Of Land, Peace, and Divine Command

Rabbi J. David Bleich

Disturbances during these past months in the liberated territories of Judea and Samaria and in the Gaza Strip have given rise to considerable discussion and debate both within the State of Israel and in the Diaspora. The debate has centered around the issue of "land for peace," the return of territory taken during the Six-Day War as a means of achieving peaceful coexistence with the indigenous Arab population. The controversy concerning the impact of such a policy upon the security and aspirations of the State of Israel is mirrored in rabbinic circles in a debate centering upon the theological and halachic ramifications of such policies. While the secular debate has taken place in public forums and in the media, and although strident pronouncements of some religious figures have received much publicity, reasoned halachic disputations have, for the most part, been confined to the study halls of rabbinic scholars and their students.

There can be no question that every committed Jew awaits with eager anticipation the time when every particle of the sanctified soil of *Eretz Yisra'el* will be under unchallenged Jewish sovereignty. Return of territory is a contingency contemplated only with pain and anguish. Only exigencies of security, stability and

---

Rosh Yeshiva, and Rosh Kollel Le-Hora'ah, Rabbi Isaac Elchanan Theological Seminary; Professor of Law, Benjamin N. Cardozo School of Law

peace prompt an investigation of the position of halacha with regard to this agonizing issue.

Judaism is hardly monolithic. It is no more surprising to find disagreement in rabbinic circles with regard to the religious and halachic aspects of the problem than it is to find disagreement in the political arena with regard to the impact of available options upon matters of national security. With regard to the latter a consensus is now in the process of emerging; with regard to the former, it seems to this writer, a consensus has long existed. Ralbag, in the course of his philosophical writings, employs a poignant phrase for widely held positions. He terms them the beliefs of *"hamon anshei Toratenu"*, the beliefs of "the multitude of the adherents of our Torah." Although very little has appeared in print with regard to the stated position of Torah scholars, it is this writer's firm conviction that the material herein presented reflects the consensus of *"hamon chachmei Toratenu* — the multitude of the scholars of our Torah," i.e., the views of the "silent majority" of authoritative rabbinic decisors.

There is considerable disagreement among rabbinic authorities with regard to whether or not the commandment concerning residence in the Land of Israel is binding in our day.[1] Letters ascribed to both R. Ya'akov of Lissa[2] and the Chafetz Chaim[3] declare that our sole justification for remaining in the Disapora is reliance upon the opinion of those authorities who maintain that, in our day, the obligation to live in the Land of Israel is no longer incumbent upon us. It may be argued that if establishment of

---

1. For a discussion of the various positions regarding that issue, see this writer's *Contemporary Halakhic Problems*, II (New York, 1983), 189-211.
2. Cited in R. Yosef Sheinberger, *Amud Esh* (Jerusalem, 5714), pp. 105-109.
   The authenticity of this letter was challenged by R. Shmuel ha-Kohen Weingarten in a detailed critique, *"Ziyuf Sifruti," Sinai*, vol. xxxii (5713), no. 1-2, pp. 122-127. Subsequently, Chaim Bloch, who had originally submitted the letter for publication in *Ha-Posek*, no. 140, again vouched for its veracity. Cf., Mayer Herskovics, *Maharatz Chajes: Toldot Rabbi Zevi Hirsch Chajes u-Mishnatto* (Jerusalem, 5732), pp. 231-232.
3. Cited in R. Menachem Gerlitz, *Mara de-Ar'a Yisra'el* (Jerusalem, 5734), II, 27-29 and in *Kovetz Michtavim* (Bnei Brak, 5735), pp. 19-21. This also appears to be the opinion of *Knesset ha-Gedolah, Yoreh De'ah* 239:33.

domicile and of a Jewish homeland in the Land of Israel is not incumbent upon us, it then follows, *a fortiori,* that there is no obligation to engage in war either for the conquest of any portion of the Land of Israel or in order to retain sanctified territory that has come under the jurisdiction of the Jewish state. Conquest of territory would appear to be mandated as a means of facilitating settlement; in the absence of an obligation with regard to settlement, conquest would be devoid of purpose. If so, the question of the propriety of returning liberated territory in order to avoid bloodshed bears further analysis only if the opinion of those authorities who maintain that the obligation to establish residence in the Land of Israel remains in force is accepted as normative. Other considerations, some of which will be discussed later, are certainly set aside in face of danger.

This conclusion also flows from an examination of the biblical passages in which these obligations are expressed. The obligation mandating conquest and settlement of the Land of Israel is formulated in the verse "and you shall inherit the land and dwell therein" (Numbers 33:53). The authorities who fail to consider the command "and you shall dwell therein" as binding in our day certainly would not regard the antecedent admonition "and you shall inherit the land" as remaining in force. There might, however, be grounds to assume that if "and you shall dwell therein" remains a binding obligation, the commandment to conquer the territory couched in the phrase "and you shall inherit the land" remains a binding obligation as well.

This, however, proves not to be the case. The halachic conditions that must be satisfied prior to engaging in a war of conquest are such that they cannot be fulfilled in the current historical epoch. Wars of conquest, including a *milchemet mitzvah* or "commanded" war, require a king who must initiate military activity, a Sanhedrin that must approve such action, and consultation of the *urim ve-tumim* for advice and consent. The absence of a monarch may not be a decisive factor since Ramban, who is the principal exponent of the position that residence in the Land of Israel remains obligatory, declares in a somewhat different context that the term "king" must be understood as connoting not only a royal monarch, but "a king, a judge, or whosoever has

jurisdiction over the people,"[4] i.e., the person or body exercising sovereignty over the nation. If so, absence of a scion of the Davidic dynasty would not vitiate either the prerogatives or the obligations recognized by halacha with regard to military endeavors. Some latter-day authorities have adopted the position that the need for approval of a Sanhedrin is limited to circumstances in which there is a need to employ the coercive powers of the judiciary for the purpose of raising an army by means of involuntary conscription.[5] When, however, voluntary enlistment satisfies military needs, approval of the Sanhedrin, according to these authorities, is not required. Nevertheless, consultation of the *urim ve-tumim* remains a *sine qua non* for any act of military aggression.[6] Since, lamentably, we possess neither an *urim ve-tumim* nor a High Priest to don the *urim ve-tumim,* a war of aggression designed to effect the conquest of the Land of Israel, in whole or in part, is precluded.

Indeed, even if such an obligation were to exist in our day, that obligation would be severely limited in nature. *Minchat Chinuch,* no. 425, raises an obvious question. All commandments, with the exception of the prohibitions against homicide, idolatry and certain sexual offenses, are suspended for the purpose of saving a life. Actions which otherwise would be prohibited are permissible, and indeed mandatory, in the event that there exists even a remote chance that a life may be saved as a result of their performance. Obligations which are otherwise mandated are suspended in face of even possible danger to life. Failure to wage an obligatory war is

---

4. See Ramban, addenda to Rambam's *Sefer ha-Mitzvot, mitzvot lo ta'aseh,* no. 17. For a fuller discussion of this point, see *Contemporary Halakhic Problems,* II, 207, note 27.
5. See R. Judah Gershuni, *Torah she-be-'al Peh,* XIII (5731), 149-150; *idem, Or ha-Mizrach,* Tevet 5731; and R. Sha'ul Israeli, *Amud ha-Yemini,* no. 14 and no. 15, chap. 5, sec. 6.
6. See Rambam, *Sefer ha-Mitzvot, shoresh* 14, and Ramban, addenda to *Sefer ha-Mitzvot, mitzvot lo ta'aseh,* no. 17; see also R. Judah Gershuni, *Torah she-be-'al Peh,* XIII (5731). Cf., however, R. Yechiel Michal Epstein, *Aruch ha-Shulchan he-Atid, Hilchot Sanhedrin* 74:7, who states that "perhaps" consultation of the *urim ve-tumim* is not an absolute condition; cf., also, R. Shlomo Yosef Zevin, *Le-Or ha-Halachah* (Tel Aviv, 5717), p. 12.

not enumerated as one of the cardinal sins demanding martyrdom rather than transgression. How, then, can the Torah command us to wage war? Yet war for the conquest of *Eretz Yisra'el* as well as for the eradication of Amalek is a mandatory duty. Warfare obviously presents the possibility of casualties and, even in the most favorable of circumstances, poses a threat to life. The scriptural phrase *"va-chai be-hem* — and he shall live by them" (Leviticus 18:5) is understood by the Sages as suspending the yoke of the commandments when fulfillment might mean that the person so obligated might "die by them" rather than "live by them." *Minchat Chinuch* resolves the problem by explaining that the commandments concerning war are unique. Warfare, by virtue of its nature, demands that a participant's life be placed in danger. Hence, in this case, the nature of the mitzvah requires that one place one's life in danger. Since that is the very essence of the obligation, the mitzvah cannot be suspended in face of possible danger.[7]

Nevertheless, it is only reasonable to suppose that there exist certain limitations with regard to the nature of the risk which must be accepted. It may not be necessary to place one's life in danger under any and all circumstances. While acceptance of the danger inherent in a battlefield situation may be mandatory, a clear distinction must be drawn between acceptable risks and risks which are tantamount to a suicide mission. The obligation to participate in

---

7. Cf., R. Naphtali Zevi Yehudah Berlin, *Meromei Sadeh, Eruvin* 45a and *Kiddushin* 43a; and R. Yitzchak Ze'ev Soloveitchik, *Hiddushei Maran Riz ha-Levi al ha-Torah* (Jerusalem, 5723), *Parshat Beshalach*, p. 32. These scholars quite appropriately note that, even in the absence of a *mitzvah*, considerations of endangerment of self or of others are set aside in time of war simply by virtue of the "laws of war", i.e., the Torah's very recognition and sanction of warfare constitutes dispensation for endangerment of lives in the conduct of war.

R. Joshua Aaronberg, *Dvar Yehsohu'a*, II, no. 48, extends this position in stating that, since considerations of self-endangerment are set aside in the conduct of war, war may not be eschewed if avoidance of war would result in infraction of even a rabbinic prohibition. Thus, for example, the prohibition, *lo titen lahem chaniyah be-karka* may not be violated because of considerations of *pikuach nefesh* since there exists the option of waging war in order to prevent

obligatory wars may not require an individual to place himself in a situation in which it is a certainty that his life will be forfeit. Moreover, it is reasonable to assume that the obligation to wage war is an obligation to engage in battle only when the anticipated gain is commensurate with the loss which may reasonably be anticipated.[8]

Quite apart from the foregoing, the Gemara, *Ketubot* 111a, reports that, at the time of the destruction of the Temple, G-d called upon the people of Israel to swear a solemn oath *"she-lo ya'alu be-chomah,"* not to attempt a return to the Land of Israel by means of forcible conquest. If the oath remains endowed with any halachic import — and many, and probably most, rabbinic scholars maintain that is does[9] — it certainly serves to prohibit any military campaign for the purpose of territorial aggrandizment.

It may, of course, be objected that these considerations apply only to the initiation of armed conflict for the purpose of capturing or liberating sanctified territory. The stipulations requiring a king, Sanhedrin and *urim ve-tumim* certainly do not pertain to defensive war undertaken for the purpose of preserving Jewish lives.[10] Neither, it may be argued, do they apply to military activity undertaken for the purpose of retaining territory already

---

non-Jewish occupation of land. This writer finds Rabbi Aaronberg's thesis unconvincing. The Torah *permits* self-endangerment in a *milchemet mitzvah;* nowhere is there the slightest hint that an otherwise non-obligatory war becomes obligatory when necessary to avoid suspension of any prohibition in the face of danger. On the contrary, the Gemara, *Gittin* 56a, indicates that a blemished animal might be accepted as a sacrificial offering because refusal would offend the authorities and result in danger to Jews. There is no suggestion that war, even if potentially successful, must be undertaken in order to avoid such transgression. Moreover, the Brisker Rav, in his above cited comment, explicitly writes that the commandment *hacharem tacharimem* (Deuteronomy 20:17), *qua mitzvah,* is suspended even in time of war.

8. R. Joshua Aaronberg, *Shanah ba-Shanah,* 5730, p. 140, cogently argues that there is no obligation to engage in military activity in order to secure or to defend territory if there are grounds to fear that defeat would result in the loss of additional territory.
9. For a discussion of these oaths in rabbinic literature see *Contemporary Halakhic Problems,* I, 13-14.
10. This point is amplified in this writer's "Preemptive War in Jewish Law," *Tradition,* vol. 21, no. 1 (Spring, 1983), pp. 17 ff.

reconquered, particularly if the territory in question has been liberated by means that are consistent with the provisions of Jewish law. It should also be noted that it can — and has — been argued that surrender of territories is an infraction of the prohibition *"lo techanem"* (Deuteronomy 7:2), which, in talmudic exegesis, is rendered as *"lo titen lahem chaniyah be-karka* — you shall not grant them permanent encampment."[11] This talmudic dictum is formulated in association with a prohibition against conveying real property within the boundaries of the Land of Israel to a non-Jew. Yet a literal application of the terminology in which that prohibition is formulated would render it applicable to any action that would tend permanently to confirm non-Jewish residence in the Land of Israel. Sale of real estate would thus be but one example of activity having that effect; obviously, transfer of political sovereignty would be even more instrumental in engendering permanence of non-Jewish residence.[12]

However, historical precedent clearly establishes that war for retention of territory or sovereignty is not halachically mandated, or at least, is not always halachically mandated. At the time of the destruction of the Temple, R. Yochanan ben Zakkai not only advocated total surrender in return for minimal concessions which might be exacted from the conquerors, but was prepared to flout the wishes of contemporary political leaders and to act singlehandedly in implementing his policies. It is unthinkable to suppose that R. Yochanan ben Zakkai acted contrary to halacha. The policies he advocated were clearly stamped with the imprimatur of Jewish values and tradition. It is only the analysis of the considerations upon which those policies were grounded that remains for our elucidation.

R. Yochanan ben Zakkai was undoubtedly motivated by a desire to preserve Jewish lives. Continued resistance and warfare would assuredly have evoked repressive measures and resultant loss

---

11. See *Avodah Zarah* 19b.
12. See *Contemporary Halakhic Problems*, I, (New York, 1977), 27-32, and II, 212-220.

of additional lives. Accordingly, he must have regarded any continuing obligation with regard to preservation of a Jewish homeland as suspended in face of danger. This can be explained on the basis of a number of considerations and, although the considerations are multiple in nature, they are not exclusive of one another:

1. The most facile explanation involves the earlier-formulated thesis that a *milchemet mitzvah* is not obligatory when it must be rationally regarded as doomed to failure. A war of conquest may be mandatory, but an exercise in military futility is not. By the same token, as noted earlier, an obligation to wage war implies an obligation to assume the risks associated with warfare; it does not entail a concomitant obligation to engage in suicide missions or to accept the risk of disproportionate casulaties. War has its own conventions and its own canons of military logic — inappropriate as those conventions and that logic may be in other areas of human endeavor. There is no obligation to engage in warfare in circumstances in which war must be deemed irrational even by military standards.

2. An examination of Ramban's comments regarding the commandment "and you shall dwell therein" inescapably yields the conclusion that the obligation is double-faceted in nature. The obligation encompasses 1) a personal obligation to establish domicile in the Land of Israel and 2) a similar obligation that is communal, rather than individual or personal, in nature. According to Ramban, the latter aspect of the mitzvah includes an obligation to conquer the land, to inhabit and cultivate the land in its entirety, and to assure that no part of that territory remains in the hands of gentile nations.[13] According to Ramban's formulation, the oath not to seek forcible return to the land, may well be reflective, not simply of the suspension of the obligation with regard to conquest, but indicative of the abrogation of all communal obligations with regard to the Land of Israel. Banishment from the Land of Israel is

---

13. See Ramban, *Commentary on the Bible*, Numbers, 33:53 and *idem*, addenda to Rambam's *Sefer ha-Mitzvot, mitzvot aseh*, no. 4.

the fulfillment of the prognosticated punishment reflected in the verses "And you I will scatter among the nations" (Leviticus 26:33) and "... and you shall be plucked from off the land which you go there to possess. And the Lord will scatter you among all peoples from the end of the earth to the end of the earth" (Deuteronomy 28:63-64). But how can such a situation be reconciled with an ongoing obligation to dwell within the confines of the Land of Israel? The answer may well be that "you shall inherit the land" refers to the people of Israel as a communal entity, whereas "and you shall dwell therein" constitutes an admonition addressed to the individual. The community is in exile; hence there can be no communal obligation regarding the Land of Israel. The individual, however, remains fully bound by the personal obligation to "dwell therein." Accordingly, even after the dispersion of the community, the individual, if he is but capable of doing so, is duty-bound to establish residence in the Land of Israel. But since that obligation is incumbent upon a Jew only *qua* individual it does not extend to duties and responsibilities which, by their very nature, are not within the purview of the individual but which can be fulfilled only through the cooperative efforts of the community.

War, as a halachic category, constitutes a *mattir*, or suspension, of the prohbition against the taking of any human life. In the absence of a legitimating category of mandated or permissible war, military action would, ostensibly, be prohibited by Jewish law.[14] There exists, however, another category of halacha that is conceptually unrelated to the formal halachic categories of war but which does have a distinct bearing upon the present situation.

To be sure, wars of self-defense are recognized by halacha, not only as permissible, but as mandatory in nature. Such military action is the sole form of warfare requiring neither a king, Sanhedrin nor *urim ve-tumim*. Nevertheless, self-defense on the part of an individual is justifiable on entirely different grounds. Self-defense is recognized by Jewish law as justifiable homicide.

---

14. For further elucidation of this point see "Preemptive War in Jewish Law" pp. 25-29.

Not only is the taking of the life of an aggressor sanctioned when necessary to preserve one's own life but such action is obligatory. Moreover, unlike common law, Judaism regards such intervention as also mandatory in order to save the life of a third person who is putatively the innocent victim of an aggressor.[15] There also are situations in which homicidal intent is imputed to a malevolent individual even in the absence of overt demonstration of murderous intent. The Bible declares, "If a thief be found breaking in and he be smitten so that he dies, there shall be no bloodguiltiness for him" (Exodus 22:1). The verse refers to a burglar who has designs only upon the property of his victim. Since he is not intent upon bloodshed, killing the perpetrator would constitute force that, under the circumstances, would appear to be entirely disproportionate. Yet the Gemara, *Sanhedrin* 72a, elucidates the biblical exoneration of the victim in his use of lethal force with the explanation, "It is to be presumed that a person [faced with loss] of his money does not restrain himself. This [perpetrator] says to himself, 'if I go [there], he will oppose me and not let me [steal his property]; if he opposes me, I will kill him.' "

One crucial problem concerning extension of the "law of the pursuer" to a *ba ba-machteret*, or burglar, requires clarification. Certainly, the slaying of the burglar by the householder is an exculpable act. The *chazakah* or presumption that a person finding himself in such circumstances cannot restrain himself from defending his property is known to the perpetrator and hence generates an assumption that he is not merely a burglar but also a would-be murderer. Accordingly, the householder's act is, in actuality, an act of self-defense. It is, however, equally certain that were the burglar to be assured that the valuables he seeks would be surrendered without protest there would be no cause for a presumption of intended violence on his part. On the contrary, the presumption would be that the burglar would not engage in unnecessary force. The question, then, does not arise only *post*

---

15. See Rambam, *Hilchot Rotzeach* 1:9.

factum as a question concerning the householder's culpability. Rather, the question has its inception before the fact as a query with regard to the appropriate response of a calm and collected victim who is entirely capable of a reasoned, calculated response rather than an emotional reflexive reaction. Such a person will be quick to recognize that all danger to his life will dissipate if he surrenders his possessions without offering resistance. If he is emotionally capable of responding in such a manner, is he then not obligated to do so? At that moment, the burglar is not yet intent upon homicide. Since the householder can completely obviate the danger to his own life by deflecting the perpetrator in a different way, it would stand to reason that a lethal response is not warranted. If so, the householder in control of his emotions should be advised that he is duty-bound to surrender his possessions and, indeed, should he eliminate the aggressor instead, he will be culpable in the eyes of Heaven.

It is instructive to note that Rambam codifies the law concerning the *ba ba-machteret* in a manner significantly different from his codification of the general rule governing an aggressor. In *Hilchot Rotzeach* 1:9, Rambam declares unequivocally, "This too is a negative commandment not to spare the life of the pursuer..." The malevolent intent of the pursuer must be thwarted even at the cost of his life and failure to intervene constitutes a transgression. However, in *Hilchot Geneivah* 9:3 and 9:9, Rambam employs entirely different language with regard to the *ba ba-machteret.* Regarding such a malfeasor, Rambam, *Hilchot Geneivah* 9;3, declares, "Every person has permission to slay him" and in *Hilchot Geneivah 9:9,* Rambam writes, "And why did the Torah permit the blood of a thief even though he comes with regard to property? Because it is presumed that if the householder will offer resistance and prevent him [from stealing], [the thief] will kill him. Thus this [person] who enters the house of his fellow to steal is as if he pursues his fellow to slay him." Rambam does indeed equate the burglar with the pursuer but fails to declare that elimination of the burglar is imperative upon pain of transgressing a biblical command. On the contrary, he speaks of the burglar's blood merely as being "permitted." The clear implication of those statements is

that the decision to employ lethal force, even if necessary to do so in order to protect one's possessions, is a matter left to the victim's discretion.

The apparent contradiction between Rambam's general formulation of the law of the pursuer and his application of that law with regard to the *ba ba-machteret* dissipates with the recognition that, once the perpetrator actually becomes an aggressor, the victim is bound to invoke the law in defending himself but that, this provision of law notwithstanding, it is within the victim's discretion to create, or not to create, conditions that will render the burglar a pursuer. If the householder is prepared to surrender his valuables without resistance the burglar will have no cause to do him harm and hence the burglar cannot be considered a pursuer. Should, however, the victim offer resistance, it must be presumed that the burlgar will resort to violence and hence he must be regarded as a pursuer. The householder has no discretion with regard to invoking the law of pursuit against one who is already a pursuer; his discretion is limited solely to creating circumstances that will render the burglar a pursuer. Although he makes no explicit statement to that effect, Rambam's failure to indicate that the householder ought not to offer resistance in order to avoid triggering the law of pursuiut would appear to indicate that the householder is under no obligation to do so. Thus the presumption of resistance which, in turn, gives rise to the burglar's status as a pursuer is not dependent upon an uncontrollable instinct on the part of the victim. Rather, the victim is fully entitled to protect hearth and home as a matter of right and it is the presumption that he will exercise that right that gives rise to classification of the burglar as an aggressor.[16]

The same inference may be drawn from a comment of *Magen Avraham, Orach Chayyim* 329:5. *Shulchan Aruch, Orach Chayyim* 329:7, cites authorities who maintain that, "in our day," defensive

---

16. See R. Shlomoh Zalman Auerbach, *Moriah*, Sivan-Tammuz 5731, pp. 19-25; reprinted in *idem, Minchat Shlomoh* (Jerusalem, 5746), no. 7, sec. 2.

measures involving transgression of Sabbath restrictions may be initiated in response to an attack by non-Jews even if they are intent only upon plunder. The rationale is rather similar to, yet somewhat different from, the consideration that serves as the basis of the rule governing the *ba ba-machteret, viz.*, given the general lawlessness prevalent "in our day," failure to allow the gentiles to do as they wish, even if they are not resisted by lethal force, will result in the shedding of blood. Therefore, according to these authorities, their aggression must always be regarded as involving danger to life. *Magen Avraham,* however qualifies that ruling and declares that it is applicable only when the attack is directed against a community but not when the attack is directed against an individual. In a multitude it may be anticipated that some persons will be incapable of restraint and hence the situation must be regarded as posing a threat to Jewish lives. However, declares *Magen Avraham,* the individual who is capable of self-restraint must be admonished to surrender his possessions rather than desecrate the Sabbath.

Magen Avraham's comment appears to be limited to acts performed on the Sabbath. He does not draw a similar distinction with regard to a *ba ba-machteret,* i.e., he does not state that an individual capable of self-restraint dare not slay the burglar because, since he is emotionally and psychologically capable of handing over his valuables, the burglar does not constitute a threat to his life. Apparently, according to *Magen Avraham,* the moral analysis of the problem begins with the positing of a right to defend property. Once the property owner has determined to exercise that right, utilization of lethal force in wresting property from its rightful owner may be met with a response in kind and the property owner is under no obligation to surrender his possessions in order to avoid killing the perpetrator. The responsibility for avoiding the spilling of blood lies entirely with the perpetrator who can readily obviate all danger by desisting from his nefarious endeavor. However, although one has a right to protect property against burglars or brigands, one does not have a right to transgress the Sabbath in order to preserve property. Thus, if offered a choice, upon pain of death, of either handing over one's money or

performing an act of Sabbath desecration, one is obligated to surrender one's possessions rather than violate Sabbath prohibitions. Similarly, when confronted on the Sabbath by a burlgar or by marauding gentiles, one is not permitted to safeguard property by means of Sabbath desecration even though on a weekday it would be permissible to do so despite the virtual certainty of resultant bloodshed.[17]

Of course, the right to defend hearth and home should not be confused with an obligation to engage in such defense. Not every right must be exercised. Prudence would dictate that a rational person would not accept undue risk in preserving his property. A cautious person will eschew any significant risk to life.

The application of these principles to the current debate concerning "land for peace" is perfectly obvious. What is true for the individual is true for a community or a nation as an aggregate of individuals. There is no obligation to relinquish territory in return for freedom from the threat of continued aggression. There is no obligation to capitulate to force of arms. On the other hand, there is no duty to defend property interests in the face of danger to life.

At the same time, a prudent assessment of inherent risks requires that prospective concessions be examined with regard to any risks such concessions may portend for the future. Jewish law, as recorded in *Shulchan Aruch, Orach Chayyim* 329:6, provides for defense of "a city close to the border" on the Sabbath against occupation by the enemy even when the enemy seeks only "straw and hay" because security considerations designed to safeguard against future danger to Jewish lives require that border areas remain in Jewish hands. Applying the selfsame consideration to the current dilemma, it may well be the case that return of territory, the

---

17. The statement of the Gemara, *Sanhedrin* 72, declaring that there is no culpability attendant upon slaying the *ba ba-machteret* "whether on a weekday or on *Shabbat*" must be understood, according to *Magen Avraham,* as limited to a person incapable of controlling his response. See R. Shlomoh Zalman Auerbach, *Moriah,* pp. 23 and 25; and *idem, Minchat Shlomoh,* no. 7, pp. 47 and 48.

retention of which is essential for purposes of security, may only enhance the danger to the inhabitants of the State of Israel in any future conflict. Similarly, present concessions may not appease the enemy but, on the contrary, may whet his appetite and enhance his strategic capabilities in demanding surrender of additional territory.

The prudent householder, in determining whether or not to appease the demands of a burglar, must carefully weigh all salient factors and considerations. Ultimately, the decision to resist or not to resist is left to the discretion of the *ba'al ha-bayit* or householder. The same is true with regard to decisions made by a community or a nation. The *"ba'alei batim,"* through their designated representatives, government officials and military commanders must carefully analyze all relevant military, political and economic consequences of the options available to them and exercise their discretion in the formulation of an appropriate response. Only those individuals are privy to all factors that must be considered in order to formulate policy in a prudent manner. Moreover, no outsider is entitled to make a decision of this nature on behalf of the householder; only the potential victim is entitled to determine whether or not he wishes to assume the attendant risks inherent in the situation in which he finds himself.

One caveat: A rational and prudent householder, upon weighing all considerations, may well, and indeed probably will, determine that should a burglar break into his home he will offer no resistance. However, it would be the height of irrationality and a gross lack of prudence on his part to post a notice to that effect on the front door of his home. With regard to this caveat as well, the implications in terms of policy formulation by the State of Israel are obvious.