

The whole world awaits the realization of the vision of the prophets of Israel (Isaiah 2, 2-4):

"And it shall come to pass at the end of days that the Mount of the Lord's House shall stand firm above the mountains and tower above the hills, and all the nations shall flow unto it in joy. And many nations shall go and say: 'Come, let us go up to the Mount of the Lord, to the House of the G-d of Jacob, that he may instruct us in His ways, and that we may walk in His paths.' For Torah shall come forth from Zion and the word of the Lord from Jerusalem; thus He will judge among the nations and arbitrate for the many peoples, and they shall beat their swords into plowshares and their spears into pruning forks. Nation shall not take up sword against nation; they shall never again know war."

Until that happy time, the People of Israel will have no choice but to learn war and teach the laws of war to the nations. As King David praised the Lord and said (Psalms 144,1):

"Blessed is the Lord, my rock, who trains my hands for battle, my fingers for warfare".

When the Children of Israel fought under the leadership of King Jehoshaphat and vanquished their enemies, it is written (Chronicles II, 20, 21):

"As they went forth ahead of the vanguard, saying 'Praise the Lord, for his steadfast love is eternal'".

Rabbi Yonatan said: Why does their thanksgiving not include "for He is good"? Because G-d does not rejoice in the downfall of evildoers.

In this day and age, it can be learned from Israel what moral war is, and when the vision of the end of days is realized, the whole world will learn what the words of peace were that came forth from Jerusalem. Amen.

THE JUST ISRAEL

ON WAR AGAINST TERRORISM:

MORALITY AND THE LAW

HARM CAUSED BY ISRAEL TO CIVILIANS

DURING "OPERATION CAST LEAD"

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INTRODUCTION

In recent decades, no "large-scale" wars have been waged in Israel or the world, meaning those characterized by full-scale confrontation between countries. On the contrary, it is usually a matter of "small-scale" war, which is also known either as "asymmetric warfare" or "sub-conventional warfare". In this kind of warfare, one side is not a country, but an organization or a violent or semi-legal government, and this side is significantly weaker than the other in military power. Often, the weaker side compensates for its military handicap by operating from within a civilian population and against a civilian population. Ironically, this creates a strategic advantage, known as "the power of the weak". The weaker party benefits from protection, cover and sympathy from the civilian population amongst which it takes cover, while using civilians, women and children as a protective barrier.

The 9/11 attack is a typical example of asymmetric warfare, in which civilians were intentionally attacked by terrorists who do not belong to any regular army. Similarly, the warfare waged against American forces in Iraq and Afghanistan is characterized by terrorists' direct attacks on civilians, while the terrorists themselves hide among the civilian population, creating a virtually impenetrable moral shield. In addition, the definition of "victory" for terrorists is in actual fact their survival. Here the standard criteria of overpowering the other side or of dealing military blows are irrelevant. Terrorists are capable of absorbing severe blows, both to themselves and to their protective civilian population, and yet they still feel they are the victors by virtue of their ability to survive and to appear yet again on world media.

The State of Israel has been contending with terrorism since its inception, and is forced to fight under complex conditions dictated by asymmetric warfare. The moral complexity is doubled when, on the one hand, terrorists intentionally attack civilian targets, including women and children, and, on the other hand, the enemy operates from within a civilian population, where an attack is liable to lead to unintentional harm to women and children.

Such asymmetry was blatant during the recent "Operation Cast Lead". The operation began as a reaction to incessant rocket fire on Israeli cities. The shooting had been carried out from within Palestinian cities in the Gaza Strip. At the conclusion of the operation, over a thousand Palestinians, including hundreds of children, were counted as killed, while amongst the Israelis there were relatively few losses.

The Israeli military operation re-opened moral and practical debate on the implications of conducting asymmetrical warfare in warfare. In this context, we present a brief summary of a policy paper, based on classic texts

of Halacha and Jewish thought and exegesis, researched at the Mishpetei Eretz Institute for Law and Halacha in Ofra.

THE DIFFERENCE BETWEEN WARTIME AND PEACETIME

One of the most fundamental tenets of Torah is the prohibition against murder. This prohibition appears of course in the Ten Commandments; however, it is preceded by a universal prohibition addressed to all humanity:

שֹׁפֵךְ דַּם הָאָדָם – בְּאָדָם דָּמוֹ יִשְׁפָּךְ, כִּי בְצַלְמֵ אֱלֹהִים עָשָׂה אֶת הָאָדָם.

Whoever sheds the blood of man, by man shall his blood be shed, for in His image did G-d make man.¹

In opposition to this basic commandment, bloody wars have been waged throughout the history of mankind. While not regarding war as a desirable phenomenon, there are certain circumstances in which it is considered legitimate, and sometimes even necessary. Rabbi Naftali Zvi (the “Netziv” of Volozhin, 19th c.) interpreted the biblical injunction accordingly:

Brotherhood and murder are correlates. A person is punished for killing in contexts that mandate brotherhood, yet the world was created imperfectly. In contexts of war, there is no expectation for brotherhood, it is “a time for hatred”, and therefore war is not considered murder... The King of Israel is allowed to wage *milchemet reshut* (non-mandatory war), even at the cost of Jewish lives.²

R. Berlin accepted war as a legitimate phenomenon, and limited the prohibition against murder as applicable to peacetime social contexts alone. Furthermore, war can even be a *mitzvah*, as is clear in the case of a war of defense.³

Yet, despite all this, the Jewish eschatological vision is of a world without war:

וּכְתַבְתֵּם חַרְבוֹתֵיכֶם לְאֵתִים וְחַנִּיתוֹתֵיכֶם לְמִזְמֵרוֹת לֹא יִשָּׂא גּוֹי אֶל גּוֹי חָרֶב וְלֹא יִלְמְדוּ עוֹד מִלְחָמָה.

And they shall beat their swords into plowshares and their spears into pruning hooks. Nation shall not take up sword against nation; they shall never again know war.⁴

In short, the Netziv strives to attain the moral balance between the severe prohibition against peacetime murder and the necessities that mandate war; between the Messianic vision of a peaceful world and the awareness of its imperfections.

INTENTIONAL HARMING OF ENEMY CIVILIANS

Halacha essentially imposes moral and religious restrictions on human behavior, in a vigorous and consistent to refine human inclinations and guide them in a way that is both moral and balanced. As part of this policy, the Torah also encompasses the laws (*dinim*) of war. In Judaism, the muse of Halacha is not silent, even while the guns roar. War does not silence morality nor does it exempt anyone from moral obligation. In this vein the Rambam writes:

אֵין עוֹשִׂין מִלְחָמָה עִם אָדָם בְּעוֹלָם עַד שְׁקוֹרְאִין לוֹ שְׁלוֹם אַחַד מִלְחָמָה הַרְשוֹת וְאַחַד מִלְחָמָת מִצְוָה.⁵

One does not declare war of any type and on any person in the world, without calling first for peace.

Halacha requires the Jewish people to refrain from violence before exploring alternatives, so as to prevent bloodshed.

This instruction joins many other guidelines whose aim is to restrict the scope of violence in war. Against this backdrop, the question of harming civilians during war arises. Civilian casualties are not new phenomena, they were and are still prevalent in the vast majority of wars in the world and reached the height of horror in the Second World War in which millions of civilians were killed – scars that have not healed, especially among Jews, even today. The Jewish people still bear the scars of the Nazi atrocities.

Here the *Halachic* position is clear, as worded by the Chief Rabbi, Rabbi Avraham Shapira *zt"l*:

As long as there is no real danger to our soldiers, it is not permitted to harm a person or even [the enemy's] property.⁶

Contemporary Israeli society, including the IDF, have internalized these typically Jewish standards, and make every effort to conform to these ideals, even at great cost and danger. Conversely, it is also clear that terrorists are war criminals, whether they are fighters for Hamas, Hizbollah, Sunnis or Shi'ites in Iraq, the Taliban in Afghanistan, or members of Al Quaida

anywhere. Indeed, terrorism is by definition an act aimed at harming the civilians per se, targeting them as the "enemy" while not endangering the terrorists' lives in any way.

WAR IS A CLASH BETWEEN COLLECTIVES

The wish to totally avoid harming civilians is impossible to implement in any war, and it is certainly quite impossible in asymmetric warfare, in which the enemy intentionally operates from within the civilian population.

Legally and morally, war is not a police operation to catch a criminal, but rather war is a confrontation between collectives, between nations. In a police operation the police are duty-bound to target the wanted criminal alone and not harm innocent bystanders. The target is the individual and not the collective. The police embody the collective's monopoly on force vis-à-vis the individuals (even large groups of individuals) comprising society. In that sense, the police must pinpoint their target, since other individuals are members of the society that the police sets out to protect. The rules that apply to police action are conceptually the same that would apply to an individual acting in self-defense. On the other hand the normative framework of armed confrontation between nations is markedly different. Each and every enemy soldier or member of the collective enemy is a legitimate target. In the context of confrontation, one collective endangers some of its members in order to protect the others. By the same token, attacking the enemy is not done on the basis of its soldiers being criminals who have broken the law, but because they are part of a collective entity which constitutes a threat to the nation seeking to defend itself.

The test for this conceptual difference is the treatment of civilian populations. Namely, when the issue is conflict between two nations, it is only permitted to harm civilians of the other nation when this is a vital part of the war effort. In the same way, Rabbi Shaul Yisraeli (an important *posek* on *Halachic* laws dealing with the public in Israel) wrote that, despite the wish to restrict the extent of the destruction:

When carrying out an operation, there is no obligation to be careful about harming only those taking part, because it is the way of war that the *tzaddik* gets killed along with the *rasha*.⁷

This definition applies not only to countries but also to other national entities, such as the Palestinians in Judea and Samaria or the Shi'ites in southern Lebanon. This statement acquires further moral validity when it involves a government elected and supported by the people, as did both

the Nazi regime in Germany and the Hamas government in Gaza. In such cases, the responsibility for the government's actions undoubtedly falls on the people who elected it and continue to support it.

UNINTENTIONAL HARM TO CIVILIANS

One of the methods used by the IDF to prevent harm to civilians is by explicitly calling on residents to evacuate war zones. This was done both in the Second Lebanese War, warning the residents of southern Lebanon, and in Operation Cast Lead, in an effort to prevent civilian casualties in Gaza. This is considered proper practice according to *Halacha*:

It goes without saying that if it is possible to warn those who are innocent that they should remove themselves from the area, this should be done.⁸

After such a warning call, whoever decides to remain in the area takes the risk that he may be harmed unintentionally. In the *Tanach* there are two explicit expressions of this: once in the words of the prophet Ezekiel and in the story of Saul's war against *Amalek*.

EZEKIEL 33: 1-5

וַיְהִי דְבַר ה' אֵלַי לֵאמֹר: בֶּן אָדָם דַּבֵּר אֶל בְּנֵי עַמְּךָ וְאָמַרְתָּ אֲלֵיהֶם אֲרָץ כִּי אָבִיא עָלֶיהָ חֶרֶב וְלָקַחְתוּ עִם הָאָרֶץ אִישׁ אֶחָד מִקְצֵיהֶם וַנִּתְּנוּ אֹתוֹ לָהֶם לְצִפָּה: וְרָאָה אֶת הַחֶרֶב בָּאָה עַל הָאָרֶץ וַתִּקַּע בְּשׂוֹפָר וְהִזְהִיר אֶת הָעָם: וְשָׁמַע הַשְּׂמַע אֶת קוֹל הַשׂוֹפָר וְלֹא נִזְהָר וַתִּבּוֹא חֶרֶב וַתִּקְחֶהוּ דָמוֹ בְּרֹאשׁוֹ יִהְיֶה: אֶת קוֹל הַשׂוֹפָר שָׁמַע וְלֹא נִזְהָר דָּמוֹ בּוֹ יִהְיֶה וְהוּא נִזְהָר נִפְשׁוֹ מִלָּט:

The word of the Lord came to me: O mortal, speak to your fellow countrymen and say to them: When I bring the sword against a country, the citizens of that country take one of their number and appoint him their watchman. Suppose he sees the sword advancing against the country, and he blows the *shofar* and warns the people. If anybody hears the sound of the *shofar* but ignores the warning, and the sword comes and dispatches him, his blood shall be on his own head. Since he heard the sound of the horn but ignored the warning, his bloodguilt shall be upon himself; had he taken heed he would have saved his life.

This also transpires from Saul's call to the Kenites to leave the war zone prior to the war with *Amalek*, and if not, they were jeopardizing their lives.⁹

I SAMUEL 15: 6

וַיֹּאמֶר שְׂאוּל אֶל הַקֵּינִי לָכוּ סְרוּ רְדוּ מִתּוֹךְ עַמְלֵקִי כִּן אִסְפַּף עִמּוֹ וְאַתֶּם
עָשִׂיתֶם חֶסֶד עִם כָּל בְּנֵי יִשְׂרָאֵל בְּעִלּוֹתֶם מִמִּצְרַיִם...

Saul said to the Kenites: "Come, withdraw at once from the Amalekites, that I may not destroy you along with them; for you showed kindness to all the Israelites when they left Egypt."

These are the precise precautions that the IDF implemented in the Second Lebanese War when they called on the residents of southern Lebanon to vacate their houses. The IDF did the same in Gaza, employing a totally unconventional practice in the history of nations and war, when they telephoned Palestinian civilians and warned them to leave their houses before the bombing. In other instances, the IDF used a procedure known as "Knock on the Roof", in which a practice missile was shot at the house before dropping a bomb. Despite all this, there were cases in which Palestinians chose to stay ignore the warnings and remain in their homes, on the assumption that they would serve as a human shield protecting the terrorists. However, they were mistaken, since in such cases it is Halachically, morally and legally permitted to harm them incidentally while attacking fighters.

If indeed attacking enemy fighters necessitates harming civilians and even children, the responsibility for this is entirely the enemy's, as Rabbi Shaul Yisraeli wrote:

Regarding any disaster or harm that may befall the fighters, their associates or their children, it is they who are responsible for this and they will bear their sins. There is certainly no obligation to avoid acts of retaliation out of concern that innocent people may be hurt, since we were not the instigators, it was they themselves and we are blameless. We have not found justification for harming children intentionally from the outset.¹⁰

This being the case, when terrorists take cover amongst a civilian population, it is permitted to harm them, even when the price is harm to enemy civilians:

It would seem one could say that targeted killings carried out within a civilian population, destroying a building housing terrorists and its residents, bombing an enemy site whose location was selected by the enemy for its proximity to its own population – these are permitted, as long as they are not initiated out of a policy of killing civilians, but out of operational considerations.¹¹

Furthermore, when there is an issue of risk to IDF combatants or Israeli civilians, all necessary measures should be taken to prevent this, even at the expense of harming innocent by-standers on the other side, as written by the Chief Rabbi, Rabbi Avraham Shapira:

When there is real danger ...it is inappropriate to calculate the number of our soldiers who are, G-d forbid, liable to get hurt, as opposed to the number of enemy civilians, Jew haters, who are liable to pay the price of war... and we are obliged to save the life of every Jewish soldier.¹²

According to Rabbi Shapira, there is no rule of "proportionality" during wartime, and the side under attack may and even must use all the force necessary in order to prevent risk to its own soldiers and civilians. This does not mean relinquishing rules of morality during war, on the contrary, it stems from the moral obligation of the army towards the nation it is protecting.

THE HALACHIC STATUS OF INTERNATIONAL LAW

War requires a soldier to use violence and even to kill. However, as mentioned earlier, the Torah teaches us to reduce the extent of the violence wherever possible. Consequently, the attitude to the kind of cruel warfare described in the *Tanach* is one of necessary evil in a given situation, as discussed by Rabbi Avraham Yitzchak HaCohen Kook:

On issues of war, it was utterly impossible, while the neighbors were all preying wolves, that Israel should not fight, for then they would get together and, G-d forbid, annihilate the remnant; on the contrary, it was essential to inflict fear on the savages, even if that meant cruel behavior, in the hope that this would bring humanity to what it should be, but not to forestall its moral development...¹³

Simply put, the Jewish people were historically forced to behave cruelly at war, because had they not done so, they would have been annihilated. However, the awareness of this did not cloud over the wish and hope to attain times with no more war or, at the very least, to minimize its cruelty. The wish for the diminishment of cruelty in war began to be put into practice over the course of the last century by means of international conventions for basic rules of war. These conventions restrict the form of warfare and intensity of attack, and thereby reduce killing and cruelty. A good example of this is the ban on killing prisoners, and many lives have indeed been saved during wartime on all sides.

The broader question arises, therefore, as to the *Halachic* validity of international law.

A basic principle in the *Halachic* analysis of laws of war (*dinei milchama*) is derived from the ruling: “The Law of the king is binding” (literally: “is law”; *Dina d'malchuta – dina*).¹⁴ The very existence of a *heter* (permission) to wage war and kill in wartime stems from an international consensus to view war as a legal phenomenon, and, in the same way, if countries concur in restricting killing, this is obligatory. As Rabbi Prof. Neria Gutel expressed the matter:

If indeed the basis for the legality of war is embedded in this universal "agreement", one has to say that if it is "agreed" otherwise and most humans, or their representatives, will decide to beat their swords into plowshares and their spears into pruning hooks....in that case, the *heter* will be annulled, and war and conquest will become illegal.¹⁵

It should be stressed that the *Halachic* validity of conventions such as the Geneva conventions, is conditional on its being implemented by other countries, and not if they remain empty phrases.¹⁶

On the question of cruelty towards prisoners, there is an explicit source in the Torah which teaches us to treat prisoners humanely. The source is the words of the *כהן משה המלחמה* (*Cohen Meshuach Milchama* – the priest appointed in biblical times, who acted as a kind of modern-day military chaplain). Before going out to battle, the *Cohen* would tell to the fighters:

Today you are approaching war on your enemies, not on your brothers...Were you were to fall into the hands of your brothers, they would have mercy on you ...but you are going out against your enemies, and if you fall into their hands, they will not have mercy on you.¹⁷

The *Cohen* warns the fighters and explains to them that they must not have mercy on their enemies in battle, since if they were to fall into enemy hands, the enemy would not have mercy on them. As prisoners they would face nothing but cruelty. Yet the standard for Israelites was that of humane treatment, as evident even in instances of civil strife (see II Chronicles 28: 8-15). To the credit of the modern conventions and their implementation, considerations such as these have gained a different import and wars have become more restrained. In contradistinction, the knowledge that Hamas does not treat its prisoners or abducted soldiers according to international practice and law mandates taking more severe measures in war against them.

There were many who voiced their objections to Israel during Operation Cast Lead, claiming that Israel had violated international law. This claim is baseless. Not only was Israel very strict in its manner of conducting warfare, as the examples above show, at the same time the enemy flagrantly violated the law in its method of warfare by shooting at civilian targets, posing a threat to civilians on "its own" side and by murdering and torturing suspected collaborators both during and at the end of the battles. See Amnesty International report¹⁸ dated February 10, 2009.

International law relating to armed confrontation between countries attempts to strike a balance between two considerations: military necessities (including the ensuring of the safety of the military forces), and the humanitarian-civilian consideration (ensuring the human rights of enemy civilians).¹⁹ Towards this aim, international law differentiates between fighters and military targets on the one hand and civilians and civilian targets on the other. Fighters are legitimate targets for military attack and civilians are legally protected from attack.²⁰

However, according to the first additional protocol to the fourth Geneva Convention,²¹ neither unintentional harm inflicted upon civilians nor civilian casualties due to their proximity to fighters are infringements *per se* of the convention. The protocol mandates efforts to limit such "collateral damage". Implicitly, international law understands that there are situations in which the killing of civilians as “collateral damage” incidental to military targeting is a legitimate necessity.

Furthermore, international law necessitates that the harming of enemy civilians be proportional to military achievement.²² The Israeli Supreme Court has implemented this rule in a series of decisions that give operative guidelines to the IDF. Proportionality is not defined in numbers. A negative example of this definition is: "Hitting a whole village in order to kill a soldier on leave who is in the village".²³ The Court has held that it is

acceptable to define proportionality from the perspective of an officer's reasonable judgment, given the facts at hand in relation to the importance of the target and the number of civilians actually killed or injured.

International law relates to countries, while the relationship to terrorists operating from within a civilian population is more complex. Israel has voluntarily chosen to adopt moral criteria also in its war against terror, but this is not dictated by international law.²⁴ Undoubtedly, the attitude towards collateral damage towards civilians of an enemy who uses terrorist tactics is more lenient by virtue of the terrorists' operations.

According to the above sources, "proportionality" can be defined as follows:

- a. It is utterly forbidden to harm civilians intentionally.
- b. When hitting a military target, close to which civilians are liable to get hurt, every measure possible must be taken to reduce both harm to civilians and the intensity of the attack. Likewise, the importance of the attack has to be weighed up against the military gain from it.
- c. If the issue in question is one of direct protection of the lives of soldiers and civilians, they are not obligated to risk their lives in order to save the lives of enemy civilians.

Professor Assa Kasher (author of the IDF's ethical code) wrote in a similar vein:

We have no moral obligation to risk the lives of our soldiers in the context of military operations of self-defense against the enemy...²⁵

Great consternation can be expressed regarding the legality of other military actions in the world that were carried out in recent years: cases such as Russia's handling of Chechenian rebels, or destructive aerial bombing by NATO forces (with the U.S. at their core) of Belgrade and Serbia in the spring of 1999, bombing which continued uninterrupted for 45, days, during which thousands of Serbian civilians were killed.

The State of Israel does its utmost to avoid atrocities against its own civilians and against those of its enemies. In stark contrast to Israel, Hamas continues to aim its missiles at clearly defined, heavily populated areas in defiance of all international law, and "disappears" under cover of its civilians, whom it uses as hostages and who serve (often willingly) as a protective barrier. In violation of international law, Hamas fighters are often not identifiable by uniform or by any other means. Palestinian civilians who were hit while being forced to provide cover for the enemy were hit solely as a result of the fact that Hamas flagrantly violated every moral law of international convention.

The question of prisoners also resurfaces here, in that Hamas does not respect international law and treats the prisoners it holds with cruelty. In violation of international law, Hamas has given no information about Gilad Shalit's state of health, does not allow Red Cross representatives to meet him and violates every law and every convention in its treatment of prisoners of war. As a result, Israel is forced to wage war in a way that minimizes the danger of one of its soldiers being abducted by the enemy who cruelly abrogates the principles of international law in dealing with prisoners of war. Israel strives to achieve these aims through modification of the way it wages war. It seems clear that Israel has succeeded in minimizing harm to its citizens and soldiers in preventing attempts at abduction by Hamas, in defending its civilians from rocket attacks and in minimizing collateral damage to non-combatant Palestinian civilians.

CONCLUSION

1. In recent years, the majority of warfare has been asymmetric, in that the militarily weaker side operates from within a civilian population and against a civilian population. This situation poses a heavy moral challenge to civilized countries.
2. According to *Halacha*, there is a clearly-defined differentiation between peacetime, when the prohibition of "Thou shalt not murder" applies to every individual, and wartime, when killing is permissible, though undesirable. Furthermore, a war of defense falls within the realm of mandated war - *milhemet mitzvah*.
3. War is a confrontation between collective entities, and is not a police operation against crime.
4. Neither enemy civilians nor their property may be harmed unless necessary within the framework of harming enemy fighters.
5. As far as possible, enemy civilians should be forewarned to evacuate the war zone, and if they choose to stay, it is not forbidden to harm them incidentally in the fighting.
6. International law has *Halachic* validity if it is applicable and does not specifically contradict *Halacha*.
7. The State of Israel acts according to international law when it operates to minimize injury to enemy civilians, in direct contrast to the enemy, which operates from within a civilian population and against a civilian population.

ENDNOTES

- 1 בראשית ט, ו.
- 2 העמק דבר, בראשית ט, ה.
- 3 רמב"ם, מלכים ה, א.
- 4 ישעיהו ב, ד.
- 5 רמב"ם, מלכים ו, א.
- 6 הרב אברהם שפירא, "שיחה על מלחמה ומוסר", תחומין ד, עמ' 182. (רב ראשי לישראל בשנים 1983–1993)
- 7 הרב שאול ישראלי, עמוד הימיני סימן טז, פרק ה, לא.
- 8 שם פרק ד, א.
- 9 שמואל א טו, ו
- 10 הרב שאול ישראלי, עמוד הימיני, סימן טז, פרק ה, לב.
- 11 הרב פרופ' נריה גוטל, "לחכימה בשטח רווי אוכלוסיה אזרחית", תחומין כג, עמ' 42.
- 12 הרב אברהם שפירא, "שיחה על מלחמה ומוסר", תחומין ד, עמ' 182.
- 13 הרב אברהם יצחק הכהן קוק, אגרות הראי"ה פט.
- 14 הרב שאול ישראלי עמוד הימיני סימן טז, פרק ה, ט-כד.
- 15 הרב פרופ' נריה גוטל, "לחכימה בשטח רווי אוכלוסיה אזרחית", תחומין כג, עמ' 38.
- 16 שם, עמ' 40.
- 17 משנה סוטה ת, א.
- 18 Amnesty Report, http://www.amnesty.org.uk/uploads/documents/doc_19169.pdf
- 19 J. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law p. 3, (Vol. 1, 2005) 19, 25
- 20 'מתוך בג"צ 769/02 הוועד הציבורי נגד העינויים בישראל ואח' נ' ממשל ישראל ואח' (תק-על 2006(4), 3958),
- 21 שם, סעיף 23 לדעת השופט ברק, על פי סעיף 35(3) לפרוטוקול הנוסף הראשון לאמנת ג'נבה הרביעית..
- 22 פרוטוקול הנוסף הראשון, סעיף 51(3), מובא בפסק הדין הנ"ל, סעיף 30 לחוות דעת השופט ברק; 51(2), סעיף 26 לחוות דעת הנ"ל.
- 23 פרוטוקול הנוסף הראשון לאמנת ג'נבה הרביעית, סעיף 51(5)(b); סעיף 52(2).
- 24 דניאל רייזנר, ראיון ב"מוסף הארץ", 23/01/2009. וכך ביאר בעל פה בדברים שנשא בכנס "מוסר הלחימה של מבצע עופרת יצוקה" בתאריך כ"ח שבט תשס"ט, במרכז לאתיקה משכנות שאננים.
- 25 ראה מסקנתו של אליאב שוחטמן, מרכז אריאל למחקרי מדיניות נייר עמדה 151, "סיכון חיילי צה"ל לשם מניעת פגיעה באזרחי אויב בשולי מבצע 'חומת מגן'", וכן רייזנר שם.
- 26 אסא כשר, אתיקה צבאית, תל אביב, תשנ"ו, עמ' 58. מתוך דברים שנשא בכנס "מוסר הלחימה של מבצע עופרת יצוקה" בתאריך כ"ח שבט תשס"ט, במרכז לאתיקה משכנות שאננים, ירושלים, התבאר שהדברים אמורים אף במחיר חייהם של אזרחי הצד השני. זאת מכיוון שאחריות המדינה לחייליה גבוהה מאחריותה לאזרחי הצד השני, ועל כן ערך חיי האדם גובר בנסיבות אלו על ערך טוהר הנשק.