

## Land for Peace: A Halachic Perspective

Rabbi Hershel Schachter

### Introduction

Due to our *Galut* situation, we are often only able to study various halachic concepts on a theoretical plane. Interestingly, due to current circumstances, the subject of *milchama*—war, formerly one such topic, must now be examined in practical terms.

The Gemara in *Yoma* 22b relates that *לָא בְּאַרְבַּע רַגְלֵיךָ מְלִיכָא וְאַרְבַּע רַגְלֵיךָ מְלִיכָא*.

King Saul made one mistake for which he lost his kingdom, whereas David erred on more than one occasion yet still retained his monarchy. The commentaries clarify this passage, explaining that it is not that G-d favored David and therefore pardoned his errors where he did not tolerate Saul's, but that whereas David's transgressions were of a personal, private nature, Saul's was in the realm of government. Having failed to fulfill properly one of his major functions as king, namely that of waging war, he was deemed unworthy of remaining King of Israel. The Torah dictates that one employ a proper measure of each character trait as required by individual situations; Saul is faulted as having misplaced his mercy by applying it while waging war against Amalek. Instead, we are instructed to emulate King David who was humble when studying Torah yet, simultaneously, a ruthless warrior when the need arose.<sup>1</sup>

1. See *Moed Katan* 166.

Rosh haKollel, Yeshiva University

### Historical Precedent of Returning Land

The Gemara in *Pesachim* 56a reads:

ת"ר: ששׁוּ רַבִּירִים עִשָּׂה חֻקֵי הַמֶּלֶךְ. עַל שְׁלֵשׁ הַיּוֹדוּ לוֹ וְעַל שְׁלֵשׁ לֹא הַיּוֹדוּ לוֹ... קוֹרֵץ וְלַחֹת שֶׁל הַיֵּבֶל, וְשִׁעוֹר לֶמֶלֶךְ אֲשֶׁר וְלֹא הַיּוֹדוּ לוֹ... רַשִׁי: שִׁדְיָה לֹא לְבִטּוּם בְּחֻקֵיכֶּיךָ שְׂאֵת (מַלְכִים ב, ט"ל"ד); וְגוֹרֵר עַל הַעֵר עֹרֵר הִואַת לְהַוִּיעֵת.

This passage lists various activities undertaken by King Hezekiah on his own initiative, some of which are deemed praiseworthy, whereas for others he is criticized. Included in this latter category is his attempt to pacify Sanherib by removing golden fixtures from the Temple and sending them to the Assyrian king. Rashi clarifies his point of error by commenting that Hezekiah should have placed his trust in G-d who had promised to protect the city (Jerusalem) and deliver it from the threat of the enemy. From this it is evident that Hezekiah's action was deemed improper only in light of the prophet's assurance that the city would benefit from G-d's special protection. Had he not received such assurance, even this action of partly dismantling the Temple would have been justified in face of the impending situation of *sakanat nefashot*, (mortal danger), the *issurim* involved not being among those for which one is mandated to give up his life (*yehareg v'al yatanor*). Similarly, in the current political situation in Eretz Yisrael it is argued that since the Jews there are in mortal danger, and being that we do not have a clear promise of divine protection from a prophet, it is proper to forfeit control of Judea and Samaria and even Jerusalem to the Arabs. Although such an act would be in violation of the injunction of "*Lo techanem*,"<sup>2</sup> (not to give Gentiles a permanent settlement in the Land) it is permissible in the interest of avoiding a situation of *sakanat nefashot*.

### Sakanat Nefashot in Wartime

In his commentary on *Mitzvah* 425 which commands us to

2. See *Avodah Zara* 202.

destroy the seven Canaanite nations, the *Minchat Chinuch* limits the above precept by stating that the imperative to avoid *pikuach nefesh* (danger to life) does not apply in wartime for, in a battle situation losses are invariably suffered and thus we would never be permitted to wage war's. Applying this detail to the situation in Eretz Yisrael, it must be ascertained whether the State of Israel, in the eyes of the halacha, is currently considered in a state of war or at peace.

In response to this it would appear that although the State of Israel is not presently engaged in battle with any of her neighboring enemies, it is nonetheless halachically categorized as in a state of war. This conclusion served as the basis for a *psak* of Rav Yaakov Kamnetsky in response to a halachic inquiry that was made during the 1970 Arab hijacking of two airplanes from Lod to Jordan. At the time, the terrorists threatened to kill all passengers on board. When it became known that Rav Hunter, Rosh Yeshiva of Yeshiva Rabbi Chaim Berlin, was one of those being held, there was talk among his students of offering his captors a large ransom in exchange for his release. Although generally in a case of *pidyon sh'vuyim* (rescue of captives) the Jewish community is forbidden to ransom a captive for an exorbitant sum, the ruling in the case of a great scholar is that he should be ransomed even for a sum that exceeds his "worth."<sup>4</sup> Thus many Rabbis were of the opinion that every effort should be made to secure Rav Hunter's release. Rav Yaakov Kamnetsky dissented, however, arguing that the mitzvah of *pidyon sh'vuyim* only applies in peacetime, but surely not during hostilities, when the delivery of ransom money to the enemy would strengthen their position! He continued to explain that although a cease-fire existed at the time, the 1948 War of

3. In concurrence with the *Minchat Chinuch* are the Netziv in his comments to *Kiddushin* 45; *Chidushei HaGriz* on the *pasuk*: "Zevulun am cheref nafscho lamur"; *Nachhat Yitzchak* (Semiatycky) Chapter 69; *Dvar Yehoshua* (Ehrenberg) Volume II, Chapter 48 and additional comments in the table of contents; *Mikdash Mordechai* (Ilan) pages 228-229, among others.
4. ת"ע ב"ר"ג ט"ז ת"ת י"ח ע"ו.

Independence had never really ended, for the Arabs' avowed goal to destroy the State of Israel and drive the Jews into the sea had never been renounced. In his view, although Israel was not then engaged in active battle, in the eyes of the halacha it was considered to be experiencing a mere lull in the ongoing original 1948 War of Independence.

Likewise today, since Israel's enemies (with the exclusion of Egypt) have thus far refused to sign peace treaties with her, and since their avowed aim continues to be the destruction of the State, Israel must be considered to be in a state of war. In light of this, it is argued that the Israeli army's reaction to current border incidents, terrorist attacks, and Arab riots should be conducted as it would in wartime. Israeli soldiers should shoot to kill when necessary and, as in times of war, may even punish or kill innocent Arabs when the situation calls for such action.<sup>5</sup> Furthermore, if we follow the reasoning of the *Minchat Chinuch* (and others who concur with his opinion) Israeli policymakers are not halachically required to be concerned with the danger the current situation poses to individual Israelis. Realizing that in a war people will get killed, the policymakers have to determine whether war may nevertheless be essential in preserving the viability and ultimate security of the state.

#### **Milchemet Mitzvah and Milchemet Reshut**

With regard to the waging of war, the halacha defines the categories of *milchemet mitzvah* versus *milchemet reshut*. *Milchemet mitzvah* is a war required by the Torah, while *milchemet*

5. The Maharal of Prague, in his commentary *Gur Aryeh to Parashat Vayishlach* writes, "...Although the Torah reads, 'When you approach a city to wage war against it, you shall greet them peacefully' (first attempt to reach a peaceful agreement), this speaks of a city that did not harm us. But as regards those who attack the Jews, as Amalek did, even if only one of their members was responsible for this act, revenge may be exacted from the entire nation because he is one of them. Likewise, regarding any war such as that waged against the nation of Midian, all of whom were attacked, despite the fact that not all were guilty of wrongdoing, and this is the nature of all wars."

*reshut* is in the nature of a permissible military venture, which requires the prior authorization of the Great *Beit Din* (Sanhedrin).<sup>6</sup> Considering the fact that other nations have no High Court with the equivalent moral and spiritual authority of the Sanhedrin, it is understood that they are only justified in waging wars that are parallel in nature to what would be considered *milchemet mitzvah* for the Jewish nation.<sup>7</sup> It appears that *milchemet mitzvah* refers not only to wars of self-defense, but also to wars in defense of one's country.

The instinctive readiness of all people to defend their countries being a universal phenomenon, it can be deduced that such a war would be categorized as *milchemet mitzvah*; (otherwise, according to the responsa of the *Chatham Sofer* (see note seven, above), such a war would be forbidden even to the nations of the world). Having established this premise, we may conclude that Israel, too, may defend its territory, notwithstanding the possibility that lives will be lost in the process.

### The Winning Battle vs. the Losing One

There are those who contest the above conclusion, echoing the charge of Rabbi Yochanan ben Zakkai to his nephew Abba Sikara, leader of the militant Zealots of Jerusalem (*Gittin* 56a): "Until when will you continue to do this [Rashi: refuse to make peace with the Romans] and cause the nation to die of hunger?" Rabbi Yochanan demanded that they relinquish control of Eretz Yisrael in order to spare the Jewish nation further anguish. Eventually, Rabbi Yochanan ben Zakkai escaped from the besieged city of Jerusalem to negotiate a truce with Vespasian, conceding to the Roman general sovereignty over all of Eretz Yisrael, the Temple Mount included. Relying on this precedent, there are those who argue that land should be ceded to the Arabs if that will save lives.

6. Mishna *Sanhedrin* 22: see also *Sotah* 44b where the Talmud defines the categories of *milchemet mitzvah* and *milchemet reshut*.

7. The *Chatham Sofer* (א"ב ט"ו פ"ח ת"מ"ט) makes this point in explaining the Talmudic passage (*Sanhedrin* 59a): "א"כ"ל ב"ב ד"ב"ט ב"ב"ע."

Surface examination of the two situations, however, reveals that they bear no basis for comparison. Whereas the Jews' revolt against the Romans was obviously doomed to failure, the war of the Israeli army today against the Arab insurgency is being conducted with moderate success. The Sanhedrin under Rabbi Yochanan ben Zakkai acted correctly by surrendering, for there is no *mitzvah* to "stick out" a losing battle.<sup>8</sup> This is quite dissimilar to the present situation in Israel; thus it may be argued that it is incumbent upon them to continue to fight to the victorious finish, despite the possible tragic losses that may occur.

We have to examine very carefully the premise that Israel can ultimately succeed in its military struggle with the Arabs. Perhaps, despite the fact that the Israel Army is succeeding in retaining the territories it has held since 1967 and enforcing tenuous order there, the toll that the current situation is exacting from the nation's morale and from its standard of living might warrant our redefining Israel's current status as "winning the battle, but losing the war." If in truth Israel is in a losing position, then perhaps a land-for-peace negotiation (assuming that Israel were assured that it would thereby achieve a real, lasting peace) would be in order. Indeed, Israel's current situation must be evaluated to determine whether it is presently engaged in a winning battle or, G-d forbid, a losing one, or perhaps a stalemate. Resolution of this question will determine whether Israel is halachically mandated to fight or alternately required to withdraw from the struggle.

### Israel Today: Winner or Loser?

But who is authorized to make this crucial decision? To shed light on this question, let us return to the point that *sakanat nefeshot* must be disregarded when waging war: is it merely in the interest of maintaining our national pride that we are prepared to sacrifice the lives of Jewish soldiers? Or is the *mitzvah* of waging war one for which a Jew is required to forfeit his life?

8. See Rav Moshe Neriyah's essay "On the Permissibility of Waging War on the Sabbath" in *Mossad Harav Kook's Torah Sheb'al Peh*, ת"ש"נ.

In answer to this it would appear that at the heart of our preparedness to fight for Eretz Yisrael is the fact that Israel's role today is as the national home and of the Jewish people. Since a nation's land is vital to its existence as a nation-state, to the point that in various limited contexts only those Jews residing in Eretz Yisrael are considered full members of Klal Yisrael,<sup>9</sup> conquest by a foreign power is considered a lethal blow to the essence of the

9. The Torah rules that one who unintentionally does a violation which, if done intentionally, would have warranted the punishment of *karat*, must bring a *korban chatat*. If the majority of the Jewish nation sins in this manner due to an erroneous *psak* issued by the *Beit Din Hagadol*, rather than requiring of each individual to bring a *korban chatat*, the Torah requires that the Sanhedrin offer a sacrifice known as *par ha'alem davar shel tzibbur*.

The Talmud in *Horayot* 3A states that when calculating whether the majority of the Jewish nation has sinned, only those living in Eretz Yisrael are to be considered. This notion is derived from *Melachim* (I:8:65) which states that when King Solomon celebrated the completion of the building of the first Temple, all of the Jewish nation from the northernmost to southernmost points of Eretz Yisrael was in attendance, "*Kahal gadol milvono chamat ad nachal mitrayim*."

The Rambam in his commentary to the Mishna (*Bechorot* 29) cites this halacha in explaining why *smicha* can only be conferred in Eretz Yisrael. Confering ordination is not a private affair between Rebbe and talmid but is considered an act taken by all of the Jewish community, the Rebbe conferring the *smicha* acting on behalf of all of *Klal Yisrael*. Since the Jews who live in *chutz la'aretz* cannot really constitute *klal Yisrael*, *smicha* cannot be conferred there, as it cannot be viewed as on behalf of the *tzibbur*.

In his supplement to *mitzvah* 284, the *Minchat Chinuch* interprets three additional Talmudic passages based on this principle:

A) The Gemara in *Megilla* 11b cites that one reason that *hallel* is not recited on Purim is because *hallel* can only be recited on a miracle that occurred in Eretz Yisrael. The *Minchat Chinuch* understands this as ruling that the obligation to recite *hallel* in commemoration of a miracle only applies if it is a "*nes hatzibbur*" (miracle of the community). Although the majority of the Jewish population at the time lived outside the Land, since only Jews in Eretz Yisrael can constitute *klal Yisrael*, this miracle was considered a "*nes yechidim*" (miracle of individuals).

B) The Gemara in *Taanit* 14b states that if private individuals are in need of rain in the summertime, a prayer requesting this may be inserted in *shema koleinu*. Only if the entire *tzibbur* is in need of rain is *veten tal* said in *brachah aleinu*. In *Chutz la'aretz*, however, even if the entire community of Nineveh is in

conquered nation. Therefore, just as a doctor would amputate a patient's limb in order to save life,<sup>10</sup> when the "life" of an entire nation is endangered, it is permissible to sacrifice the lives of the few for the purpose of sparing the nation at large.

Thus the question at hand seems comparable to that of a sick individual who must decide the course of action his doctors should undertake. The *poskim* discuss the case of a patient who is fatally ill but who could receive treatment that would prolong his life although cause painful side-effects. In such a situation, since there is no clear consensus whether going ahead with such treatment is desirable, the decision is left to the sick individual.<sup>11</sup> Likewise, in the case of a nation in mortal danger, faced with a solution of dubious value, the decision on the course of action to be taken should be in the hands of the majority of those affected.

In earlier times the Sanhedrin or even a single accepted leader<sup>12</sup> could render such decision on behalf of the entire *tzibbur*

need of rain in summertime, all are treated as individuals.

C) The Gemara in *Taanit* 11b states that although in Eretz Yisrael the Rabbis were empowered to institute a *taanit tzibbur* during times of difficulty, there is no *taanit tzibbur* in Babylon. Various explanations have been suggested for this passage: the *Minchat Chinuch* claims that because the Jewish population outside of Eretz Yisrael is to be treated as *yechidim*, the problem of individuals (*yechidim*) cannot warrant a *taanit tzibbur*.

The Talmud in *Sanhedrin* 43b cites that the principle of *kol Yisrael areivim zeh bezeh* only applied after the Jewish people crossed the Jordan River. It would appear that the reason for this is that *areivut* is dependent upon our status of nationhood, a status only attained with our possession of a national homeland. Thus, before entering Eretz Yisrael, *Bnei Yisrael* had not yet fully attained a status of nationhood. Today, however, even Jews outside of Eretz Yisrael are still bound by this principle of *areivut* because they identify with Eretz Yisrael, considering it their homeland. However, based on the above passages, it becomes apparent that their level of membership of *klal Yisrael* is of a weaker nature and therefore with respect to an issue that must be determined by the majority of the nation of Israel, only those residing in Eretz Yisrael must be considered.

10. See Rambam, second *perak* of *Hilchot Mamrim*, fourth halacha.

11. See essay "*Elav hu nosh et nafsho*," *Beit Yitzchak* 1986, page 104.

12. The Gemara in *Brachot* 63a cites that Rabbi Akiva assumed the authority to intercalate the months from Babylon, because he was the greatest Torah leader of his generation.

(community), as the halacha regards them as representative of the majority opinion of *Klal Yisrael*.<sup>13</sup> However, inasmuch as there exists neither a Sanhedrin, nor any one person or group of persons widely accepted as leaders by the Jewish nation, it seems that the only course available is to assess the majority opinion of the Jews afflicted by this "malady."

It should be noted that this decision is not a matter of *peak halacha*. Therefore, just as only the individual patient — and not his rabbis — may decide which form of treatment to undergo, in this case, too, the opinion of rabbinic leaders should carry no more weight than that of anyone else. Yet, if military experts insist that it is impossible for Israel to maintain permanent control over Judea and Samaria, then even if the opinion of the entire Israeli population were unanimously otherwise, their demand would not be heeded.

Again we draw on the medical analogy — if all medical experts agree that they are unable to prolong the life of a particular patient, even if the patient insists that he receive a specific form of treatment, his request would be ignored.<sup>14</sup> Only in a situation in which the doctors themselves admit that there are valid considerations favoring either possibility is the decision left to the patient. Therefore, in this case in which military experts claim that it is possible to maintain control of Judea and Samaria but at the cost of regular losses in lives, it is for the public to decide whether the war is worth fighting.

In tallying the majority opinion of *Klal Yisrael*, it must also be stipulated that not everyone who is Jewish is considered a member of *Klal Yisrael* for this purpose. Among the criteria for "qualified membership" is that the individual be a *ma'amin* (believer), that he circumcise his sons, that he be married to a Jewess, that he believe

13. See Rav Josef Dov Soloveichik's *Kovetz Chidushai Torah*, pp. 51-52, p. 55.

14. Rav Soloveichik always emphasized that in every situation, the experts in that field be consulted *as*, for example, a competent doctor must be consulted in order to determine whether a person should eat on Yom Kippur or if one may eat forbidden foods for health reasons.

that Eretz Yisrael is the Jewish homeland, *and that he live there*. Only such people may have input into the decision as to whether we are currently engaged in a winning situation or a losing one.<sup>15</sup> In addition, the process of seeking the majority consensus is to be undertaken for the sole purpose of appraising the situation with regard to the danger which people involved feel that it poses to them. Thus, one who feels that Israel is in a winning position may not allow his opinion to be colored by humanitarian or other considerations. Indeed, if it were ascertained that Israel maintains the upper hand in its current engagement, then not only is it mandatory that we continue to fight, but it would actually be *forbidden* to stop or impede the war, as will be explained.

### **Atchalta D'Geula; A Halachic Concept**

The term *Atchalta d'Geula* (onset of the Redemption) originates in a passage in *Megilla* (17b) which states that wars signify the *atchalta d'geula*. In halachic literature, the era of *atchalta d'geula* has two ramifications:

a) According to the *Megillat Starim*, the commentary of the *Netivot to Megillat Esther* (9:19), it is permissible to establish a holiday in celebration of a manifestation that this era has arrived.

b) In a responsum, the *Minchat Elazar* rules that according to *Chatam Sofer's Sefer Hazikaron*, one may not pray that the wars heralding the *atchalta d'geula* end, for by doing so he would be "prolonging the *galut* and preventing the coming of the redemption."<sup>16</sup>

Before determining what constitutes *atchalta d'geula*, the definition of *geula* must first be established. The Ramban prefaces his commentary to *Sefer Shemot* by stating that it is the book of the first exile of the Jews and their redemption from it. The redemption culminates at the end of *Shemot* not in the entry of the Jews to the

15. For more detailed discussion of this topic refer to "הצדק והשלום יחד" *Justice and Peace Together*.

16. *Minchat Elazar*, Vol. IV, Chapter 5.

institution of *Yom Ha'atzma'ut* to commemorate the establishment of the State of Israel, an event categorized as *atchalta d'geula*, although it was not mandatory at the time that a *Yom Tov* be introduced, it was permissible to do so, even more so than the customary annual celebration of *Lag B'Omer*, as previously explained.<sup>64</sup>

#### War and *Atchalta d'Geula*

The Gemara in *Megilla's* questions why the seventh *bracha* of the *amidah* is that dealing with *geula* (*re'eh b'anyenu*), and responds that this because the *geula* will occur in the seventh year, a fact that seems to contradict the tradition that the seventh year will be characterized by war. In reconciling these two concepts, the Gemara details that the seventh year will indeed experience wars, which are also categorized as *atchalta d'geula*, following which the *geula* will take place. The simple understanding of the above-cited text is that the coming of the Messiah will be immediately preceded by war. Although it is difficult to understand the convictions of the *Chatham Sofer* and, later, of the *Minchat Elazar* that certain European wars in their lifetimes represented the *atchalta d'geula*, the 1948 War of Independence that began immediately upon the establishment of the State of Israel seems clearly applicable to the category of *atchalta d'geula*. Because the start of this war served as a sign that the establishment of the State of Israel was truly *atchalta d'geula*, it would appear that it was within the right of the Rabbinic leaders of the time to institute the *Yom Tov* of *Yom Ha'atzma'ut* on the date of the outbreak of this war.<sup>66</sup>

64. Even so, this does not necessarily justify the recitation of *Hallel* or half-*Hallel* on *Yom Ha'atzma'ut*, as we celebrate many holidays on which *Hallel* is not said. The issue of whether *Hallel* should be recited on *Yom Ha'atzma'ut* merits separate discussion.

65. *Megilla* 17b.

66. Although some argue that like the Hasmoneans who celebrated at the finish of their battles, we should only celebrate the victorious end of the 1948 War of Independence, the cases are not comparable. The Hasmoneans celebrated the ends of their wars because each victory served to spare the *Beit Hamikdash* from

#### Conclusion

To return to the view of Rav Yaakov Kaminetsky that the 1948 War of Independence continues to be waged today and that current incidents of Arab unrest are merely extensions of that original conflict, it is to be concluded in concurrence with the views of the *Chatham Sofer* and *Minchat Elazar* cited above that it is forbidden to stop or slow this war, for in so doing, we would be preventing the coming of the *geula*.



The author thanks his daughter Aviva for her assistance in translating this essay from the original Hebrew.

destruction; today, being that there is no *Beit Hamikdash*, we have no right to establish holidays to commemorate military victories, and are only permitted to establish *Yomim Tovim* intended to commemorate historical events viewed as elements of *atchalta d'geula*. Therefore, because the establishment of the State of Israel (and not winning of the war) constituted the *atchalta d'geula* we celebrate the date of *hakamat hamedina*.

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."<sup>11</sup> 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.<sup>12</sup>

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 casualties. 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.<sup>13</sup> 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 Ramban's *Sefer ha-Mitzvot, mitzvot aseih*, no. 4.

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-macheret*, 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-macheret*, 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 burglar 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.<sup>17</sup>

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, *Sanhedin* 72, declaring that there is no culpability attendant upon slaying the *ba ba-macheret* "whether on a weekday or on Sabbath" must be understood, according to Magen Avraham, as limited to a person incapable of controlling his response. See R. Shlomo Zalman Auerbach, *Morishv*, pp. 23 and 25; and *idem*, *Minchat Shlomo*, 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.