire of the Urim and Tummim: but not because of any need to obtain their permission for the proclamation of war} – But [it may be deduced] from the story related by R. Aha b. Bizna in the name of R. Simeon the Pious: A harp hung over David’s bed, and as soon as midnight arrived, a northerly wind blew upon its strings and caused it to play of its own accord. Immediately David arose and studied the Torah until the break of dawn. At the coming of dawn, the Sages of Israel entered into his presence and said unto him: “Our Sovereign King, thy people Israel need sustenance.” “Go and support yourselves by mutual trading {lit., “one from another”},” David replied, “But,” said they, “a handful does not satisfy the lion, nor can a pit be filled with its own clods” {a community cannot live on its own resources}. Whereupon David said to them: “Go and stretch forth your hands

with a troop [of soldiers] [invade foreign territory].” Immediately they held counsel with Ahitophel and took advice from the Sanhedrin {hence the ruling in the Mishnah, that the permission of the Sanhedrin was required for the proclamation of war} and inquired of the Urim and Tumim. R. Joseph said: What passage [states this]?

– *And after Ahitophel was Benaiah the son of Jehoiada* {the Biblical version of the verse is *Jehoiada the son of Benaiah*. Tosaf. Hananel and Aruk (art. [H] a.) base their versions on this reading and comment accordingly. Rashi and this translation follow the text of the printed editions of the Talmud which agree with II Sam. XX, 23, and I Chron. XVIII, 17} *and Abiathar; and the Captain of the king’s host was Joab* {I Chron. XXVII, 34}. “*Ahitophel*” is the adviser, even as it is written, *And the counsel of Ahitophel which he counselled in those days, was as if a man inquired from the word of God* {II Sam. XVI, 23}. “*Benaiah the son of Jehoiada*,” refers to the Sanhedrin, and “*Abiathar*” to the *Urim and Tumim*.

11. Herbert Danby, *The Mishnah*. Oxford: Oxford University Press, 1933, p. 302.
12. See Sotah 8:5.
13. Reuven Kimelman, “Warfare and Its Restrictions in Judaism”, Brandeis University, at [http://www.bc.edu/research/cjl/meta-elements/texts/current/forums/Isr-Hez/kimelman\\_war.htm](http://www.bc.edu/research/cjl/meta-elements/texts/current/forums/Isr-Hez/kimelman_war.htm) (accessed 6 October 2008).
14. See Rabbi J. David Bleich, in *Tradition, Journal of Orthodox Jewish Thought*, 21(1), 1983: 35, fn 9.
15. *Encyclopedia Judaica*, Vol. 16. Jerusalem: Keter, 1972, p. 8.
16. Solomon, “The Ethics of War: Judaism”.
17. *Ibid.*
18. Moses Maimonides, “Kings”, in *The Code of Maimonides*. New Haven, CT: Yale University Press, 1949, pp. 220–224.
19. Elliot Dorff, “In Defense of Defense”, *S’vara*, 2(1), 1991; excerpt available at [http://www.myjewishlearning.com/ideas\\_belief/warpeace/War\\_TO\\_Combat/War\\_Types\\_Hartman/War\\_Defensive\\_Dorff.htm](http://www.myjewishlearning.com/ideas_belief/warpeace/War_TO_Combat/War_Types_Hartman/War_Defensive_Dorff.htm) (accessed 6 October 2008).
20. *Ibid.*
21. Solomon, “The Ethics of War: Judaism”, p. 112.
22. Maimonides, “Kings”.
23. *Ibid.*
24. Zvi Yaron, “Religion and Morality in Israel and in the Dispersion”, in Marvin Fox (ed.) *Modern Jewish Ethics, Theory and Practice*. Columbus, OH: Ohio State University Press, 1975, p. 237 (emphasis added).
25. *Ibid.*, p. 237.
26. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1992, p. 3.
27. *Ibid.*, pp. 61–62.
28. Dorff, “In Defense of Defense”.
29. Richard Norman, *Ethics, Killing & War*. Cambridge: Cambridge University Press, 1995, p. 133.
30. Norman Solomon, “Judaism and the Ethics of War”, *International Review of the Red Cross*, 87(858), 2005: 302.
31. UN Charter, Chapter 7, at <http://www.un.org/aboutun/charter/chapter7.htm> (accessed 7 October 2008).
32. John C. Bender, “Self-Defence and Cambodia: A Critical Appraisal”, in Richard A. Falk (ed.) *The Vietnam War and International Law: The Widening Context*, Vol. 3. Princeton, NJ: Princeton University Press for the American Society of International Law, 1972, p. 139.
33. Noam J. Zohar, “Morality and War: A Critique of Bleich’s Oracular Halakha”, in

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34. Mira Schuarov, "Security Ethics and the Modern Military: The Case of the Israel Defence Forces", *Armed Forces & Society*, 31(4), 2005: 187.
  35. Israel Defense Forces website, "Ethics", at <http://dover.idf.il/IDF/English/about/doctrine/ethics.htm> (accessed 7 October 2008).
  36. Quoted in Solomon, "Judaism and the Ethics of War", p. 307.
  37. Solomon, "The Ethics of War: Judaism", p. 124.
  38. *Ibid.*, pp. 122 ff.
  39. Quoted in Solomon, "Judaism and the Ethics of War", pp. 305–306.
  40. Solomon, "Judaism and the Ethics of War", p. 306.
  41. Solomon, "The Ethics of War: Judaism", p. 127.
  42. "War, Ethics and Values: An Interview with Brad Hirschfield", National Jewish Center for Learning and Leadership, available at <http://www.clal.org/ss46.html> (accessed 7 October 2008).
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  44. John Keegan (quoting Sir Adam Roberts), quoted in Kenneth Anderson, "Proportionality in jus in bello", Kenneth Anderson's Law of War and Just War Theory Blog, 2006; available at <http://kennethandersonlawofwar.blogspot.com/2006/07/proportionality-in-jus-in-bello.html> (accessed 7 October 2008).
  45. Solomon, "Judaism and the Ethics of War", pp. 308–309.
  46. Joshua Brilliant, "Gen. Amidror: Hizballah's Recovery Timetable", United Press International, 6 September 2006; cited at <http://dailyalert.org/archive/2006-09/2006-09-08.html> (accessed 23 October 2008).
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  49. Kenneth Anderson et al., "A Public Call for International Attention to Legal Obligations of Defending Forces as Well as Attacking Forces to Protect Civilians in Armed Conflict", 19 March 2003. Reproduced on Kenneth Anderson's Law of War and Just War Theory Blog, available at <http://kennethandersonlawofwar.blogspot.com/2006/07/civilian-collateral-damage-and-law-of.html> (accessed 7 October 2008).
  50. Solomon, "Judaism and the Ethics of War", p. 308.
  51. Reuters photographs manipulated by computer software were used to make damage in Beirut look worse than it was; doctored ambulances in Cana were used by Associated Press to report falsely that Israel targeted ambulances; captions in TIME about a direct Israeli hit on a bank of Hezbollah truck-mounted missile-launchers in a Lebanese army parking lot were altered to say that an Israeli jet was shot down over civilian territory; *New York Times* reporter Judith Miller was used to convince Americans that going to war in Iraq was vital; the Arutz7 media network in Israel agitates for the far right in Israel; ultra-orthodox Rabbi Ovadia Yosef broadcasts out of context into Arab lands and his extreme views have a tremendous effect on their hatred of Israel as a "Jewish State".
  52. Asa Kasher and Amos Yadlin, "The Military Ethics of Fighting Terror: An Israeli Perspective", *Journal of Military Ethics*, 4(1), 2005: 3–32.
  53. Michael J. Broyde, "Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition", available on the *Jewish Law* website, <http://www.jlaw.com/Articles/war3.html> (accessed 7 October 2008).
  54. Walter Reich, "Ethics of War", *New York Sun*, 10 August 2006 (OpEd).

55. David S. Shapiro, "The Jewish Attitude towards Peace and War", in N. Lamm (ed.) *Studies in Jewish Thought*, Vol. I. New York: Yeshiva University Press, 1975.
56. *The Babylonian Talmud*, London: Soncino, 1969. Tractate Sotah.
57. *The Babylonian Talmud*, Tractate Sotah, available at <http://www.come-and-hear.com/talmud/index.html> (accessed 7 October 2008).
58. Kimelman, "Warfare and Its Restrictions in Judaism".