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by the Rosh Yeshiva of Yeshivat Brisk in Chicago.

WAGING WAR ON SHABBAT

The question whether it is permissible to wage war on *Shabbat* must be considered from three perspectives. First, from the perspective of legitimate *milhamah* (war) per se. Second, from the perspective of *pik-kuah nefesh* (the saving of human life). Third, from the perspective of *Rodef* (the law that if one person pursues another to kill him, then the pursued party has the legal halakhic right to kill the aggressor in order to save his own life).

I

The Legitimacy of Milhamah (War) Per Se on Shabbat

There is an explicit *heter* (license) to wage war on *Shabbat* even if doing so is not indispensable to the saving of Jewish lives. This *heter* is mentioned in Deuteronomy 20:20:

Only the trees which thou knowest that they are not fruit trees, them thou shalt destroy and cut down; and thou shalt build bulwarks against the city that maketh war with thee, *until it be subdued*.

With respect to the phrase *ad riddah* (until it is subdued), the Sifre and the Gemara (*Shabbat* 19a) state: *Ad riddah—afillu be-Shabbat*, even on *Shabbat*. This implies that it is permissible to wage war on *Shabbat* even if the war is not essential for the saving of human lives, but rather is being prosecuted in order to successfully subdue the enemy.

To be sure, there are limitations on the initiation of hostilities on *Shabbat*. The Gemara (*Shabbat* 19a) says:

One does not besiege Gentile towns less than three days before *Shabbat*, but if they are commenced, they do not stop. And thus did Shammai say: *Until it is subdued—even on Shabbat*.

This means that it is forbidden to start a war on *Shabbat*. The war is to be initiated three days prior to *Shabbat*; but if it was started three days or less before *Shabbat* it can be continued without interruption, on *Shabbat* as well.

Does this mean that the State of Israel is forbidden to start a war on *Shabbat*? The answer is that according to the Yerushalmi (*Shabbat* 1:8) the prohibition against initiating a war on *Shabbat* applies only to a *milhemet ha-reshut* (a permitted, but not obligatory, war) but does not apply to a *milhemet hovah* (an obligatory war). A defensive war in *Eretz Yisrael* is undoubtedly a *milhemet hovah*, according to all Rishonim on the grounds that it constitutes *ezrat Yisrael mi-yad tsar she-ba alehem* (saving Israel from the hand of the enemy who attacks), as defined by the Rambam (*Hil. Melakhim* 5:1).

The State of Israel has not initiated an aggressive war against any Arab nations. If the State of Israel has engaged in war against any Arab nation or against a group of Arabs such as the PLO, it has clearly been a defensive war, even when initiated by Israel. The category of *ezrat Yisrael mi-yad tsar she-ba alehem* is not to be limited to a war that is initiated by the enemy of Israel on a certain specific day. If Israel initiates a war against the PLO or against any other enemy of Israel who constantly and relentlessly persists in attacking and harassing Jews all over the world, then it is a *milhemet ezrat Yisrael mi-yad tsar she-ba alehem*, just as if the war had been initiated by the PLO or by any other enemy of Israel. Given the relentless nature of the PLO and its allies' threat to Israel the best defense is a good offense. This means that a war initiated by Israel against the PLO and its allies, who are constantly engaged in harassing Jews in Israel and throughout the world, is definitely a *milhemet hovah* and consequently, according to the Yerushalmi, may be initiated on the *Shabbat* day itself.

Furthermore, the prohibition against initiating a *milhemet ha-reshut* on *Shabbat* does not imply that Jews who initiate a *milhemet ha-reshut* on *Shabbat* are guilty of the *issur* of *hillul Shabbat* (the prohibition against doing work on *Shabbat*). Just as the *issur* of *hillul Shabbat* does not apply to a *milhemet ha-reshut* that is initiated on Tuesday and is continued into *Shabbat*, so it does not apply to a *milhemet ha-reshut* that is initiated on the *Shabbat* day itself. The prohibition of initiating a *milhemet ha-reshut* on *Shabbat* merely constitutes an extraneous obligation incumbent upon Jews who are determined to initiate a *milhemet ha-reshut*, i.e. that they commence the war three days prior to *Shabbat* as a token of *kevod Shabbat* (respect for and honor of *Shabbat*).

This additional obligation is deduced by the Sifre from Deuteronomy 20:19:

If you besiege a town many days to war upon it . . .

The Sifre states in connection with this *pasuk*:

Days (i.e.—plural)—two; *Many*—makes three. From here they inferred: one does not besiege Gentile towns less than three days before *Shabbat*.

This means that if Jews were indeed to initiate a *milhemet ha-reshut* on *Shabbat* (or less than three days prior to the *Shabbat*) they would be guilty of neglecting a positive commandment—to demonstrate *kevod Shabbat* by beginning the *milhemet ha-reshut* three days prior to *Shabbat*; they would not be guilty of *hillul Shabbat*.

To summarize: the previous discussion leads to the conclusion that there is a definite *heter* (license) even in a situation where the initiation of the war is not indispensable for the saving of Jewish lives. The *heter* of engaging in war on the *Shabbat* is based on the *gezerat ha-katuv* (decree of the Torah) “*ad riddah—afillu beShabbat*,” which implies a *heter milhamah* on *Shabbat*, *per se*.

One question, however, must still be considered: namely, whether a war today has a *halot shem milhamah* (the halakhic de jure status of *milhamah*) or not. Perhaps the status of *milhamah* (de jure, not merely de facto) is only possible where it is sanctioned by the *Urim veTumin* and other halakhic institutions (see below); today, when such institutions do not exist, a *milhamah* de jure is not possible, according to this claim.

In order to resolve this question we must note two versions (*girsao*) of the Rambam’s text in *Sefer haMitsvot*. But first we must consider the talmudic sources.

The Mishnah (*Sanhedrin* 2a) states:

The people may not be mobilized for a non-obligatory war without the authority of the Court of seventy-one.

The Gemara (*Sanhedrin* 16a) says the following:

Non-obligatory war: . . . Whence do we deduce this? Said R. Abahu: “And he shall stand before Elazar the priest [who shall inquire for him, by the judgment of the Urim before the Lord. At his word shall they go out and at his word shall they go in, he and all the children of Israel with him, even all the congregation (Numbers 27:21)]. *He*—refers to the king; *and all the children of Israel* with him—to the priest appointed for the conduct of the war; *and all the congregation* means the *Sanhedrin*.” But perhaps it is the Sanhedrin whom the Divine Law instructs to inquire of the Urim and Tumin (and it would then be permissible to wage war consulting neither the Sanhedrin nor, consequently, the Urim and the Tumin)? But it may be deduced from the story related by R. Aha B. Bizna in the name of R. Simon the Pious: “A harp was suspended over David’s bed, and as soon as midnight arrived, a northerly wind blew upon its strings and caused it to play of its own accord. Immediately David arose and studied the Torah until the break of dawn. At the coming of dawn, the sages of Israel entered into his presence

and said unto him: 'Our sovereign king, thy people are needful of sustenance.' 'Go and support yourselves by mutual trade,' David replied. 'But,' said they: 'a handful does not sate the lion, nor can a pit be filled with its clods.' Thereupon David said to them: 'Go forth and stretch out your hands as a band!' Immediately they consulted Achitophel, took advice from the Sanhedrin and inquired of the Urim and Tumin."

From this Gemara it is definitely implied that a *milhemet ha-reshut* (a non-obligatory war) could not be prosecuted without the approval of the Urim and Tumim. The question arises: what about a *milhemet mitsvah* (an obligatory war)? Can a *milhemet mitsvah* be pursued and be deemed to have a *halot shem milhamah* (de jure status of war in the eyes of the halakhah) in the absence of Urim and Tumim and the other requisites?

The Rambam, at the end of his preface to the *Sefer haMitsvot*, in the standard printed edition, says the following:

It is well-known that *milhamah* (war) and the conquest of towns can only take place if these are conducted by a king with the counsel of the Great Sanhedrin and Kohen Gadol (i.e. the High Priest inquiring of Urim and Tumim) as is written: "And he will stand before Elazar the priest." Consequently, because most people are fully aware of those positive commandments and negative commandments which are contingent upon sacrifices, the Temple worship, capital punishment, a prophet, a king, a *milhemet ha-reshut* (a non-obligatory war), it will not be necessary for me to indicate that they are only relevant during the period of the Temple, inasmuch as this is obvious and goes without saying.

The expression employed by the Rambam according to this printed text is *o be-milhemet ha-reshut*—"or in a non-obligatory war." This implies that only a *milhemet ha-reshut* cannot have a *halot shem milhamah* under present-day circumstances. A *milhemet mitsvah* (obligatory war) could have a *halot shem milhamah* even when the authority and approval of Urim and Tumim, *melekh* (king) and *Bet Din* (Sanhedrin of seventy-one sages) are lacking.

Such is the law according to the standard text. However, according to the *girsah* in the edition of *Sefer haMitsvot* translated and published by Rabbi Hayyim Heller of sainted memory, the halakhah is contrary to this. R. Hayyim Heller's *Sefer haMitsvot* reads as follows:

Consequently, because most people are fully aware of those positive commandments and negative commandments which are contingent upon sacrifices, the Temple worship capital punishment, a prophet, a king, or a *milhemet mitsvah* (an obligatory war), it will not be necessary for me to indicate that they are only relevant during the period of the Temple, inasmuch as this is obvious and goes without saying.

According to this text of the *Sefer haMitsvot* not only is a *milhemet ha-*

reshut impossible under present circumstances but even *milhemet mitsvah* is impossible nowadays because there cannot be *any* war de jure without the authority of a *melekh*, *Bet Din haGadol* and Urim and Tumin.

To conclude this part of our analysis: Is it permissible for the State of Israel to wage war on *Shabbat* on the basis of the *heter* of *milhamah per se*, deriving from the *gezerat ha-katuv* “*Ad ridtah—afillu be-Shabbat*”? According to the *girsat* of the standard edition of the *Sefer haMitsvot*, it is permissible to wage war on *Shabbat* on the basis of *heter milhamah*, provided the war is *milhemet mitsvah*. According to R. Hayyim Heller’s text of the *Sefer haMitsvot* there could not be a *halot shem milhamah* nowadays, even in connection with a *milhemet mitsvah*, precipitated by the obligation of *ezrat Yisrael mi-yad tsar she-ba alehem* (relieving Israel from being under siege).

We must now consider the permissibility of waging war on the *Shabbat* on the grounds of *pikkuah nefesh*: One is permitted to wage war, even on *Shabbat*, even if it does not have the *halot shem milhamah* de jure, because of the requirement to save lives.

II

Pikkuah Nefesh (Saving Lives)

The permissibility of waging war, or even initiating war, on *Shabbat* from the perspective of *pikkuah nefesh* (the saving of human lives) is definitely established, according to the views of all Rishonim. This *heter* (license) pertains to all times, even according to the view that, due to the absence of *melekh*, *Bet Din* and Urim and Tumin, there cannot be a war de jure today. The basic source for this license is the following passage in *Eruvin* 45a:

Rav Yehudah said in the name of the Rav: If Gentiles besieged a Jewish town (on *Shabbat*) one is not allowed to go forth against them with weapons and it is forbidden to violate the *Shabbat* because of the siege. Similarly, it was stated (in a *baraita*): If Gentiles besieged Jewish towns... When is this the case? Only when the goal of the siege is to appropriate possessions (without intending to kill any Jews). However, if the intention of the Gentiles is to kill Jews, then one must go forth against the aggressors with weapons, and one is allowed to violate the *Shabbat* to repel the attack. If the attack was on a border city, even if the purpose was to appropriate from the Jews straw and stubble, the Jews are to go forth with their weapons, and may violate the *Shabbat*.

This passage clearly implies that it is permissible to wage war on the *Shabbat* for the purpose of suppressing an attack by hostile Gentiles on the grounds that *pikkuah nefesh* is *doheh* (overrides) *Shabbat*. The

same law is formulated by the Rambam (*Hil. Shabbat* 2:23):

Gentiles who besieged Jewish towns: if they besieged exclusively for the purpose of appropriating their possessions, without intending to kill any Jews, then it is forbidden to violate the *Shabbat* and we do not wage war against them. In the case of a town close to the border, even if they came for the purpose of taking straw and stubble, it is permissible to go forth against them (on *Shabbat*) with weapons and we violate the *Shabbat* in such a case. In any place if they (the hostile Gentiles) came for the purpose of killing or if they were engaged in waging war, or if they conducted a siege of indefinite nature, then we go forth against them (even on *Shabbat*) with weapons and we violate the *Shabbat* in such a case; and it is a *mitsvah* for all who are able, to go forth and help their brethren in the siege and to save them from the hostile Gentiles (even) on the *Shabbat*; and it is forbidden to tarry and postpone the aid to the conclusion on the *Shabbat*. When they (the neighboring Jews) have finished assisting their brethren it is permissible for them to return with their weapons to their respective places on *Shabbat* in order to preclude a future pitfall.

This halakhah unequivocally spells out the definite *heter* for the Jews of Israel to wage war on *Shabbat* on the basis of *pikkuah nefesh* (the saving of Jewish lives).

The same halakhah is cited in *Shulhan Arukh* (*Orah Hayyim*, 329:6):

If heathens besieged Jewish towns: if they came solely to appropriate possessions from the Jews it is forbidden to violate the *Shabbat* for the purpose of preventing a loss of money. If they came in order to kill Jews, or even if they attacked in an undefined manner, their intention being unrevealed, then we go forth against them with weapons and we violate the *Shabbat*. Where the attack, however, was made on a town that is close to the border, even though they did not attack with any intention of taking lives but merely to plunder straw and stubble, the people are permitted to sally forth against them with their weapons and violate the *Shabbat* on their account.

Rama comments:

Even if they (the hostile Gentiles) did not yet besiege but are planning to besiege.

The Mehaber continues (sec. 7):

There is an opinion that in our day even if they (the hostile Gentiles) attacked solely for the sake of monetary matters we violate the *Shabbat*, because if any Jews would put up opposition and not allow themselves to be plundered and looted, they would be killed. Hence it must be regarded as if they had attacked for the purpose of taking lives.

III

Rodef (The Pursuer)

The third perspective through which the *heter* to wage war is to be considered is that of *Rodef*. This is the law that mandates that when a person pursues another person to kill him the pursued party has the halakhic right to kill the aggressor in order to save his own life. The law of *rodef* can be derived from several *parshiyot* (passages) in the Torah.

One *parashah* is found in Deuteronomy 22:26-27. The Torah says: But unto the girl thou shalt do nothing; there is in the girl no sin deserving death; for it is as when a man riseth against his neighbor and slayeth him, so is this matter. For he found her in the field; the betrothed girl screamed, and there was none to save her.

From the expression *ve-en moshia' lah* (and there was none to save her), the Gemara (*Sanhedrin* 73a) deduces:

ha yesh lah moshia' attah moshia' lah be-kol davar she-attah yakhol le-hoshia'. If there was someone to save her, you are to save her by any means that you can.

The Torah here implies that the betrothed girl (or married woman) is completely faultless since she screamed and there was no one to help her. However, if someone could have helped her by saving her from rape, then it would be incumbent upon everyone, be it the victim or any bystander, to avert the rape, even if this entails killing the aggressor.

The Gemara (*Sanhedrin* 74a) draws a further inference from the expression "for it is as when a man riseth against his neighbor. . . ." There is a comparison between homicide and the case of rape. Just as the betrothed girl or married woman is allowed to defend herself, even if this requires taking the assailant's life, and it is incumbent upon any bystander to do everything possible in order to save her, so also with regard to homicide: if one person pursues another to kill him then the pursued party is required to defend himself, even by resorting to violence and even to the point of killing his attacker. The same obligation is incumbent upon the bystander to save the life of the intended victim.

A second source for the halakhah of *rodef* is the *parashah* of *mahteret* (Exodus 22:1-2). Here the Torah states:

If the thief be discovered digging his way, and is smitten that he die, no guilt of blood shall be incurred for him. If the sun shone upon him, there shall be guilt.

With respect to the first verse, according to which the thief who breaks

into his neighbor's house may be killed by the householder without incurring punishment, the Gemara (*Sanhedrin* 72a) states:

Rava said: "What is the reason for the law of breaking and entering? Because it is certain that no man will be inactive where his property is concerned; therefore this one (the thief) must have reasoned: 'If I go there, he (the owner) will oppose me and prevent me, but if he does, I will kill him.' Hence, the Torah decreed: If he comes to slay thee, slay him first (*Ha-ba le-horgekha—hashkem ve-horgo*).

Tosafot (*Sanhedrin* 73a s.v. *af*) inquires about the relationship between this source mentioned above for the halakhah of *rodef* and the source mentioned above, namely the *parashah* of the betrothed girl. Why must the Gemara (*Sanhedrin* 73a) resort to the *hekesheh* (analogy) between homicide and rape in order to establish the law of *rodef*? The law of *rodef* is spelled out explicitly in the *parashah* of *mahteret* (Exodus 22:1), which clearly indicates that if a burglar breaks into a house, the owner or anyone else may kill the burglar in order to save the owner of the house (when the burglar is likely to pursue his aims by violence). Why must the Gemara have recourse to the second, more indirect, source?

The answer given by Tosafot is that the *gezerat ha-katuv* (the Divine decree) explicit in the section of *mahteret* only implies a *heter* (license) to kill the burglar. However, the *gezerat ha-katuv* implicit in the *hekesheh* of homicide to rape indicates that if one pursues another to kill him, then it is obligatory for the intended victim or for any bystander to save the life of the victim. The bystander who refrains from killing the pursuer and thereby saving the pursued, violates the prohibition of *lo ta'amod al dam re'ekha* ("Thou shalt not stand idly by the blood of thy neighbor." Leviticus 19:16); he also violates the injunction *ve-katsota et kappah* (Deuteronomy 25:2).

In the case of *mahteret* there is permission to kill the burglar, but no obligation, because his primary intention is not kill the *ba'al ha-bayit* (householder). The burglar intends to kill the owner only in the event that the latter resists him and attempts to prevent him from taking his property. If the householder does not put up opposition the burglar will leave him unharmed. Hence the Torah does not impose an obligation, but merely grants a license.

The license to kill the burglar who is discovered *ba-mahteret* applies both on weekdays and on *Shabbat*. The Gemara (*Sanhedrin* 72b) derives this from the fact that the Torah employs, for the concept of blood (ordinarily *dam*) the plural form *damim*:

There shall be no guilt of blood (*damim*): neither blood on weekdays nor blood on *Shabbat*.

The license to kill the burglar who breaks in on *Shabbat* is *not* based upon the principle of *pikku'ah nefesh* in view of the fact that the owner has the alternative of saving his life without killing the intruder simply by remaining passive and not interfering with the burglary. Obviously the *gezerat ha-katuv* here implies a special *heter* to desecrate the *Shabbat* in order to fight back against a *rodef*. The same *heter* also applies to a *rodef* who pursues a married woman to perpetrate rape, or one who pursues a male for the purpose of homosexual rape, as is cited, in the name of R. Shrira Gaon, by the Rif (to *Pesahim* 49b).

To summarize: the Talmudic formulation—“The Torah decreed; ‘He who has come to slay thee, slay him first’ ” establishes the right of self-defense which every person possesses even when that person has the option of saving his life by permitting the criminal to take his money.

There is, however, another source regarding *rodef*. *HaRav haMeiri* (to Sanhedrin) cites the Midrash Tanhuma (on *Parashat Pinhas*) to the effect that the principle of *Ha-ba le-horgekha hashkem ve-horgo* (“He who would slay thee, slay him first”) is deduced from the verse in Numbers 25:17-18:

Tsaror et ha-Midyanim ve-hikkitem otam; ki tsorerim hem lakhem. Vex the Midianites and smite them, for they are vexing you.

It would appear from *haRav haMeiri* that the halakhah of “*Ha-ba le-horgekha. . .*” that is deduced by the Gemara Sanhedrin from the *parashah* of *mahteret* and the halakhah of “*Ha-ba le-horgekha. . .*” that is deduced in Midrash Tanhuma from the *pasuk* in Numbers, represent the same law and right of self-defense, but on different levels.

The halakhah stated in the section of *mahteret* asserts a law and right of self-defense on an individual level. If an individual person is attacked he has the right to kill the aggressor to save himself. The halakhah that is implicit in the verse *Tsaror et haMidyanim* implies a law and right of self-defense on a collective and national level. If a hostile foreign nation or group of hostile people such as the PLO constantly attack Jews in Israel and throughout the world then the entire nation and entire group have the status of *rodfim* (pursuers). Israel has the right of self-defense against them. This is the case even when the group includes civilians whom the PLO, for example, might be, in effect, holding hostage.

The halakhah mentioned in Midrash Tanhuma is the basis for the Rambam’s halakhah which defines, as one category of obligatory war, *ezrat Yisrael mi-yad tsar she-ba alehem* (relief of Israel from an adversary who attacks them).