

Judaism and the ethics of war

Norman Solomon*

Norman Solomon served as rabbi to Orthodox congregations in Britain, and since 1983 has been engaged in interfaith relations and in academic work, most recently at the University of Oxford. He has published several books on Judaism.

Abstract

The article surveys Jewish sources relating to the justification and conduct of war, from the Bible and rabbinic interpretation to recent times, including special problems of the State of Israel. It concludes with the suggestion that there is convergence between contemporary Jewish teaching, modern human rights doctrine and international law.



The sources and how to read them

Judaism, like Christianity, has deep roots in the Hebrew scriptures (“Old Testament”), but it interprets those scriptures along lines classically formulated by the rabbis of the Babylonian Talmud, completed shortly before the rise of Islam.

The Talmud is a reference point rather than a definitive statement; Judaism has continued to develop right up to the present day. To get some idea of how Judaism handles the ethics of war, we will review a selection of sources from the earliest scriptures to rabbinic discussion in contemporary Israel, thus over a period of three thousand years.

The starting point for rabbinic thinking about war is the biblical legislation set out in Deuteronomy 20. In form this is a military oration, concerned with *jus in bello* rather than *jus ad bellum*; it regulates conduct in war, but does not specify conditions under which it is appropriate to engage in war. It distinguishes between (a) the war directly mandated by God against the Canaanites

* For a fuller examination of this subject with bibliography see Norman Solomon, “The ethics of war in the Jewish tradition”, in *The Ethics of War*, Rochard Sorabji, David Robin *et al.* (eds.), Ashgate, Aldershot 2005.

and (b) other wars. This is something like the distinction made in early modern Europe between wars of the Church and wars of the Prince.¹

War against the Canaanites is based on the *herem*, or holy ban, law of anathema; it is a war of extermination that knows no restraint (verses 15–18). Justification — a sort of *jus ad bellum* — is offered, on the grounds that these nations might teach Israel “abominations” and lead them to sin (verse 18).² The text itself limits the *herem* ban to the “seven nations.”³ This kind of war is of historical interest only, and does not serve as a model within Judaism; a formal declaration that the “seven nations” are no longer identifiable was made by Joshua ben Hananiah, around 100 CE.⁴

Deuteronomy lays down several constraints to be observed in the pursuit of “normal” war:

- the war is to be fought only by those who are courageous, possessing faith in God, and who do not have a commitment such as a new house, vineyard or wife (verses 1–10);
- an offer of peace is to be made to any city which is besieged, conditional on the acceptance of terms of tribute (10, 11);
- should the city refuse the offer of peace the males are put to the sword, the females and small children are taken captive, and the city plundered;
- food trees may not be cut down in prosecution of the siege (19, 20);
- 21:10–14 offers some amelioration of the status of the female captive.

Joshua 11:19 states, “No city submitted to the Israelites, save the Hivites who lived in Gibeon”; the rabbis inferred from this that offers of peace were made to the Canaanites, too.⁵

As to *jus ad bellum*, many biblical passages indicate the need for a *casus belli*, though the Bible does not articulate principles from which we might judge whether a particular cause was justified. If God issued explicit instructions, that would constitute adequate justification. However, God conspicuously does not rely on divine fiat alone when he commands the Israelites to conquer the “promised land”, but justifies it with the claims that (a) He has condemned the Canaanites on account of their immorality⁶ and (b) if left, they might “contaminate” the Israelites.

1 On this distinction see J.T. Johnson, *Ideology, Reason and the Limitation of War: Religious and Secular Concepts 1200–1749*, Princeton University Press, Princeton NJ, 1977, p. 53.

2 Compare Deuteronomy 9:5. Michael Walzer, in *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Basic Books, New York, 1992, p. 215, aptly observes that no biblical author “undertakes to construct an argument on behalf of the seven Canaanite nations comparable to Abraham’s argument on behalf of the Canaanite cities of Sodom and Gomorrah.”

3 Altogether ten nations are named in various verses, but they are conventionally referred to as seven.

4 CE stands for “common era”, i.e. 100 AD. Joshua’s example concerned a self-proclaimed “Ammonite proselyte” who but for Joshua’s ruling would have been forbidden to marry a native-born Jewish woman. See Mishna *Yadayim* 4:4.

5 Jerusalem Talmud *Shevi’it* 6:1.

6 “For the sin of the Amorites will not be total until then” (Genesis 15:16) is a justification of the Israelite conquest on the grounds that God would not have permitted the Canaanites to be destroyed unless and until their evil justified it.

The Dominican theologian Franciscus de Victoria (1492–1546) supports his “natural law” arguments against war for religion by a direct invocation of the Hebrew scriptures:

“[E]ven in the Old Testament, where much was done by force of arms, the people of Israel never seized the land of unbelievers either because they were unbelievers or idolaters or because they were guilty of other sins (...) but because of either a special gift from God or because their enemies had hindered their passage or had attacked them.”⁷

Two kings, Saul and Ahab, certainly challenged the ruthlessness of Deuteronomy, and it is unlikely that the war laws of Deuteronomy governed Israelite activities even in the biblical period; one scholar has called them the “radicalism of the writing desk,” a retrojection by authors attempting to bolster the covenantal consciousness of Israel.⁸

The rabbis dared not criticize Deuteronomy, for they regarded it as the direct word of God; rather, they expressed their unease by means of interpretation. Nor could they exonerate Saul for being remiss in destroying the Amalekites, since the Bible states that he deserved his punishment; but they retold the story in a way that was sympathetic to Saul and expressed their own unease at the command to destroy Amalek:

“And he strove⁹ in the valley (1 Samuel 15:5).” Rabbi Mani says, “Concerning the inheritance.¹⁰ For when the Holy One, blessed be He, said to Saul, ‘Go, smite Amalek ...’ (15:3) he said, ‘Surely, if the Torah says that if someone kills even one person a calf’s neck must be broken,¹¹ how much more so for all these people, and if the adults have sinned, what about the children!’ A heavenly voice issued forth and said, ‘Do not be over-righteous’ (Ecclesiastes 7:16).”¹²

This puts the “heavenly voice” on the defensive; Saul’s moral critique is made to appear correct.

Rabbinic readings of scripture

By the time the Talmud was compiled Jews had lost political independence. Rabbinic discussion of war lacks firm contact with political reality; the rabbis’

7 *De Indis*, sect. II, 16, cited by Johnson, *op. cit.* (note 1), pp. 156–7.

8 Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*, Clarendon Press, Oxford, 1972. Weinfeld compares Deuteronomy’s military orations with those to be found in Herodotus and Thucydides; they are “literary programmatic creations and do not convey the actual content of speeches delivered in concrete circumstances”, p. 51. He attributes them to the scribes of Josiah’s Reform, p. 158.

9 Some English translations have “lay in wait.”

10 The Hebrew *nahal* may be translated “valley” or “inheritance.” Rabbi Mani interprets the verse as hinting that Saul was troubled about the means by which he was to secure possession of the land for Israel. Two Palestinian rabbis were called Mani, or Mana, one in the third century and one in the fourth; it is not certain which is cited here.

11 The allusion is to the atonement ceremony to be performed by representatives of the town nearest to where a slain person was found (Deuteronomy 21:1–9, immediately following the section on war).

12 Babylonian Talmud *Yoma* 22b. *Midrash Rabba* on Deuteronomy 5:12 ascribes to Moses the initiative, confirmed and praised by God, to seek peace with Sihon; *Midrash Tehillim* on Psalm 120:7 ascribes a similar initiative to the Messiah.

legislation on warfare is historical reconstruction or messianic speculation, not the operational law of an actual Jewish State.

They distinguished three kinds of war:

- *milhemet hova* (obligatory war)
- *milhemet reshut* (optional war)
- pre-emptive, or perhaps preventive war.

Rava, a fourth century Babylonian rabbi, said: “All agree that Joshua’s war of conquest was *hova* (obligatory) and the expansionist wars of David were *reshut* (optional). But they differ with regard to [the status of] a pre-emptive war intended to prevent idolaters from attacking them.”¹³

There is some resonance here with the Roman notion of *bellum justum*, though the rabbinic classification is concerned with obligatory and optional rather than just and unjust. A defensive war is obligatory (just); a pre-emptive war *might* be.¹⁴

On the other hand, the “expansionist wars of David” are seen as more questionable. The Talmud insists that the king would need to seek authorization from the Great Court of 71 justices, as well as divine approval through the oracle¹⁵ of the High Priest, before engaging in such a war.¹⁶ As these institutions have not existed for 2,000 years, the definition of “competent authority” virtually rules out the possibility of non-defensive war; there is no Jewish equivalent to the process by which some seventeenth century English Puritans declared wars to be “commanded by God” simply because they were deemed by the leadership to be in conformity with God’s will.¹⁷

Exemption, self-defence, proportionality

A precedent for the exemption of non-combatant “clerics” from military service¹⁸ is derived from the story of King Asa’s gout¹⁹ (1 Kings 15:23): Rava speculated that this was a divine punishment because he had conscripted “disciples of the sages” into his army.²⁰

Defence, including self-defence, is not so much a right as a duty. The principle of self-defence is derived from Exodus 22:1, understood by the rabbis as referring to a thief who breaks in with intent to kill should he be discovered: “If someone comes to kill you, kill him first.”

13 Babylonian Talmud Sota 44 b.

14 Efraim Inbar, “War in the Jewish tradition”, in *Jerusalem Journal of International Relations* 9:2 (1987), pp. 83–99, on p. 86, and n. 6 on p. 98, points to the distinction between pre-emptive and preventive war. He cites *Le'um Mishneh* who interprets Maimonides’ expression “war to enlarge the borders of Israel” (*Mishneh Torah: Melakhim* 5:1) as preventive war, to deter potential aggressors.

15 The Urim and Tumim (Exodus 28:30), the precise nature of which is a matter of debate. The oracular function assumed by the rabbis is hinted at in Ezra 2:62 and Nehemiah 7:65.

16 Mishna *Sanhedrin* 1:5.

17 Johnson, *op. cit.* (note 1), pp. 104 and 117 ff., especially the section on Alexander Leighton, pp. 125 ff.

18 For an example of this application see in *Crossroads: Halakha and the Modern World*, Zomet, Jerusalem, 1987/5747, p. 199.

19 Other diagnoses are of course possible.

20 Babylonian Talmud Sota 10 a.

Proportionality follows from Exodus 22:2: “If the sun has risen on him, there shall be blood-guilt for him (...)”; as the rabbis express it, “Does the sun rise only on him? [Surely not. But the verse teaches:] if it is as clear as day to you that he does not come in peace (i.e. that he is ready to kill), kill him, but otherwise not.”²¹

The duty to defend a threatened third party, even at the expense of the life of the aggressor, is derived from the case of the betrothed rape victim (Deuteronomy 22:25-27). Scripture itself compares rape to murder, and implies that if anyone heard the victim cry out he should have defended her, if need be by slaying the rapist. The same would apply to someone intent on murdering another person. But what, asks the Talmud, if the victim could be saved by “one of his limbs,” i.e. without killing the attacker? Then the saviour would himself be guilty of murder if he killed the attacker.²² This last caveat establishes the principle of proportionality.

These texts are set in the criminal code, not among the laws pertaining to war. Later authorities extrapolate from personal to collective self-defence, that is, war designed to defend society as a whole, or its most cherished values.

Compassion; humanitarian assistance

After losing a battle Hadad, King of Syria, sought refuge with the victor, King Ahab of Israel; his advisers had counselled him that Israelite kings were *malkhei hesed* “merciful kings” (1 Kings 20:31). Though Ahab was reprimanded by the prophet for affording refuge to Ben-Hadad, the reputation of the Israelite kings for showing compassion has subsequently been a source of pride, and is cited as an indication that even in wartime compassion should be shown to one’s enemies if circumstances are such that it will not undermine the war aim.

Philo of Alexandria, writing early in the first century, stresses the restraint to be shown by Israel in first offering peace. Women are in any event to be spared “as in virtue of their natural weakness they have the privilege of exemption from war service.”²³ In similar vein a thirteenth century rabbi argues that the rationale of less-than-total war against the “other nations” was to instil compassion, for “it is fitting for us, the holy seed, to act [with compassion] in all matters, even towards our idolatrous enemies.”²⁴

Environment

“When you are at war, and lay siege to a city (...) do not destroy its trees by taking the axe to them, for they provide you with food...” (Deuteronomy 20:19)

21 Babylonian Talmud Sanhedrin 72 a.

22 *Ibid.*, 74 a.

23 Philo, *The Special Laws*, 219–223.

24 *Sefer ha-Uinukh* No. 527. The work is of unknown authorship, though traditionally ascribed to Aaron ha-Levi of Barcelona (c. 1235–1300).

In its biblical context this is a counsel of prudence rather than a principle of conservation; however, rabbinic tradition has applied it generally as a prohibition of waste, and modern Jewish environmentalists have quarried this tradition in support of their pleas for conservation.

The question posed by this verse is whether there is some limit to the amount of environmental degradation that might be caused even in pursuit of a just war. Was the defoliation of the forests of Vietnam acceptable even if the war aims were agreed? Irrespective of the human suffering caused, could it ever be acceptable to have recourse to nuclear weapons, seeing that their use would severely damage the environment? The works of Artson and Landes give some indication of the range of Jewish views on these matters; while the duty of conserving nature is universally acknowledged, there is disagreement over how this duty should be balanced against the duty of defence of human life.

Some mediaeval Jewish views

In the Middle Ages, under Christian and Muslim rule, Jews were not collectively involved in warfare other than as bystanders and incidental victims. Occasionally, they organized armed defence against Crusaders and others, and individuals are known to have served as mercenaries in the armies of other peoples.

Shmuel (Samuel) ha-Nagid, also known as Ismail ibn Nagrela (993–1055/6), who was vizier to caliphs Habbus and Badis of Granada, and a Hebrew poet and scholar of distinction, was probably unique among mediaeval Jews as military commander of a Muslim army. He nowhere expressly justifies his involvement on behalf of his dissolute master in the internecine wars of Muslim Spain, but in his poetry articulates some of the emotional and spiritual issues, roundly condemning any thought of the “glory” of war:

“War at the outset is like a beautiful maid
 With whom everyone wishes to flirt
 At the end it is like a despised hag
 Bringing tears and sadness to whomever she meets.”²⁵

The Yemenite Jewish philosopher Netanel ibn Fayyumi (d. c.1165), writing in Arabic, lists *jihad* amongst the “external”, or bodily commandments.²⁶ Perhaps he had picked up the broader Islamic concept of *jihad* as struggle, effort, readiness to commit totally to God’s work, or perhaps he was hinting to Jews that they, too, given the appropriate conditions, have a duty to fight for their faith just as Muslims do; the hint was not taken up by later authorities.

Moses Maimonides (1135/8–1204), or Rambam, as he is generally known, compiled a comprehensive code of Jewish laws in the 1160s incorporating a section entitled “The laws of kings and their wars.” One significant

25 Leon J. Weinberger, *Jewish Prince in Moslem Spain: Selected Poems of Samuel Ibn Nagrela*, Alabama: University of Alabama Press, 1973, p. 118.

26 D. Levine (ed.), *The Bustan al-Ukul by Natanael Ibn al-Fayyumi*, p. 24. With an English translation, *The Garden of Wisdom*, Columbia University Press, New York, 1908; repr. 1966, English p. 40, Arabic p. 24.

deviation from his rabbinic sources concerns the exemption from warfare of those who devote their life to God. The context is the biblical command that the tribe of Levi, who are designated as teachers, should not be apportioned land or receive the spoils of war.²⁷ Maimonides writes:

“Why did the tribe of Levi have no right to a share in the Land and spoils of war with their brethren? Because they were singled out to serve God, to teach His upright ways and true judgements to the public (...) so they were set apart from the ways of the world, and did not wage war like the rest of Israel nor inherit [the Land] nor acquire rights through physical exertion. But they are the Lord’s army (...) and He, blessed be He, grants their rights.

And not only the tribe of Levi, but any human being whose spirit and intellect move him to stand before God and to serve and know Him, and who walks uprightly as God has made him, and casts aside the designs of men, is a most holy person; God is his portion for ever and will grant his needs in this world as he granted the Priests and Levites...”²⁸

Since Maimonides pointedly uses the expression *kol ba’ē ‘olam* (any *human being*) rather than “any Israelite” he implies that the immunity of clerics and the like on the opposing side is to be respected (provided, of course, that they are non-combatants).

Like his European contemporary Gratian (mid-twelfth century) and later Thomas Aquinas (1225–74), who grant non-combatant immunity only to clerics and bishops,²⁹ Maimonides grants immunity only to those devoted to the service of God, not to non-combatants in general. The reason for exemption is not that such people do not bear arms, but because they are holy, removed from mortal concerns.

A doctrine of “right intent” emerges from his consideration of the biblical justification of war against the Canaanites. Maimonides’ overall view seems to be that war is a sad fact of life, a consequence of the moral and intellectual failings of human beings; the Torah regulates it, making due allowance for frail human nature, in accordance with divine compassion, which demands the elimination of evil, the source of which is the error of idolatry.³⁰

Maimonides nowhere suggests that Jews have a duty to go out into the world and actively to seek and destroy idolatry.³¹

Nahmanides (1194–1270), or Ramban, as he is generally known, was a rabbi and religious scholar in Catalonia; he completed his *Commentary on the Torah* in Palestine where he ended his days, having fled Spain in the aftermath of the 1263 Disputation in Barcelona. His stern warning of the moral degradation

27 Numbers 18:20, 23; Deuteronomy 18:1, 2.

28 Maimonides *Mishneh Torah* (“The Torah Reviewed”): *Shemīāa v’Yovel* 13:12, 13.

29 Thomas Aquinas, *Summa Theologica* 2:2 40:2; *Corpus Juris Canonici: Decretum Quaest.* VIII, Cans. IV, XIX.

30 Moses Maimonides, *The Guide of the Perplexed*, transl. Shlomo Pines, 2 Vols., University of Chicago Press, Chicago and London, 1963, p. 126 (Book 1, Chapter 54).

31 Noah Feldman rightly observes that “the king preserves his discretion to use his own practical reason to decide whether or not it is appropriate to seek to expand his borders,” but he omits to point out that whatever practical reason suggests remains subject to the prophetic verdict of the Urim and Tummim.

of war, in a comment on Deuteronomy 23:9 — “You shall guard yourself from every evil thing” — carries a ring of personal observation:

“Scripture warns [us to be especially careful] at times when sin is common. It is well known that when groups go to war they eat every abominable thing, steal, do violence, and are not ashamed even to commit adultery and other detestable things, so that even the most naturally upright of men is enveloped in violence and anger when setting off to battle against an enemy. Therefore scripture warns, ‘You shall guard yourself from every evil thing’ (...) for ‘the Lord your God is in the midst of your camp’ (verse 14).”

Other mediaeval Jewish commentators emphasize commitment to peace. The Spanish theologian and commentator Isaac Arama (c. 1420–1494), contends that the Torah’s commandment to proclaim peace requires:

“Entreaties and supplications offered in the most conciliatory possible way, in order to turn their hearts (...) for this follows necessarily from the human wisdom of peace, and the Divine will consent (...) For if we find that He commanded ‘You shall not destroy its tree [that is, that found in the city of the enemy], to lift against it an axe’ [Deut. 20:19], all the more so should we take care not to commit damage and destruction to human beings.”³²

Isaac Abravanel (1437–1508), commenting on Deuteronomy 20:10, advances three reasons to justify an offer of peace prior to the commencement of hostilities: (a) it is proper to follow the ways of God, Who does not desire [people’s] death and the destruction of the world, but forgives the penitent; (b) peaceful conquest denotes the power and magnanimity of the ruler; (c) the outcome of war is at best uncertain and at worst catastrophic. He argues that women and children are to be spared since they are by nature non-combatants.

The modern period

Western attitudes to war have undergone four major transformations in the modern period.

1. In reaction to the Wars of Religion, a consensus emerged that wars should not be fought to spread “true” religion.
2. The Industrial Revolution led to the invention of more effective weapons and communications, and made possible the deployment of large armies over great areas.
3. 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.

32 Eliyahu Munk, (tr.) *Akeydat Yitzchak: The Commentary of Isaac Arama on the Torah* (condensed version), 2 Vols., Rubin Mass, Jerusalem, 1986, pp. 726 ff. and 791 ff.

4. The principle that all nations have a right to self-government has been accepted, and imperialism has been discredited.

Jews participated in all these developments.

Throughout the Middle Ages Jews lived in autonomous communities and saw themselves as a separate nation in exile; with the Emancipation they learned to look upon themselves as citizens of the new European nation-States. Defence became defence of the nation-State, or of civilization itself, rather than of Jews alone.

Jewish emancipation, even Western Europe, remained insecure; consequently, Western Jews tended to assert to excess their loyalty and their readiness to fulfil civic obligations, including military service. Moses Mendelssohn (1729–1786), for instance, in a caustic response to J.D. Michaelis' argument that Jews should not be granted full civic rights since their religion rendered them incapable *inter alia* of becoming soldiers, points out that no religion, Christianity included, has the task of making men soldiers. He said further that Church and State ought to be rigorously separated;³³ in no way did Jews lag behind others in civic conduct, and they were as committed as anyone to the defence of the fatherland.³⁴

The Italian scholar and rabbi Samuel David Luzzatto (1800-1865) stated categorically that the only permissible war was defensive. He commented on Deuteronomy 20:10-11:

“The text does not specify the cause for a permitted war or [say] whether Israel may wage war without cause, merely to despoil and take booty. [But] it seems to me that in the beginning of this section [20:1], in saying ‘When you go forth to battle against your enemy’, scripture indicates that we should make war only against our enemies. The term ‘enemy’ refers only to one who seeks to harm us; so scripture is speaking only of an invader who would enter our territory to take our land and despoil us.”³⁵

The Slovakian-born, American-trained J.H. Hertz (1872–1946), who from 1913 until his death was Chief Rabbi of the United Hebrew Congregations of the British Commonwealth, preached an intercession sermon, “Through Darkness to Light”, at the Great Synagogue, London, on 1 January 1916:³⁶

“None could have foretold that civilized mankind would rush back to savagery with such dreadful fervor (...).

Is there nothing for which to bless God (...) the readiness for unbounded sacrifice, as soon as it was realized that we were confronted by a powerful foe who desired nothing less than England's annihilation. Nobly have also the sons of Anglo-Jewry rallied round England in the hour of her need (...) our brethren (...) have been admitted to the glorious privilege of fighting for their country (...).

33 This is the theme of Mendelssohn's well-known and frequently translated *Jerusalem*.

34 Moses Mendelssohn, *Anmerkungen zu des Ritters Michaelis Beurteilung des ersten Theils von Dohn, über die bürgerliche Verbesserung der Juden*, in *Moses Mendelssohns Gesammelte Schriften*, Leipzig, 1843, Vol. 3, pp. 365–367.

35 Luzzatto, p. 157.

36 J. H. Hertz, *Sermons, Addresses and Studies*, Vol. 1, Soncino Press, London, 1938, pp. 25–29.

With the victory of Great Britain, the old Egyptian idols and heathen ideals — the worship of brute force — will be shattered (...) Let us prayerfully resolve that the new order be a better order, rooted in righteousness, broad-based on the liberty of and reverence for each and every nationality, and culminating in a harmony of peoples. Amen.”

Hertz, like Luzzatto, was very much a child of the Enlightenment. War is no longer, to him, an issue of Israel versus the world of idolatry, but of enlightened civilization versus barbarism and superstition. With this hermeneutic key he interprets Bible and tradition to allow identification of his Jews with the British — equals civilized, equals Torah-true — cause.

Precisely this hermeneutic enables Jews to rally to the defence of democracy, liberal values and even, for those who think it is justified, the “war against terrorism.”

Menahem Zemba (1883-1943) argued that the Torah forbade Jews to engage in aggressive war.³⁷ Zemba was one of the last Warsaw rabbis to remain in the ghetto after the first wave of extermination. On the eve of the Warsaw Ghetto Uprising, Catholic circles offered their assistance to save the three remaining rabbis of Warsaw, but Zemba declined the offer and died a martyr’s death in the ghetto. At a meeting of its surviving leaders on 14 January 1943, he gave rabbinic approval for the uprising, stating:

“Of necessity, we must resist the enemy on all fronts (...) Sanctification of the Divine Name manifests itself in varied ways. During the First Crusade, at the end of the 11th century, the Halakhah (...) determined one way of reacting to the distress of the Franco-German Jews, whereas in the middle of the 20th century, during the liquidation of the Jews in Poland, it prompts us to react in an entirely different manner. In the past, during religious persecution, we were required by the law ‘to give up our lives even for the least essential practice’. In the present, however, when we are faced by an arch foe, whose unparalleled ruthlessness and program of total annihilation know no bounds, the Halakhah demands that we fight and resist to the very end with unequalled determination and valor for the sake of Sanctification of the Divine Name.”³⁸

The Jewish State

The religious proto-Zionist Rabbi Zevi Hirsch Kalischer (1795–1874), witnessing the armed independence struggles of several European nations, proposed a militarily trained home guard to protect settlements in the Land of Israel,³⁹ but the early secular Zionists paid little attention to the possibility of war, even defensive. Theodor Herzl, for instance, in his vision of a future Jewish State, “allotted far

37 David J. Bleich, *Contemporary Halakhic Problems II*, Ktav, New York, 1983, p. 165, citing *Zera’ Abraham* 24.

38 *Encyclopaedia Judaica*, s.v. Zemba.

39 Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881–1948*, transl. William Templer, Stanford University Press, Stanford, 1999 (reprint of the 1992 Oxford University Press publication), p. 16, citing Kalischer’s *Derishat Zion* (1862).

more space to describing how steam engines were changing the face of the earth than to the topic of the defence of the proposed state.⁴⁰ Nobody, religious or secular, proposed a military expedition to take Palestine by force.

Two factors, however, impelled some Zionists at the Sixth Zionist Congress (Basel, Switzerland, 1903) to envisage a more proactive military role. Reaction to the Kishinev pogrom of 1903 had stimulated the creation of trained Jewish defence groups in the Pale of Settlement,⁴¹ and there was increasing acceptance of Ahad Ha-'am's assessment that not only was the land populated, but its population was likely to be hostile towards Jewish settlement. Though the majority demurred, some of the younger delegates, including Vladimir Jabotinsky (1880–1940), called for military preparedness. Jabotinsky fought with the Jewish units under Allied command in the First World War, and after the war insisted on the need to maintain the Jewish Legion in Palestine as a guarantee against the outbreak of Arab hostility; this led to the formation in 1920 of the Haganah, later to become the Israel Defense Forces.

These secular developments were anxiously watched by the religious. Abraham Isaac Kook (1865–1935), Ashkenazi Chief Rabbi of pre-State Palestine, urged that Jewish settlement of the land should proceed by peaceful means only.⁴² Even a Jewish king, Kook reasoned, would need to consult the High Court before embarking on war, for no war (other than purely defensive) might be pursued against those who observe the Seven Commandments (or Noahide Laws), and if the enemy were idolaters (this would exclude Muslims and Christians) it would still be necessary for the Court to examine their moral condition before declaring the war justified.⁴³ (For Kook it was axiomatic that no such Court existed in the present day). Later, a similar position prohibiting offensive war was taken by the ultra-Orthodox Yeshayahu Karelitz (the *Hazon Ish*, 1878–1953).⁴⁴

Kook's younger contemporary, Moshe Avigdor Amiel (1883–1946), went beyond this. On 25 August 1938⁴⁵ Amiel, who was at that time Chief Rabbi of Tel Aviv, wrote to the editor of a Jewish journal in Prague that military restraint was an *absolute* demand of Torah law, for “Thou shalt not kill” applied irrespective of whether the victim was Arab or Jew, and was the basis of Jewish ethics:

“In my opinion, even if we knew for certain that we could bring about the Final Redemption [by killing Arabs] we should reject such a

40 Shapira, *ibid.*, p. 10.

41 That is, the areas under Russian domination where Jews were permitted to live.

42 Even so, he refused a compromise, acceptable to the secular Zionist leadership, that might have acknowledged Muslim title to the Western Wall. Samson, David and Tzvi Fishman, *Eretz Yisrael: Lights on Orot: The Teachings of HaRav Avraham Yitzhak HaCohen Kook*. Jerusalem: Torat Eretz Yisrael Publications, 5756 (1996), pp. xv–xvi.

43 Aviezer Ravitsky, “Prohibited wars in the Jewish tradition”, in T. Nardin, (ed.), *The Ethics of War and Peace: Religious and Secular Perspectives*, Princeton University Press, Princeton NJ, 1996, pp. 115–127, at p. 116, based on Kook, *Igrot Rayah* (Jerusalem 1966) Vol.1 p. 140.

44 Ravitsky, *ibid.*, p. 116, based on Karelitz' *Notes on Maimonides' Code: Melakhim* 5:1 in the Jerusalem, 1957 edition.

45 The letter is dated 25 Ab 5698, which is equivalent to 25 August 1938.

‘Redemption’ with all our strength, and not be redeemed through blood. Moreover, even if we were to apprehend several Arab murderers, if there was the slightest possibility that one of them was innocent we should not touch them, lest the innocent suffer.”⁴⁶

Contemporary “settler” movements, on the other hand, follow Kook’s son Tzvi Yehuda (1891–1982), who focused on his father’s irredendist concept of Redemption through return to the Land: “... the establishment of Jewish sovereignty over Eretz Yisrael is a commandment of the Torah.”⁴⁷ Tzvi Yehuda demanded that no land within the biblical boundaries of Israel be given up voluntarily once settled by Jews, though he did not advocate aggressive conquest.

The Israel Defense Forces

Until the mid-1930s the Zionist leadership in Palestine permitted defensive action only; the policy of *havlaga*, or restraint, was maintained even in the face of the Arab riots of 1920, 1921, 1929 and 1936, and only slightly modified when the British Captain Orde Wingate insisted on the need to take action to prevent further massacres of Jews. In the 1930s the concept of *tohar ha-nesheq* or “purity of arms” emerged, demanding minimum force in the attainment of military objectives, and discrimination between combatants and non-combatants.⁴⁸ Despite doubts when confronted by indiscriminate terrorism *tohar ha-nesheq* remains the guiding rule for the Israeli forces, though as an Israeli soldier remarked, “One may speak of ‘justified arms,’ of ‘defensive arms,’ but how can there be ‘purity’ in the shedding of blood?”⁴⁹

The concepts of *havlaga* and *tohar ha-nesheq* arise out of:

- the neo-Orthodox, secular and reformist stress on the ethical and moral values stemming from the prophetic tradition of Israel;
- extrapolation from the *halakha* on personal relationships to that on international relationships;
- the desire for moral approval and hence political support from the world community, combined with the naïve belief that military restraint would attain these objectives.

These foundations have elicited a fair degree of consensus among Jews, both religious and secular, and are incorporated in the official Doctrine Statement of the Israel Defense Forces, which defines purity of arms in these terms: “The IDF servicemen and women will use their weapons and force only for the purpose

46 The letter (in Hebrew) was republished in the Hebrew journal *Te'umin* X: p. 148.

47 Tzvi Yehuda Kook, *Torat Eretz Yisrael*, p. 165.

48 See Elliot Dorff’s remarks in Daniel Landes (ed.), *Confronting Omnicide: Jewish Reflections on Weapons of Mass Destruction*, Jason Aronson, Northvale NJ and London, 1991, pp. 177–179. Dan Yahav, in *Tohar ha-Nesheq: Ethos, Mythos u-Metziut 1936-1956* (Purity of Arms: Ethos, Myth and Reality 1936–1956), Tammuz Publishers, Tel Aviv, 2002, has investigated the relationship between the official ideal and the reality “on the ground.”

49 Cited in Yahav, *op. cit.* (note 48), p. 13, from *Siah Lohamim*, a volume of reflections by Israeli soldiers following the invasion of Lebanon.

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.”⁵⁰

The IDF Doctrine Statement is not, *per se*, a religious document. Nevertheless, it commands broad acceptance among the religious. The religious basis was forcefully articulated by Chief Rabbi Shlomo Goren (1917–1994), who had served in the IDF as both paratrooper and chief chaplain:

“Human life is undoubtedly a supreme value in Judaism, as expressed both in the *Halacha* and the prophetic ethic. This refers not only to Jews, but to all men created in the image of God.”⁵¹

“We see that God has compassion for the life of idolaters and finds it difficult to destroy them. Since we are enjoined to imitate the moral qualities of God, we too should not rejoice over the destruction of the enemies of Israel.”⁵²

Conclusion

For Jews today the question of involvement in war arises in two contexts, viz. Israel, and participation in wars of countries of which Jews are citizens. Their religious traditions, as we have seen, afford ample resources to guide them, but must be read within a context markedly different from that in which the traditional sources were compiled. Differences between the context of modern human rights doctrine and that of the traditional religious sources include the following:

1. There is general recognition of the principle of national self-rule (i.e. imperialism is rejected), though it is not always clear what constitutes a nation.
2. Individual religious freedom must be guaranteed, and it is not acceptable to impose religion by force, even on one’s co-religionists.
3. International communications are better than ever before, and there is at least a semblance of international law and order independent of religious authority.
4. Modern armaments are capable of inflicting large-scale damage, but not of discriminating effectively between combatants and non-combatants.

These differences set the parameters within which a Jewish theologian has to re-evaluate traditional sources. On this basis he/she might reasonably conclude:

50 The English text is available on <www.idf.il> (last visited 10 May 2005).

51 Shlomo Goren, “Combat morality and the Halakha” in *Crossroads: Halakha and the Modern World*, Zomet, Jerusalem, 1987/5747, pp. 211–231. The volumes of *Crossroads* contain selected material based on articles in the Hebrew journal *Teumin*.

52 *Ibid.*, p. 215.

On the justification for engaging in hostilities (*jus ad bellum*):

- Every attempt should be made to settle international disputes by negotiation, not by war or by the threat of war.
- The only legitimate wars are defensive, “defence” being understood as defence of national territorial integrity and/or the physical safety of citizens.
- Defensive wars are not only permissible but mandatory; in appropriate circumstances there is a duty to assist other nations in their defence.
- The extent to which the perceived threat rather than the actual onset of hostilities justifies pre-emptive warfare is a matter for judgement on a case by case basis. Deterrent (preventive) wars, aiming to stop a potential enemy from reaching the point at which he might constitute a threat, are less justifiable.
- Territorial or religious expansion does not justify war.

As to the conduct of war (*jus in bello*):

- Minimum casualties should be inflicted to attain legitimate objectives. This is not the same as minimum force. The threat, or even the use, of maximum force may shorten a conflict and minimize casualties.
- If at all possible, non-combatants should be spared. The difficulty of exercising such discrimination with modern weapons of mass destruction means that it is not always possible to spare non-combatants; on the other hand, it would be absurd for a country to surrender to an aggressor simply to save the life of one non-combatant hostage.
- If at all possible, there should be no recourse to nuclear, biological and chemical weapons, or other weapons harmful to the environment.
- Hostages should not be taken; prisoners’ rights should be respected.

As the phrase “if at all possible” indicates, there 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 War⁵³ 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.

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. Article 7.1 of the 1981 UN Weapons Convention candidly states “When one of the parties to a conflict is not bound by an annexed Protocol, the parties bound by this Convention and that annexed

53 Roberts, Adam and Richard Guelff (eds.) *Documents on the Laws of War*, Revised edition, Oxford: Clarendon Press, 1989, pp. 271 ff.

Protocol shall remain bound by them in their mutual relations.”⁵⁴ But they are not bound by them in their relations with the unbound party.

The legal formulation by no means determines the moral position. However, only a “party” with overwhelming military superiority can afford to be generous towards an unscrupulous foe.

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. For instance, if Iraq under Saddam Hussein had posed a serious (how serious?) threat to the security of the United States or any of its allies (including Israel), and if the threat could not be averted by diplomatic means, *jus ad bellum* would have permitted the United States and its allies (including Britain) to wage war against Iraq. What was questionable was not the principle, but the assessment of the situation.

Again, *jus in bello* demands that non-combatants be spared. But this does not help us to define who is a combatant, nor does it define what degree of sacrifice is necessary to save non-combatants from harm, or what degree of restraint is appropriate to avoid “collateral damage” when using powerful and indiscriminate weaponry.

In sum, it seems that many exponents of contemporary Judaism read the traditional texts in close conformity with modern human rights doctrine and international law. This convergence is hardly surprising in view of the interaction between secular ethics, international law and Jewish texts, starting with the Bible.

It will be appropriate to close with what are perhaps the most powerful words ever uttered on our subject:

“And they shall beat their swords into ploughshares,
and their spears into pruning-hooks;
nation shall not lift up sword against nation,
neither shall they learn war any more.” (Isaiah 2:4; Micah 4:3.)

54 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, *ibid.*, pp. 473 ff.