



Halakha Sources: What is Just War By Rabbi Pamela Barmash

Question: To What Extent Must Non-Combatants in Enemy Territory be Protected?

(1)

**“The IDF Spirit” Major General Amos Yadlin, head of team of the Israeli Defense Force (IDF)
College of National Defense, and Professor Asa Kasher**

The Principle of Self-Defense Duty

- (1) It is the prime duty of a democratic state to effectively defend its citizens against any danger posed to their lives and well-being by acts or activities of terror, both in the short run and in the long run.
- (2) In doing so, the state discharges its obligation to protect the human dignity of the citizen, both as person and as citizen.
- (3) Moreover, being a democratic state, it must fulfill its obligation while properly respecting the human dignity of each person, as a person.

The Principle of Military Necessity

Military acts and activities against terror are right only if they are carried out under the following conditions:

- (1) Purpose Condition: The act or activity is taken in fulfillment of the basic duty of the state to defend its citizens from terror acts and activities.
- (2) Relative Effectiveness Condition: Any alternative act or activity (including refraining from any act or activity, respectively) would expose the lives or well-being of the citizens of the state, including its combatants, to greater danger.
- (3) Minimizing Collateral Damage Condition: The act or activity is carried out in a manner that strictly protects human life and dignity by minimizing all collateral damage to individuals not directly involved in acts or activities of terror.
- (4) Proportionality Condition: The act or activity is carried out in a manner that takes into account the relationship between its contribution to the defense of citizens from dangers of terror and the collateral damage it causes.
- (5) Fairness (or universalizability) condition: The act or activity is of universal applicability: Its justification would justify carrying out parallel acts or parallel activities in all parallel situations.

Priorities on Grounds of Duties

Military acts and activities carried out in discharging the duty of the state to defend its citizens against terror acts or activities while at the



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same time protecting human dignity, should be carried out according to the following priorities which reflect the order of duties the state has toward certain groups:

- (d.1) Minimum injury to the lives of citizens of the state who are not combatants during combat;
- (d.2) Minimum injury to the lives of other persons (outside the state) who are not involved in terror when they are under the effective control of the state;
- (d.3) Minimum injury to the lives of the combatants of the state in the course of their combat operations;
- (d.4) Minimum injury to the lives of other persons (outside the state) who are not involved in terror, when they are not under the effective control of the state;
- (d.5) Minimum injury to the lives of other persons (outside the state) who are indirectly involved in terror acts or activities;
- (d.6) Injury as required to the liberties or lives of other persons (outside the state) who are directly involved in terror acts or activities.

Proviso: All this applies when the presence of persons directly involved in terror acts or activities within the environment of other persons not involved in terror outside the state, has not been created by the state, and is of direct responsibility of a foreign power.

(2)

Rabbi Major General Shlomo Goren, “The Siege on Beirut”

- A. There is a specific law in the laws of siege and warfare from which we can learn about the high level of humanitarianism and ethics of the Torah of warfare and of the value of human life, including that of an enemy who fights us.
Maimonides in the Mishneh Torah *Hilkhot Melakhim* (Laws of Kings and their Wars) 6:7 writes:
When we besiege a city to capture it, we do not surround it on all four sides but only from three sides. We leave a place open for escapees. Anyone who wishes to escape with their life may do so, as it is written in Num. 30:7, “They deployed against Midian just as God commanded Moses”. We learn from tradition that God commanded Moses thus [to leave one side open].
- B. The siege under discussion here [the siege of Beirut], however, is not for the purpose of conquering the city but rather to defend Israel from an enemy and to destroy that enemy. [This type of war is an obligatory war, termed in Hebrew *milhemet mitzvah*, not an optional war taken just for the sake of conquest]....
- C. A Jewish military force undertaking a siege must leave one side open so that the people of a besieged city may escape with their lives. This is because the essential aspect of this law is learned from the war with Midian, a war that was not a war of conquest but a war of retribution against enemies of Israel [an obligatory war], just as it is defined twice in the Torah: in Num. 25:16-17, “The LORD spoke to Moses, saying, Attack the Midianites and defeat them because they attacked you by trickery,” and in Num. 31:1-2, “The LORD spoke to Moses, Avenge the Israelites on the Midianites”....



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Despite this, Moses is commanded not to surround Midian on all four sides but only on three sides in order to give an opportunity to one who wishes to escape and save his life. According to this law, in any kind of warfare, no matter its goal, it is forbidden to close off a besieged city from all sides. Since this rule is operative even in a war of retribution with Midian, the Israelites are commanded to give an opportunity to anyone who wishes to flee and save his life [in any kind of war].

Nonetheless, we have the right to prevent the besieged from receiving reinforcements or the means to break the siege, such as food, water, and armaments, through the open fourth side. The obligation to leave a side open in a siege is to allow movement in one direction only, from the city outward, not from the outside to the city.

D. Pesak Din (Ruling):

According to Maimonides, this law operates in our time -- if we besiege an enemy city whether in an obligatory war or in an optional war, whether within the borders of the land of Israel or outside, we are forbidden to encircle a city from all sides. We must allow one side to remain open in order to offer an opportunity to those who wish to flee from the besieged city and save their life, as long as they do not take advantage of this [open] side in order to bring in reinforcements, whether soldiers, armaments, or food...

May peace come to our soldiers and tranquility arrive within our borders.

Conclusions:

1. We see this conversation occur across Jewish time and so it is not new for us to be discussing this.
2. It is important to see the Israeli Defense Forces having a conversation with Halakha and with Rambam on this topic.
3. We can view what is happening today in Israel through this lens across time.