

INSTRUCTIONS FROM AUTHOR TO LIBRARY FOR THESES AND PRIZE ESSAYS

AUTHOR

JEFFREY BARNET KAMINS

TITLE

LAND FOR PEACE: AN ANALYSIS  
OF SOME CONTEMPORARY HALAKHA CONCERNING  
THE TRANSFER OF TERRITORIES OF ISRAEL  
TO GENTILE SOVEREIGNTIES

TYPE OF THESIS: Ph.D. [ ] D.H.L. [ ] Rabbinic [X]

Master's [ ] Prize Essay [ ]

1. May circulate [X] ) Not necessary  
2. Is restricted [ ] for \_\_\_ years. ) for Ph.D.  
thesis

Note: The Library shall respect restrictions placed on theses  
or prize essays for a period of no more than ten years.

I understand that the Library may make a photocopy of my thesis  
for security purposes.

3. The Library may sell photocopies of my thesis.

yes no

27 FEBRUARY 1989  
Date

Jeffrey Barnett Kamins  
Signature of Author

Library  
Record

Microfilmed

Date

July 12, 1989

Marilyn Kuder  
Signature of Library Staff Member

LAND FOR PEACE:

AN ANALYSIS OF SOME CONTEMPORARY HALAKHA  
CONCERNING THE TRANSFER OF TERRITORIES OF ISRAEL  
TO GENTILE SOVEREIGNTIES

By Jeffrey Barnet Kamins  
1 March 1989

Thesis submitted in partial  
fulfillment of the  
requirements for Ordination.

Hebrew Union College -  
Jewish Institute of Religion  
Referee: Dr. Mark Washofsky



## DIGEST

The primary purpose of this thesis was to enable me to delve into the halakhic world, to learn the methodology of Jewish legal research and to understand how current halakhic authorities use the halakhic sources.

I chose to study the halakha concerning the return of occupied territories to see how political perspectives determine legal conclusions in the halakhic world. In short, the halakhic system is little different than any other legal system. Politics influences the emphasis on certain sources and the interpretation of ambiguous sources.

The three basic legal issues regarding the return of territory of Israel are the prohibition of certain gentile settlement, the obligation of Jewish settlement and the application of the rule of saving a life to those two laws.

There are many other issues that could be considered, including whether laws regarding Israelite monarchy can be applied to the current State of Israel. Moreover, within each strata of law - Torah, Talmud, codes and responsa - further study could be undertaken to learn the social and political circumstances that led to the creation and development of the laws.

The following thesis, then, introduces the issues concerning the return of occupied territories and demonstrates how politics influences halakha.

## ACKNOWLEDGEMENTS

I welcome the opportunity to thank my advisor, Dr. Mark Washofsky, for his review of the cumbersome material presented within this thesis. His comments and guidance were on point and instructive. But I appreciate most of all his patience, availability and flexibility in meeting the demands of my schedule. Mark opened for me the doors to the halakhic world, and I value that experience.

I also thank my father, Richard J. Kamins, for the generous giving of his time and expertise in editing the final drafts of this thesis. His comments and suggestions added depth, clarity and continuity to the analysis sections of the thesis, and as always, working with him was a privilege.

Last, but certainly not least, I wish to thank my best friend, Bobette Abramson, for her typing, editing and printing of this thesis - draft after draft - over the last year. She has put in nearly as many hours on this project as I.

Bobette, I dedicate this thesis to you with love.

# TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. The Prohibition of Gentile Presence	
A. Halakhic Sources	
1. Toraitic	
a. Exodus 23:33	9
b. Deuteronomy 7:1-2	11
c. I Kings 9:10-13	12
2. Mishnaic	
a. <u>Avodah Zarah</u> 1:5	16
b. <u>Avodah Zarah</u> 1:8	17
3. Talmudic	
a. Yerushalmi <u>Avodah Zarah</u> 1:9	18
b. <u>Avodah Zarah</u> 14b	19
c. <u>Avodah Zarah</u> 19b-21b	20
d. <u>Gittin</u> 44a	25
e. <u>Gittin</u> 47a	26
4. Post-Talmudic	
a. Rambam	
(1) <u>Sefer HaMitzvot</u>	
(a) Negative Commandment No. 50	30
(b) Negative Commandment No. 51	31
(2) <u>Mishneh Torah, Hilkhot</u> <u>Avodah Zarah</u> 10:1-6	32
b. <u>Sefer Mitzvah Gadol</u>	
(1) Negative Commandment No. 48	36
(2) Negative Commandment No. 49	39
c. <u>Sefer HaChinukh</u>	
(1) Commandment No. 94	40
(2) Commandment No. 426	42

	<u>Page</u>
d. <u>Minchat Chinukh</u>	
(1) Commandment No. 94	45
(2) Commandment No. 426	50
B. Current Halakhic Authorities	
1. R. Zolti	54
2. R. Bakshi-Doron	67
3. R. Warhaftig	74
4. R. Krieger	85
C. Analysis	104
III. Commanded Jewish Settlement, Commanded War	
A. Halakhic Sources	
1. Toraitic	
a. Numbers 33:53	127
b. Deuteronomy 20:16-18	129
2. Mishnaic: Mishna <u>Sotah</u> 8:5/7	131
3. Talmudic	
a. <u>Ketubot</u> 110b-111a	133
b. <u>Gittin</u> 8b	136
c. <u>Eruvin</u> 45a	137
d. <u>Sotah</u> 44b	138
4. Post-Talmudic	
a. Rambam	
(1) <u>Sefer HaMitzvot</u>	
(a) Negative Commandment No. 48	139
(b) Negative Commandment No. 49	140
(c) Positive Commandment No. 187	141
(2) <u>Mishneh Torah</u>	
(a) <u>Hilkhot Melakhim</u> 5:1	144
(b) <u>Hilkhot Shabbat</u> 2:23	145
(c) <u>Hilkhot Ta'anit</u> 2:3	146
b. Ramban: Commentary on <u>Sefer HaMitzvot</u> , Addendum No. 4 to the Positive Commandments	147

	<u>Page</u>
c. <u>Megillat Esther</u> on Ramban's <u>Addendum No. 4</u>	151
d. <u>Shulchan Arukh, Orach Chayim</u> 229:6	153
e. <u>Sefer HaChinukh, Commandment</u> 425	154
f. <u>Minchat Chinukh, Commandment</u> 425	158
 B. Current Halakhic Authorities	
1. R. Aaronberg and R. Shragai	160
2. R. Katznelbogen	167
3. R. Glickman	172
4. R. Nachshoni	184
5. R. Rabinowitz	193
6. R. Ariel	198
7. R. Rabinowitz	204
 C. Analysis	208
 IV. The Obligation of Saving a Life and Other Issues	
A. Halakhic Sources	
1. Toraitic: Lv. 18:5	221
2. Talmudic	
a. <u>Gittin</u> 55b	222
b. <u>Gittin</u> 56b	224
c. <u>Sanhedrin</u> 74a/b	225
3. Post-Talmudic: Rambam, <u>Mishneh Torah,</u> <u>Hilkhot Yesodei Torah</u> 5:1-3	227
 B. Current Halakhic Sources	
1. R. Unterman and R. Israeli	229
2. R. Hadaya	234
3. R. Israeli, R. HaLevy and R. Breur	237
4. R. Weingart	249
5. R. Yosef	267
6. R. HaLevy	276
 C. Analysis	285
 V. Conclusion	294
 VI. Bibliography	302
 VII. Sources of Translations	305

## INTRODUCTION



When I chose to write a thesis analyzing the halakha concerning the exchange of territories for peace between Israel and its neighbors, I wanted to learn more about the halakhic process through a current issue. Many people who first hear of this project mistakenly believe the halakha controls political reality in Israel. I have to explain to them that Israeli law and political process, while perhaps vaguely influenced by halakha, is not governed by it. This thesis, rather, is an attempt to see to what extent the halakha is influenced by political, military and other social realities.

To a large extent, there is a broad gap between political and halakhic concerns. Reading such books as David Shipler's Arab and Jew, Meron Benveniste's Conflict and Contradiction, and Amnon Rubinstein's The Zionist Dream Revisited, one gets a far different perspective of the problem and its potential solutions than by reading halakhic arguments. Those concerned with political and social realities discuss the historic nature of the conflict over the last 100 years. They acknowledge the human aspect of all concerned, the fear and mistrust that exists on both sides. They present the competing ideologies of both sides that tend to preclude settlement. Generally, the competing religious claims - whether of fundamentalist Islam or Judaism - are not discussed.

The halakhic analysis approaches the problem from an opposite direction. By definition, the source of halakha is God through the immutable Torah. Over thousands of years of legal tradition, many interpretations have become fixed. Therefore, certain resolutions to problems are outside the halakhic boundaries. An analysis of the halakhic issues concerning the delivery of territories occupied by Israel to the Arabs in exchange for peace shows the difficulty of making halakha relevant to modern situations. Yet, the results of this research shed little guidance on the ultimate disposition of the territories, for any solution arrived at by the government of Israel will be according to political and security, not halakhic, considerations.

However, even if a halakhic consideration of the return of occupied territories does not affect their actual disposition, the halakhic analysis has theoretical value. In general, a connection exists between one's awareness of Jewish law and one's Jewish identity. To respond in a more informed way to the decisions made by the traditional Jew, the non-traditional Jew should understand how these decisions are made. Within Israel, the Supreme Court is occasionally influenced by halakhic considerations.<sup>1/</sup> Moreover, the current political composition of Israel gives the religious parties an opportunity to impress their

<sup>1/</sup>Elon, HaMishpat Ha-Ivri, p. 114.

halakhic perspectives on the governmental process. Thus, the role of halakha within Israeli law and decision making is an important topic in the developing self-identification of the Jewish state.

Indeed, the major question to be addressed here is to what extent is the halakha responsive to real social and political circumstances. A secondary consideration that derives from this question is how the current rabbinic authorities arrive at their positions - do they cite different sources or read the same sources differently?

There are two advantages in studying the variety of interpretive methodologies on a given subject. First, one observes the range of options that exist in the halakha as a whole. (One does not rely on the ruling of any one contemporary decisor, no matter how prestigious he may be, as the sole, authoritative voice of Jewish law on an issue over which differing approaches and opinions exist.) Second, if the authorities do in fact disagree on basic issues of judgment and interpretation, the observer may discover that these disagreements are the result of divergent social and political views as well as differences over halakhic textual reasoning.

The halakhic issues concerning the return of the occupied territories are thoroughly explored by Rabbi J. David Bleich in the second volume of his Contemporary Halakhic Problems. One can infer from Bleich's conclusion

that he is aware of the political realities underlying the problem of whether or not to return territories. He states that the "issue may be reduced to the question of whether or not return of occupied territories is indeed vital for the preservation of the safety and security of the inhabitants of the Land of Israel."<sup>2/</sup> Primarily, Bleich discusses whether Jews are still commanded to settle the land; and secondarily, he discusses whether they are commanded not to return any of it. He further addresses the issue of how the doctrine of saving a life affects the ultimate issue of disposition of the territories. While on one hand Bleich's article is a review of the early literature on the subject (through 1977) and an excellent source of major issues and references, on the other hand Bleich himself is an original halakhic thinker.

Based on Bleich's article, I was able to ascertain the best references to contemporary halakhic literature touching on this subject. I selected readings primarily from the halakhic journals Torah ShB'al Peh, Noam, HaMayan, Shana B'Shana and Techumin. Bleich often referred to articles published in these journals, except Techumin, which was first published after Bleich's article was written. I also used a monograph published by Oz V'Shalom, which helped

<sup>2/</sup>Bleich, Contemporary Halakhic Problems, Vol. II, p. 220.

round out the perspectives which otherwise tended to be against any consideration of return of territory.

This thesis is an analysis of some contemporary halakha; the further I have delved into my research, the more articles I have discovered in both Hebrew and English journals. However, to respond to the questions raised above, it was not necessary to review the entire body of contemporary halakha touching on the subject. In general, the halakhists devote more attention to "Lo Techonem" (the prohibition of certain gentile settlement based on Dt. 7:2) than "VeHorashtem" (the commandment to settle the land). Based on their emphasis, I have concluded that the return of territories depends more upon the prohibition of non-Jewish settlement than upon the obligation of Jewish settlement. An overarching issue is the obligation to save life. The following three chapters address these three issues: the prohibition of gentile settlement, the commanded Jewish settlement and conquest of the land, and the obligation to save a life.

It should be noted that certain important issues raised in the following discussion cannot adequately be considered in the scope of this thesis. For example, a primary consideration concerning the application of "Lo Techonem" to modern Arabs is whether this law applies to Moslems and Christians. That issue, "who is an idolater," has been addressed at length by other studies. The question relevant

to this thesis is whether contemporary halakhic decisors are aware that a debate has been on-going for over a thousand years as to "who is an idolater," and that the position taken in that debate has consequences for the application of "Lo Techonem."

Another issue not addressed at length is the idea of the commanded war, which is a corollary to "VeHorashtem," the commanded settlement. Once again, there are vast studies concerning whether or not the laws that applied to the ancient Israelite kingdoms apply to the modern state of Israel. Again, the question relevant to this thesis is whether individual decisors are aware of the inherent problem in applying the concept of the commanded war to warfare conducted by the modern state.

Other issues raised but not explored in depth concern whether a peace treaty can be made with the Arabs, what rights Arabs have under Israeli sovereignty, and what land is considered the "land of Israel."

The material treating the three issues is organized into three chapters, and each chapter is divided into three sections.

The first section, entitled "Halakhic Sources," consists of the translations of the primary halakhic sources cited by the contemporary authorities concerning the issue. The list of translations indicates those halakhic sources already translated into English. I translated the following



halakhic sources: Sefer Mitzvah Gadol, Minchat Chinukh, Ramban and Megillat Esther on Sefer HaMitzvot and Abravanel on I Kings 9:11ff.

The second section, entitled "Current Halakhic Authorities," consists of the translations, or more precisely, digests of the articles read. In translating these pieces, I attempted to capture the author's major points of argumentation as well as his tone and style. However, I also chose to write in the third person to gain some consistency of terminology. For example, "gentile" refers to all non-Jews, while "idolater" refers to those gentiles who worship gods through images and figures.

Any comments in parenthesis "()" are the author's; comments in brackets "[]" are mine. The footnotes generally reflect citations made within each article by the author, although occasionally I have added some explanatory notes. The reader will note that there is some slight artificiality in the organization of these articles within these sections. Most decisors did not confine themselves to one issue but rather addressed two or three major issues. I have, therefore, tried to put within each section the primary statements concerning prohibition of settlement, commanded settlement and the obligation to save a life.

The third section, entitled "Analysis," consists of my analysis of how the current halakhic authorities interpreted the halakhic sources. There are a wide range of opinions

and different styles of interpretation. All halakhic authorities are aware of the political realities and fashion their analysis to reach the desired legal conclusion.

Generally, those favoring exchange of territories for peace are "strict constructionists" on the issues of prohibited gentile settlement and commanded Jewish settlement. On the other hand, they tend to more liberal interpretation on the issue of saving a life. Not surprisingly, the reverse is true for those opposing exchange of territories. One cannot separate politics and legal philosophy from legal analysis. The reader will observe this connection in the articles by the current halakhic authorities, as well as in my analysis of them.

CHAPTER I

THE PROHIBITION OF GENTILE PRESENCE

### Halakhic Sources

EX. 23:33 - "LO YESHVU"

They shall not remain in your land, lest they cause you to sin against Me; (Ki) for you will serve their gods - (Ki) and it will prove a snare to you.

[This passage is in the context of six of the seven nations: the Amorites, Hittites, Perizzites, Canaanites, Hivites and Jebusites. The Girgashites mentioned in Dt. 7:1 are not referred to here.]

Rashi comments only on the grammatical structure of the verse: Both particles ki here have the meaning of 'asher' (that). It has this meaning in several passages . . . [According to Rashi the verse would read, "They shall not remain in your land lest they cause you to sin against Me when that you serve their gods that will be a snare against you"].

Ramban quotes Rashi and adds: But it is not so. Instead, the meaning of the verse is: "They shall not dwell in thy land for they will be a snare unto thee lest they make thee sin against Me, for you will serve their gods." [Similarly is Ex. 34:12.] The meaning of this verse is that their dwelling in your land will be a snare unto you and a

source of stumbling, lest they make you sin against Me through their evil ways and corrupt doings, for you will serve their gods when they will persuade and beguile you to do so.

DT. 7:1-2 "LO TECHONEM"

When the Lord your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you - the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites, seven nations much larger than you - and the Lord your God delivers them to you and you defeat them, you must doom them to destruction: grant them no terms and give them no quarter. [Onkelos on Lo (Te)chonem, translated above as "give them no quarter", interprets Lo (Te)rachem, show them no mercy].

Rashi: "'Lo Techonem' means 'thou shalt not ascribe grace (chen) to them - it is forbidden to a person to say, 'How beautiful is this heathen.' Another explanation: thou shalt not grant them a chaniya, an encampment (a settlement) in the land (Avodah Zarah 20a)."



## I KINGS 9:10-13

At the end of the twenty years during which Solomon constructed the two buildings, the Lord's House and the royal palace - since King Hiram of Tyre had supplied Solomon with all the cedar and cypress timber and gold that he required - King Solomon in turn gave Hiram twenty towns in the region of Galilee. But when Hiram came from Tyre to inspect the towns that Solomon had given him, he was not pleased with them. "My brother," he said, "What sort of towns are these you have given me?" So they were named the land of Cabul, as is still the case.

## II CHRONICLES 8:1-3

"At the end of twenty years, during which Solomon constructed the House of the Lord and his palace - Solomon also rebuilt the cities that Hiram had given to him, and settled Israelites in them - Solomon marched against Hamath-zobah and overpowered it.

Abravanel on I Kings 9:10-13: [The twenty years refers to the seven years it took to build the Lord's house in Jerusalem and the 13 years to build the king's palace], for which buildings Hiram King of Tyre delivered to the King [Solomon] cedar trees and gold as he needed, by which

Solomon was exalted and made great, so that Solomon, out of his goodness, gave Hiram 20 cities in the Galil. It is already mentioned in II Chronicles 8:2 that Hiram gave King Solomon cities in which to settle Israelites, as it is written, "That the cities which Hiram [Masoretic text: Hiram] gave Solomon, Solomon built them and caused the children of Israel to dwell there." The commentators [see, e.g., Radak] have written that first Hiram gave Solomon these cities and then Solomon compensated him with the twenty cities mentioned here, and that they did this to strengthen the covenant and brotherhood between them. But it seems unlikely to me that Hiram gave cities to Solomon and took cities from him and Scripture did not mention the two together, but rather mentioned there that Hiram gave cities to Solomon and here that Solomon gave cities to Hiram. It also does not sit well with me that Hiram said, "What are these cities which you have given me, my brother," and he called them the land of Kabul. This shows contempt for Solomon's gift, and if so, how could there remain between them the love which is mentioned in Scripture?

Accordingly, I think that every year Solomon gave Hiram, as is mentioned above [I Kings 5:25] wheat and oil in large quantity to feed his house [as payment for the cedar and gold Hiram sent Solomon]. After he finished all his work [in building] he saw [fit] to give Hiram cities in the Galil, not so that these cities should be subjugated to

Hiram nor that he should be master over these cities and that the children of Israel who lived there be enslaved to the King of Tyre, for if he had done this he would have transgressed a commandment of Torah. Rather, the essence of the gift was each year to collect the wheat and oil that he would give him from these cities; accordingly, the produce of these cities went to Hiram but sovereignty over these cities was with Solomon. Thus, the cities given were in the Galil, a land of wheat, barley, olives, oil and honey. Perhaps, the intent of the agreement was that Hiram's workers would sow and harvest there and be the workers of those lands. Hiram went to see if these cities could annually produce [the same quantity] of wheat and oil that Solomon had given him [the twenty years of building] and [the cities] did not please him; therefore, he called them the land of Kabul, meaning a land that does not produce fruit, as in Talmud Bavli Shabbat 54a. Accordingly, the gift concerned the produce, not the land itself. Indeed [the meaning of the passage in Chronicles is that] Hiram returned the cities to Solomon, since they were his originally, and Solomon afterward built them to demonstrate that they were not bad, like Hiram thought. He settled Israelites there to plow and sow since Hiram's men would not settle there and do the work. Thereafter, Solomon gave

annually the wheat and oil [and Hiram continued to send cedars and gold]. Accordingly, the story is one unit between the passage here and in Chronicles, without there having been an exchange of territory.

MISHNA AVODAH ZARAH 1:5

These are things that it is forbidden to sell to idolaters: stone-pine cones, white figs on their stalks, frankincense and a white cock. R. Judah says: It is permitted to sell him a white cock among [other] cocks, but if it be by itself [the Jew] cuts off one of its toes and sells it to him, because they do not offer aught defective at idolatrous service. But, all other things, if it be not specified [that they are for idolatrous purposes], are permitted [to be sold to idolaters], but if it be specified [that they are intended for idolatrous practices], they are prohibited. R. Meir says, it is also prohibited to sell to idolaters fine dates, or sugarcane and "nicolaos" dates.

MISHNA AVODAH ZARAH 1:8

None may make ornaments for an idol: necklaces or earrings or finger rings. R. Eliezer says: If for payment it is permitted. None may sell them what is attached to the soil, but it may be sold after it has been severed.<sup>1/</sup> R. Judah says: One may sell it to an idolater on condition that it is severed. None may hire houses to them in the land of Israel, or needless to say, fields; in Syria houses may be hired to them but not fields; outside the land, houses may be sold and fields hired to them. So R. Meir. R. Jose says: In the land of Israel houses may be hired but not fields; in Syria houses may be sold and fields hired to them; outside the land either may be sold to them.

<sup>1/</sup>In some sources the following mishna (beginning R. Judah says) is found at the beginning of Avodah Zarah 1:9 as opposed to the end of Avodah Zarah 1:8.



MISHNA. "They do not rent [to gentiles] houses in the land of Israel, and it goes without saying, fields. But in Syria they rent them houses, but not fields. And abroad they sell them houses and rent them fields," the words of R. Meir. R. Yose says, "Even in the land of Israel they rent them houses[, but not fields]; in Syria they sell them houses and rent them fields; and abroad they sell them both the one and the other."

GEMARA. R. Zeira in the name of R. Yose ben Chaninah, R. Abba, R. Chiyya in the name of R. Yochanan: "'You will show no mercy to them [TCHNM]' (Deut 7:2). - You will show them no grace.' 'You will show no mercy to them.' - You will give them no unrequited gift [MKWM CHNM] in the Holy Land." Now has it not been taught in a Tannaitic teaching: R. Yose says, "Even in the Land of Israel they rent them houses"? As to a house, it is uncommon to profit from it, while it is quite common to profit from a field. R. Yose b. R. Bun gave instructions that it is forbidden to rent them a burial place in the land of Israel, on the count of not giving them a place to settle in the Holy Land. "You will show no mercy to them." - You will give them no unrequited gift."

R. MEIR SAYS, ALSO A GOOD PALM etc. Said R. Chisda to Abimi: There is a tradition that the [tractate] Avodah Zarah of our father Abraham consisted of four hundred chapters; we have only learnt five, yet we do not know what we are saying. And what difficulty is there? The Mishna states that R. MEIR SAYS: ALSO A GOOD PALM, HAZAB AND NICOLAUS ARE FORBIDDEN TO BE SOLD TO IDOLATERS [which implies that] it is only a 'good palm' that we must not sell but a 'bad palm' we may sell yet we have learnt (in Avodah Zarah 19b): One may not sell to them anything that is attached to the soil! He replied: What is meant by 'good palm' is the fruit of a 'good palm'.

MISHNA. ONE SHOULD NOT MAKE JEWELRY FOR AN IDOL [SUCH AS] NECKLACES, EAR RINGS, OR FINGER RINGS. R. ELIEZER SAYS, FOR PAYMENT IT IS PERMITTED. ONE SHOULD NOT SELL TO IDOLATERS A THING WHICH IS ATTACHED TO THE SOIL, BUT WHEN SEVERED IT MAY BE SOLD. R. JUDAH SAYS, ONE MAY SELL IT ON CONDITION THAT IT BE SEVERED.

GEMARA. Whence do we derive these rules? - Said R. Jose b. Chanina: [20a] From the scriptural words, "nor be gracious unto them - lo techonem" - [which may be rendered] nor allow them to settle on the soil. But are not these words needed to convey the Divine command not to admire their gracefulness? - If that alone were intended, the wording should have been "lo techunem", why is "lo techonem" used? To imply both these meanings. But there is quite another purpose for which this is needed, to express the Divine command not to give them any free gift! For that purpose the wording should have been "lo techinem," why then is it "lo techonem"? - So as to imply all these interpretations. It has indeed been taught so elsewhere: "lo techonem" means, thou shalt not allow them to settle on the soil. Another interpretation of "lo techonem" is, thou shalt not pronounce them as graceful; yet another interpretation of "lo techonem" is, thou shalt not give them any free gift. . . .

[20b] ONE SHOULD NOT SELL TO IDOLATERS A THING WHICH IS ATTACHED TO THE SOIL. Our Rabbis taught: One may sell a tree to a heathen with the stipulation that it be felled and he then fells it; this is the opinion of R. Judah. R. Meir, however says: We may only sell to heathen a tree when felled. Likewise, low-growth, with the stipulation that it be cut and he may then cut it; this is the opinion of R. Judah. R. Meir, however, says: We may only sell it to them when it is cut. So also, standing corn, with the stipulation that it be reaped and he may then reap it; this is the opinion of R. Judah. R. Meir, however, says: We may only sell it (to) them when reaped. And all these three instances are necessary; for were we told of the case of a tree only [we might think that] in that case only does R. Meir oppose, for, since the heathen will not lose by letting it remain in the ground, he might leave it so, but the other case [the standing corn] where he would lose by letting it remain in the soil, we might think that R. Meir would agree with R. Judah. On the other hand, were we told about the tree and the corn only [we might have thought that] it is because it is not obvious that he benefits by leaving them in the soil [that R. Judah permits], but in the case of low-growth where he obviously benefits by leaving it to grow on, we might think that he agrees with R. Meir. Were we again to be told of the case of [low-growth] only, we might have thought that it is only in that case that R. Meir objects

[since it pays him not to cut it], but in the other two cases, he shares the view of R. Judah; hence all these are necessary.

MISHNA. ONE SHOULD NOT LET HOUSES TO THEM IN THE LAND OF ISRAEL; AND IT IS NEEDLESS TO MENTION FIELDS. IN SYRIA, [21a] HOUSES MAY BE LET TO THEM, BUT NOT FIELDS. ABROAD, HOUSES MAY BE SOLD AND FIELDS LET TO THEM; THIS IS THE OPINION OF R. MEIR. R. JOSE SAYS: IN THE LAND OF ISRAEL, ONE MAY LET TO THEM HOUSES BUT NOT FIELDS; IN SYRIA, WE MAY SELL THEM HOUSES AND LET FIELDS; BUT ABROAD, THE ONE AS WELL AS THE OTHER MAY BE SOLD. EVEN IN SUCH A PLACE WHERE THE LETTING OF A HOUSE HAS BEEN PERMITTED, IT IS NOT MEANT FOR THE PURPOSE OF A RESIDENCE, SINCE THE HEATHEN WILL BRING IDOLS INTO IT; FOR SCRIPTURE SAYS, AND THOU SHALT NOT BRING AN ABOMINATION INTO THY HOUSE. NOWHERE, HOWEVER, MAY ONE LET A BATH-HOUSE TO A HEATHEN, AS IT IS CALLED BY THE NAME OF THE OWNER.

GEMARA. Why is it 'NEEDLESS TO MENTION FIELDS'? Shall we say because it offers two [objections]: the one, that the heathen settles on the soil, and the other that [the produce] becomes exempt from tithes? If it be that, then houses too offer two objections: the one, that the heathen settles on the soil, and the other that they become exempt from having a mezuzah. Said R. Mesharshey: It is upon the occupant that the observance of mezuzah devolves.

IN SYRIA HOUSES MAY BE LET TO THEM, BUT NOT FIELDS. Why is selling [of houses] not allowed - lest it lead to selling [houses] in the Land of Israel? Why then not make a safeguard in the case of letting also? - Letting is in itself a safeguard; shall we then go on making another safeguard to guard it? But is not the letting of a field in Syria a safeguard to another safeguard, and yet it is upheld? - That is not a mere safeguard, it follows the opinion that even the annexation by an individual is to be regarded as annexed [to Palestine]; hence, in the case of a field, which offers a twofold objection our Rabbis ordained a safeguard; but in the case of houses, since there is no such double objection, no safeguard was made by our Rabbis.

ABROAD, HOUSES MAY BE SOLD AND FIELDS LET TO THEM. Because in the case of a field, which offers a twofold objection, our Rabbis ordained a safeguard; but in the case of a house, since there is no such double objection, no such safeguard was made by our Rabbis.

R. JOSE SAYS: IN THE LAND OF ISRAEL, WE MAY LET TO THEM HOUSES BUT NOT FIELDS. What is the reason? - In the case of fields, which offer the twofold objection, our Rabbis ordained a safeguard, but in the case of houses, since there is no such double objection, no safeguard was made by our Rabbis.

IN SYRIA, WE MAY SELL THEM HOUSES AND LET FIELDS. What is the reason? - [R. Jose] holds that the annexation made by

an individual is not regarded as a proper annexation; hence in the case of fields, which offer the twofold objection, our Rabbis instituted a safeguard, but in the case of houses, since there is no such double objection, no safeguard was made by our Rabbis.

BUT ABROAD, THE ONE AS WELL AS THE OTHER MAY BE SOLD. What is the reason? - Because, on account of the distance [from Palestine], the principle of safeguard does not apply.

Said Rab Judah in the name of Samuel: The halakha is with R. Jose. Said R. Joseph: Provided he does not make it a [heathen] settlement. And how many [tenants] constitute a settlement? - A Tanna taught that at least three persons constitute a settlement. But should we not fear lest, after this Israelite has sold the property to one idolater, the latter may go and sell a part thereof to two others? - Said Abaye: We need not be particular overmuch.

EVEN IN SUCH A PLACE WHERE LETTING HAS BEEN PERMITTED. This implies that there are places where letting is not permitted - [21b] which proves that R. Meir's view is accepted, since according to R. Jose letting is permitted everywhere.



If a man sells his house [in the land of Israel] to a heathen, the money paid for it is forbidden. If, however, a heathen forcibly takes a house of an Israelite and the latter is unable to recover it either in a heathen or a Jewish court, he may accept payment for it and he may make out a deed for it and present it in heathen courts, since this is like rescuing [money] from their hands.



MISHNA. IF A MAN SELLS HIS FIELD TO A HEATHEN, HE HAS TO BUY [YEARLY] THE FIRSTFRUITS FROM HIM AND BRING THEM TO JERUSALEM, TO PREVENT ABUSES.

GEMARA. Rabbah said: Although a heathen cannot own property in the land of Israel so fully as to release it from the obligation of tithe, since it says, "For mine is the land", as much as to say, mine is the sanctity of the land, yet a heathen can own land in the Land of Israel so fully as to have the right of digging in it pits, ditches and caves, as it says, "The heavens are the heavens of the Lord, but the earth he gave to the sons of man." R.

Eleazar, however, said: Although a heathen can own land so fully in the land of Israel as to release it from the obligation of tithe, since it says, "[The title of] thy corn", which implies, 'and not the corn of the heathen,' yet a heathen cannot own land in the Land of Israel so fully as to have the right of digging in it pits, ditches and caves, since it says, "The earth is the Lord's." What is the point at issue between them? - One holds that [we interpret the word 'thy corn'] to mean 'thy corn and not the corn of the heathen' and the other holds that we interpret it to mean, 'thy storing and not the storing of the heathen.' Rabbah said: Whence do I derive my view? Because we have learnt: Gleanings, forgotten sheaves, and produce of the

corner belonging to a heathen are subject to tithe unless he has declared them common property. How are we to understand this? Are we to say that the field belongs to an Israelite and the produce has been gathered by a heathen? If so, what is the meaning of 'unless he declared them common property,' seeing that they are already such? We must therefore say that the field belongs to a heathen and an Israelite has gathered the produce, and the reason why he has to give no tithe from them is because he declared them common property, but otherwise he would be liable! - This is not conclusive. I may still hold that [the field spoken of] belongs to an Israelite and that a heathen has gathered the produce; and as for your argument that it is already declared common property, granted that it is such in the eyes of the Israelite, is it such in the eyes of the heathen?

Come and hear: If an Israelite bought a field from a heathen before the produce was a third grown and sold it back to him after it was a third grown, it is subject to tithe because it was so already [before he sold it back]. The reason is [is it not] because it was so already, but otherwise it would not be subject? - We are dealing here with a field in Syria, and [the author of this dictum] took the view that the annexation of an individual is not legally counted as annexation. Come and hear: 'If an Israelite and a heathen buy a field in partnership [47b] "tebel" and

"chullin" are inextricably mixed up in it. This is the view of Rabbi. Rabban Simeon b. Gamaliel says that the part belonging to the heathen is exempt [from tithe], and the part belonging to the Israelite is subject to it'. Now [are we not to say that] the extent of their difference consists in this, that the one authority [R. Simeon] holds that a distinction can be made retrospectively, while the other holds that no distinction can be made retrospectively, but both are agreed that a heathen can own land in the land of Israel so fully as to release it from the obligation of tithe? - Here too we are dealing with land in Syria, and [R. Simeon] took the view that the annexation of an individual is not legally regarded as annexation. R. Chiyya b. Abin said: Come and hear, IF ONE SELLS HIS FIELD TO A HEATHEN, HE MUST BUY FROM HIM THE FIRSTFRUITS AND TAKE THEM TO JERUSALEM, TO PREVENT ABUSES. That is to say, the reason is to prevent abuses, but the Torah itself does not prescribe this? - R. Ashi replied: There were two regulations. At first they [the sellers of the fields] used to bring the firstfruits as enjoined in the Torah. When [the Sages] saw that they made the recital [over them] and still sold

[fields], being under the impression that the fields still retained their holiness, they ordained that [the first-fruits] should not be brought. When they saw that those who were short of money still sold and the fields remained in the hands of the heathen, they ordained that they should be brought.

RAMBAM, NEGATIVE COMMANDMENT NO. 50  
SHOWING MERCY TO IDOLATERS.

By this prohibition we are forbidden to show mercy to the idolaters, or to praise anything belonging to them. It is contained in His words (exalted be He), "Nor shalt thou show mercy unto them" (lo techonem) [Dt. 7:2], which is traditionally interpreted as meaning: 'Thou shalt ascribe no grace (chen) to them'. [Avodah Zarah 20a.] Thus, even if an idolater has a fine figure, we are forbidden to say of him 'He has a fine figure', or 'he has a beautiful face', as is explained in our Gemara.

The Gemara of Avodah Zarah [1:9] in the Jerusalem Talmud says that to ascribe beauty [to an idolater] is forbidden by a Negative Commandment.

RAMBAM NEGATIVE COMMANDMENT NO. 51  
SUFFERING IDOLATERS TO DWELL IN OUR LAND

By this prohibition we are forbidden to suffer idolaters to dwell in our land, so that we may not learn their heresy. It is contained in His words (exalted be He), "They shall not dwell in thy land - lest they make thee sin against Me." [Ex. 23:33]. Should an idolater desire to stay in our land, we may not permit him to do so unless he forswears idolatry; in which case it is permissible for him to become a resident. Such a one is known as a "ger toshav", which means that he is a proselyte only in the sense that he is allowed to dwell in our land. Thus the Sages say: 'Who is a 'ger toshav'? According to R. Judah, one who forswears idolatry.' [Avodah Zarah 64b].

'A worshipper of idols, however, may not dwell among us; neither are we to sell him an estate or rent him [land or houses]: ["lo techonem"] is expressly interpreted to mean, thou shalt not grant them a settlement (chaniyah) in the land.' [Avodah Zarah 20a].

The provisions of this Commandment are explained in Sanhedrin and Avodah Zarah.

1. One was not allowed to make a treaty of peace with the seven Canaanite peoples that allowed them to go on worshipping idols, as the verse states: 'Thou shalt make no covenant with them' (Deuteronomy 7:2). They might either repent or might be destroyed. It was also forbidden to show them mercy; the verse continues, 'nor show mercy unto them' and, if one saw one of them perishing or drowning in a river, one might not save him. If one saw him near to death one might not help, but to destroy him with one's own hand or push him into a pit or the like was forbidden unless he was at war with the Israelites. How did this apply to the seven Canaanite tribes? As regards traitors and unbelievers in Israel, the Law was to destroy them with one's own hand and put them in a pit of destruction because they oppressed Israel and turned the people from following the Lord.

2. From that you learn that it was forbidden to doctor idolaters even for hire, but if a doctor was afraid of a person or general enmity, he might doctor for pay, never for nothing. The stranger in our midst might be treated for nothing because we were commanded to help him to live.

3. Houses and fields in the land of Israel might not be sold to idolaters but in Syria houses might be sold to them but not fields. In Israel, houses might be rented to them on condition that they did not set up a settlement. A



settlement consisted of not less than three houses. Fields might not be leased to them in Israel but might be in Syria. Why was a field important? For two reasons, first, the idolater paid no tithes, and second he might settle on the land. It was allowed to sell them both houses and fields outside Israel because that was not the land of Israel.

4. However, where it was permitted to lease a house, permission to dwell in it might not be given because idols would then be brought into it as the verse says: 'Neither shalt thou bring an abomination into thine house' (Deuteronomy 7:26), but houses could be leased as stores. One might not sell to an idolater fruit or grain which was still on the stalk, but might sell it to one on condition that he harvested it; the purchase was then binding. Why was one forbidden to sell to idolaters? Because it is written: 'Nor show mercy unto them' (Deuteronomy 7:2), which means not to allow them to settle in the land of Israel, and, if they had no land, any settlement had to be temporary. One was also forbidden to praise them, even to say how beautiful an idol was. How much more was it forbidden to speak in praise of their deeds and utterances of devotion. The verse above states: 'Nor show mercy unto them'. They might not find grace in thine eyes because after becoming attached to them one might learn the evils of idolatry. One might not make a free gift to them but one



might give to an alien since the verse states: 'unto the stranger that is in thy gates, that he may eat it or thou mayest sell unto an alien' (Deuteronomy 14:21), implying selling to an alien, but not presenting it.

5. Relief was given to poor idolaters in the same way as it was given to poor Israelites - for the sake of peace. Poor idolaters were not prevented from gathering gleanings and an overlooked sheaf in the corner of a field, and that also was for the sake of peace. Even on their festival days they were greeted as this contributed to peace but a greeting was never uttered twice. One might not enter an idolater's house on his festival to give a greeting. If one met him in the market, one greeted him quietly and respectfully.

6. All these courtesies were exchanged only at a time when Israel was in exile among idolaters or an idolatrous power was holding the land of Israel. When Israel had the power in her own land it was forbidden to allow idolatrous settlements. Sojourners were not allowed in the land of Israel and traders going from place to place might not travel in the land unless they had accepted the seven commandments of Noach. The verse says: 'They shall not dwell in thy land' (Exodus 23:33), not even for an hour. If

an idolater did not accept the seven commands of Noach, he was an alien settled in the land. Such alien residents were acceptable in a jubilee year; at other times only proselytes were accepted.

Not to give the idolater encampment upon the land, as it is written "Lo Techonem" and from this we learned [Talmud Bavli, Avodah Zarah 21a] that we do not sell them houses or fields in the land of Israel, but outside the land it is permitted. Our rabbis interpreted three things [Avodah Zarah 20a] based on this Scripture [Dt. 7:2] "chaniya, encampment", as we explained; "chen, grace", so that it was forbidden to say "How beautiful this idolater," in order that one would not follow after them and learn from their deeds. If so, it refers to [all] those [idolaters] whom we were not commanded to kill. Accordingly, "chanina", mercy, refers to those in Avodah Zarah [13b], [whom we are told] not to take them out of the well nor lower them in. And the simple essence is "Lo Terachem, Do not have mercy" upon them, rather kill them. But if it requires us to kill them, then this speaks of the seven nations - the Amorite, Gibeonite and so forth. Now, in Avodah Zarah [21a] it says that it is permitted to sell the idolater outside the land houses and fields. Rabbi Yosef said this is only providing that they do not make a neighborhood, and there is no neighborhood fewer than three houses. Your law is that it is forbidden to sell the idolater three houses in a row when a Jew lives next to them. These three idolaters will take counsel against him, to kill him or to do him damage.

We say that even in a place where they said renting [was permitted] they did not speak about rental of a dwelling for the idolater would practice idolatry there and the Torah says "Do not bring an abomination into your house." The renter does not acquire ownership [and the Jewish owner would be allowing an idolater into a house he owned]. But to rent a building for the making of a product [was permitted]. In our time, the custom of the people is to rent even a dwelling place. My mother's father, Rabbi Chayim Cohen, brings textual support for this [practice] from what was said in [Talmud] Yerushalmi, that in a place where they said it was permitted to sell [or rent] to them, like outside the land of Israel, it was permitted to sell even a dwelling place or to rent even a dwelling place, even though in Syria this was not the rule, as the Tosefta taught that it was permitted to sell but forbidden to rent. This is the language of the Tosefta: "One does not sell them houses or fields in Israel, and in Syria one sells houses and rents fields, and outside the land of Israel they sell these and these, here and here, [but] they do not rent a dwelling place." The interpretation of "here and here" speaks of the land of Israel and Syria. But, outside the land is permitted, as it says in the Yerushalmi. And the reason that we said it is permitted to rent outside the land is because the Torah only prohibits the [rental or sale] to an idolater of a house in which a Jew lives. It may be

compared to the mezuzah, which [Toraitically] is an obligation of the one who lives in the house [not necessarily the owner]. However, the rabbis extended the ruling [the obligation of mezuzah] to his [the owner's] house even if he does not live there [i.e., it is still "your house"]. But they did not apply their ruling to sale or rental.

SEFER MITZVAH GADOL, COMMANDMENT 49

It is forbidden to let one of the seven idolatrous nations settle in our land as it is written [Ex. 23:33], "Lo Yeshvu": "they shall not settle in your land lest they lead you to stray from me," [this is] so they will not teach you to do [idolatrous practices]. From here, they said [Sotah 35b]: "If they convert we should accept them, since there is no more concern that they will teach their ways. To what does this refer? To Canaanites living outside the land, but those living in the land we do not accept. Behold, regarding the Gibeonites who converted in the days of Joshua, it is written, "And the Israelites did not smite them because the leaders of the congregation had sworn to them." [Joshua 8:18].

SEFER HACHINUKH, COMMANDMENT 94  
NOT TO SETTLE ANY IDOL-WORSHIPER IN OUR LAND

Not to have idol-worshippers dwell in our land: for it is stated, "They shall not dwell in your land, lest they make you sin against Me" (Exodus 23:33).

At the root of the precept lies the reason revealed in the Writ: it is in order that we shall not learn from their heresy.

Among the laws of the precept there are what the Sages of blessed memory said, that if they wanted to forsake the worship of [their] idol, even though they did worship it from their very beginning, they are permitted to live in our land - and this kind is what is called "ger toshav", "a resident proselyte": i.e. he is a proselyte to an extent that gains him permission to live in our land. As our Sages of blessed memory said: Who is a "ger toshav"? - one who accepted and resolved not to worship idols. If he did not forsake idolatry, there is no need to say that he is not to be sold any ground so that he can dwell in our land; but even to rent to him is forbidden, as long as he wishes to rent [property] for a residence, since he will bring an idol into it; however, if it is [for a warehouse] for his merchandise, it is permissible - on condition that one should not rent it to three people: for three [indicate that it is] a permanent matter, and it is not proper to make them permanent tenants.

Then there is the difference in the laws which, our Sages of blessed memory said, apply in this regard between houses and fields and vineyards, and between Syria and the land of Israel. [These] and its further details are explained in the tractates Sanhedrin and Avodah Zarah.

It applies to both man and woman in the land [of Israel]. If a person violates it and sells them land or rents to them in an instance where it is forbidden, he has disobeyed a [Divine] royal command; but he is not given whiplashes since it is possible to sell them land or to rent to them without doing any physical action.



SEFER HACHINUKH, COMMANDMENT 426  
TO SHOW NO MERCY TO IDOL-WORSHIPERS

That we should have no kind feelings for those who worship idols, and nothing about them should be good or pleasing in our eyes: in other words, we should remove far from our mind, and it should not [ever] arise in our speech, that there could be anything of value in one who worships in idolatry, and he should find no grace or favor in our eyes - to such an extent that the Sages of blessed memory taught that it is forbidden to say, "How handsome that heathen is," or "How charming and pleasant he is." About this it is stated, "and you shall not be gracious to them" (Deuteronomy 7:2), for which the interpretation was given [in the Oral Tradition]: Do not ascribe grace or charm to them - in keeping with what we said. Now, there are some of our Sages who inferred from the verse, "you shall not be gracious to them," that you shall not give them gratuitous gifts; but it is all from one root [principle]. And in the tractate Avodah Zarah in the Jerusalem Talmud (1:9) it was stated: "you shall not be gracious to them" - it is a negative precept.

At the root of the precept lies the reason that the beginning of every human activity is fixing one's thought on the acts and bringing the matters up on the speech of the tongue; after thinking and talking about it, every task is carried out. Therefore, by refraining in thought and speech

from finding anything gainful or charming in those who worship in idolatry, we will thus refrain from joining them and striving after their affection, and from learning anything from all their evil deeds.

Among the laws of the precept there is what the Sages of blessed memory taught about not giving them gifts gratuitously: that this applies specifically to one who worships in idolatry, but not to one who does not practice idol-worship, even if he stands firm in his non-Jewish ways, eating loathsome and swarming creatures and committing all the other iniquities - such as a ger toshav, for since he undertook to observe the seven precepts, he may be sustained and given gratuitous gifts.

Our Sages of blessed memory taught that a ger toshav may be accepted at no other time but when the law of the Jubilee is in effect. And they (of blessed memory) said that it is permissible to sustain the poor of the non-Jews along with the Israelite poor, for the sake of peace. The rest of its details are explained in the Talmud tractate Avodah Zarah.

This is in effect in every place and time, for both man and woman. If someone transgressed this and praised idol-worshippers and their activities, other than in some matter where he would find much more to praise in our nation as a result of their praise, he would violate this negative precept. It entails no penalty of whiplashes, though, since it involves no physical action. Yet his punishment would be

very great, since it is a cause of great misfortune for which there is no compensation: for the words may penetrate at times to the innermost depths of the listeners. Anyone who has sensible knowledge will understand this.

We are commanded not to allow the idolater to dwell on our land. Rambam, in Hilkhoh Avodah Zarah 10, applies this to all idolaters, not just the seven nations. Sefer Mitzvah Gadol, Rabad, Rashi and Sifte Cohen apply this prohibition only to the seven nations. Sefer HaChinukh appears to follow them, not Rambam.

The Chinukh is incorrect in stating that a resident stranger is one who rejected idolatry. This position follows the statement of Rabbi Meir in Avodah Zarah 64b. However, the sages state there that a resident stranger is one who has accepted all seven Noachide commandments, not just the one to reject idolatry. The halakha follows the sages.

Similarly, Rambam wrote that until the idolater accepted upon himself the seven Noachide laws, it was forbidden to allow him to settle in the land, as he also ruled in Hilkhoh Melakhim and in Hilkhoh Issurei Biyah 14:7 and 8. I have already explained above that Rambam brings the rule that the laws regarding the acceptance of a resident stranger apply only during the time of the Jubilee. [That is, there is no ability in our times to declare someone a "resident stranger."] It appears from his words that this is also the case regarding the matter of settlement on the land. [That is, since there is no process whereby an idolater can become

a "resident stranger" there is no way that the idolater can be permitted to live on the land of Israel.]

Yet, Rabad writes that the lack of an official procedure for accepting a resident stranger does not prevent an idolater who has accepted the seven Noachide laws from settling on the land. The Kesef Mishneh wrote that Rambam's position also was that if the idolater took it upon himself to accept the seven Noachide laws then we cannot prevent his settling in the land since the prohibition is based upon "Lest they lead you astray." (Ex. 23:33, Lo Yeshvu.)

According to the Kesef Mishneh, even though the idolater did not become a resident stranger by being accepted by three judges - since there is no judicial procedure to accept the idolater as a resident stranger in our times - in all events if he fulfilled the seven Noachide laws he was permitted to dwell in the land. [In other words, the position of Rabad and Kesef Mishneh is that while a non-Jew may not officially gain the status of "resident stranger" in our times, if he accepts the seven Noachide laws on his own, he may settle on the land. The question remains whether or not Kesef Mishneh correctly interpreted Rambam.]

Rambam, in Hilkhos Issurei Biyah 14:7 writes, "What is meant by 'a resident stranger?' A former heathen who has undertaken to forsake the worship of idols and to observe the other commandments made obligatory on the descendants of Noah, but has been neither circumcised nor immersed. He

should be accepted and regarded as one of 'the pious individuals of the nations of the world.' Why is he called 'resident?' Because we are allowed to permit him to reside in the Land of Israel, as we have explained in the laws concerning idolaters." And in 14:8 he writes, "A resident stranger may be accepted only during such times as the law of the Jubilee is in force. Nowadays, however, even if he accepts the entire Torah, but with the exception of one particular, he may not be received." It appears from his words there, as understood also by Rabad in his commentary there, that the laws of accepting the resident stranger applied equally to settlement of the land.

Rabad wrote in his commentary there, that during the time that there is no Jubilee, certain laws that relate to the resident stranger are not applicable. Some examples of these laws are that a resident stranger was permitted to reside in the land but never inside the city itself, could only own Israelite slaves for a limited period of time and had to be rescued when his life was endangered on the Sabbath. Therefore, according to Rabad, while the Jubilee is not in effect, the suspension of these laws concerning the resident stranger sometimes works to his benefit and sometimes to his detriment. But, the resident stranger continued to be a person allowed to settle on the land because he accepted the seven Noachide Commandments.



In Gittin, in the passage "lo tasgir eved," they discuss the matter presented by Rambam here. Rambam states that it is forbidden for the idolater to even pass through the land. On the other hand, Rabad writes that specifically "settlement" is prohibited by "Lo Yeshvu" and the author of Sefer HaChinukh appears to follow Rabad. But the violation of this prohibition does not subject one to lashes, as stated by the Chinukh and Rambam, Hilkhos Sanhedrin 19.

There is also an important prohibition in Avodah Zarah concerning the duty of the individual. All the people of Israel are commanded to exile them. [The question is to which land this applies.] It could apply to the land of Israel that was sanctified [originally, by the first conquest of Joshua] or by the second conquest of Ezra. The decision is the land not possessed by the immigrants from Babylon is not considered sanctified, as I wrote many times.

It appears that if our hand is stronger, even if the land of Israel is in a state of destruction, that this prohibition applies. There are those who say that an idolater can acquire land in Israel, but that once Israel has the stronger hand that acquisition is invalid. There are others who say that if an idolater acquires land in Israel, the whole time that the idolater has the stronger hand there is acquisition, as will be explained, God willing, in the laws of terumah and ma'asar further on. If so, if one idolater lived on land considered pagan land, we

are not obligated to expel him, even if our hand is stronger, as will be explained there, God willing.

Regarding what the author of Sefer HaChinukh wrote here concerning the law of sale of houses will be explained, God willing, in Commandment 426, regarding the prohibition "Lo Techonem," for the prohibition of sale and "Lo Techonem" stem from this prohibition, as Rambam explained here.



Not to have compassion upon the idolater as it is written "Lo Techonem" and is explained by Rambam in Hilkhot Avodah Zarah 10. Behold, in the first chapter of Avodah Zarah, page 20, the Rabbis derive 3 things from "Lo Techonem": (1) not to show them compassion, (2) not to give them a free gift, and (3) not to give them encampment upon the land - see the Gemara where it all is written there. And behold, even though this prohibition is only stated regarding the seven nations, in all events, Rambam and the author of Sefer HaChinukh agree, as do the Tosafot in Avodah Zarah there, that this prohibition is said against all idolaters. And Rambam at the beginning of the section there wrote that it is forbidden to have mercy upon the idolater as it is written "Lo Techonem;" accordingly, if one saw an idolater drowning [he did not rescue him]. From here one learns that it is forbidden to heal an idolater even for compensation. In my opinion, the prohibition against healing for compensation needs to be investigated, for clearly the prohibition against healing for compensation is not deduced from either "no free gift" or "do not show them mercy." See page 20 of Avodah Zarah that giving to a gentile who knows him is not considered a violation of "no free gift." Similarly, on the basis of the rule "mipnei darkhei shalom," this prohibition does not apply; see the

Tosafot there. Even according to one who permits the free gift, in all events it is forbidden to raise him from the well, as we are taught in Tosafot there. But the law against a free gift does not apply when he helps him for his own benefit because it is not free - see Rabbenu Nissim regarding his liberation of his slave and so forth. Accordingly, this matter needs further exploration regarding what Rambam says about one who transgresses this. Rambam explains that it is forbidden to give them a free gift as it is written, "You shall not eat of anything that dies of itself; you shalt give it to the stranger who is in your gates that he may eat it or sell it to an alien." [Dt. 14:21] [Citations and references are given but are omitted here. They indicate that much authority counters Rambam's position. Perhaps Rambam means that "free gift" violates both a negative and positive commandment.] In all events, the matter needs further investigation since Rambam did not write in terms of issuing a judgment against the transgressor of this prohibition [but instead based it on Dt. 14:21.] Others have observed this difficulty with Rambam's position. [Citations omitted.] I have also seen that he wrote four things whereas the Talmud writes that one learned from this scripture three things, as is stated above. And this [Rambam's] prohibition of raising him out I did not find in Avodah Zarah 20a, and this needs further investigation.

Included in this prohibition is the prohibition against giving them encampment upon the land of Israel as it is forbidden to sell them a house, field, or anything connected to the land as is explained in the Gemara and the Rambam here. According to the author of Sefer HaChinukh, this law is found in the commandments of Parashat Mishpatim [Commandment 94]. It is connected to this commandment here - see the annotations. It was explained there that the Torah specifically prohibits sale, but that rental was permitted for it did not lead to encampment upon the land. The matter of one who sells for a period of time [i.e., leases] needs to be investigated. See Rambam, Hilkhos Mekhira 23, where it appears that it is possibly considered a sale and transgressed this commandment. The author of Sefer HaChinukh wrote here that if one gave him praise, there would be no specific physical punishment for such praise. According to this, giving a free gift would be a [punishable] action. But one could say that he gains a certain benefit and it would not be a free gift.

It appears it would not be a prohibition learned in the manner of a "specific example of general rule" even though three things are learned from this prohibition - but it is really just one prohibition [that is, one cannot learn further prohibitions from it by analogy].

Now behold the one who sells land in the land of Israel does not receive lashes as Sefer HaChinukh wrote in

Commandment 94. According to him, this would be a prohibition transgressed "not through a concrete action" since it is possible that it was not a transaction and this needs investigation.

In the case of Commandment 361, the prohibition of selling the tenth calf, one who actually sells a calf is not punished by lashes since the sale is held to be invalid, and thus the "seller" did not sell anything. [Minchat Chinukh then notes other cases that appear to be similar, but the sale is held valid and the seller is punished.] This matter needs further investigation.

Rambam did not include this prohibition in his Hilkhos Sanhedrin [where he lists prohibitions subject to lashes], and we need to investigate why, according to the opinion of Rambam who thought like Sefer HaChinukh regarding this rule [that giving encampment upon the land was not a sale subject to lashes]. This matter needs great investigation.

## Current Halakhic Authorities

RABBI BETZALEL ZOLTI  
POSSESSION OF THE LIBERATED TERRITORIES

The question of possession of the occupied territories is not political or economic, but halakhic at its essence. In fact, at the root of all problems one can find a halakhic issue and resolution. In order to find the halakhic resolution, one must obtain factual data; but then, Torah sages will utilize this data to determine the halakhic position.

The essence of the halakhic question regarding the return of the territories, so long as the Arabs will not recognize or make peace with Israel, is theoretical, for all agree that the territories are essential to security. However, the halakhic issue should be examined, for if there is a halakhic prohibition against the return of even an inch of the territories, then God will aid Jews in their upholding of mitzvot, including preventing gentiles from possessing the land of Israel.

A. Ramban, in his commentary on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments, discusses the continuing obligation based on Nm. 35:53 to settle the land; accordingly, possession of the territories fulfills a positive commandment.

Rambam does not include the settlement of land as a positive commandment for our times, but prohibits the return of even an inch of territory once it has been conquered. Rambam mentions that it is prohibited to sell real property, either houses or fields, to gentiles in the land of Israel, basing his position on Dt. 7:2, "Lo Techonem," that is, "do not give them an encampment on the land" for without encampment on the land their settlement there will be temporary.<sup>1/</sup>

The major question to resolve is whether giving sovereignty to gentiles over territory in which they already own houses and fields violates "Lo Techonem." One theory is that if the purpose of the law is to prevent encampment leading to permanent settlement, the law would not be applicable once permanent status on the land by the gentile had been achieved. Rabbi Shneur Zalman, who wrote Torat Chesed, was cited in the book, Zekher Simcha, by Rabbi Isaac Dov Bamburger. Rabbi Zalman, when asked whether an exchange of houses in Israel between Jew and gentile was permissible, answered in the affirmative. He reasoned that Scripture did not prohibit sale (or exchange) but "Lo Techonem," encampment. But, the prohibition of encampment rested on the presumption that the presence of gentiles on the land was temporary. Since the gentiles already had permanent presence on the land, the prohibition did not apply. He

<sup>1/</sup>Hilkhos Avodah Zarah 10:3-4



reasoned that one is not giving them any greater permanency by this exchange. Accordingly, since gentiles owned and possessed land in the territories both before and after the conquest, "Lo Techonem" would not apply to the return of gentile rule over those areas.

The opposite view is given by the Chazon Ish,<sup>2/</sup> who responded to a question whether a Jew and gentile could trade land in Israel when the Jew would gain more land in the trade. The Chazon Ish strongly rejected any type of exchange of land. He noted that there exists a positive commandment to liberate land from gentiles, but also a negative commandment not to give them land in Israel. He argued that one cannot perform one commandment through the transgression of another. Moreover, any sale of land provides encampment to the gentile and violates "Lo Techonem." Chazon Ish supports his argument on the basis of Avodah Zarah 14b. In a discussion there as to whether certain fruit (trees) may be sold to gentiles, the rabbis respond that only produce severed from the land may be sold. The Chazon Ish concluded from this passage that any land delivered to a gentile, under any circumstances, gave the gentile encampment and violated "Lo Techonem."

Rabbi Abraham Isaac Kook, in his book Shabbat HaAretz, acknowledged the position of the Chazon Ish but concluded differently, permitting sale of land to a gentile who

<sup>2/</sup>Shevi'it 24

already owned land in Eretz Israel. Rabbi Kook's position, while mere dicta, could have been based on a reading of Gittin 47a. The rabbis state there that, "If a man sells his field to a heathen he has to buy the first fruits from him and bring them to Jerusalem to prevent abuses." Rashi comments that this provision is so that a Jew will not become accustomed to selling land to a pagan; if he did make such a sale he would later attempt to repurchase the land. Yet, why should it be necessary "not to get accustomed" to a deal that should be prohibited by "Lo Techonem?"<sup>3/</sup> Further, Rashi in Gittin 44a has written that one may not make use of the money made from the sale of land to a pagan. These reasons should be enough to prevent a sale to a pagan, yet Gittin 47a permits it.

One explanation may be that Gittin 47a speaks of a sale compelled because (a) a Jew lived in a city occupied by gentiles and wanted to move, but could only sell his house to gentiles out of fear they would otherwise seize or destroy it, or (b) a Jew lived in a Jewish town and was forced to move, but no Jew would buy his house, even at an incredibly low price. But, this explanation fails on two accounts. First, Rashi speaks of "don't become accustomed," and one cannot become accustomed to a compelled sale, since

<sup>3/</sup>This question is raised in Kaftor VeFerach Section 10; there, the author resolves the dilemma by suggesting the idea of compulsion.



we assume compulsion is an isolated instance to which an individual does not become accustomed. Second, one may not transgress a prohibition because of financial reasons.<sup>4/</sup> If the negative commandment "Lo Techonem" applied, a Jew would have to be willing to use his property to prevent the transgression. Thus, Gittin 47a and the Rashi thereon apparently permit the sale of land to a gentile who already owns land itself, believing this sale does not violate "Lo Techonem."

B. The answer to the question raised in the previous section, whether or not land could be sold to a gentile already in possession of land in Israel, hinges, according to Minchat Chinukh, Commandment No. 426 on which way one interprets "Lo Techonem," as either prohibiting sale or encampment. If the essence of "Lo Techonem" is to prohibit sale, then any sale of land to a gentile violates "Lo Techonem" regardless of any land the gentile may already own. On the other hand, if the essence of "Lo Techonem" is to prevent the gentiles gaining permanent settlement on the land and the gentile already is permanently settled thereon, then "Lo Techonem" would not prohibit a sale of land, for such sale would not increase the gentile's already permanent settlement on the land.

<sup>4/</sup>Rabbi Moshe Isserles in the Shulchan Arukh, Orach Chayim 656 writes: "One must lose all one's property to avoid transgressing a negative commandment."

The difference of opinion is raised by Rabbis Meir and Jose in Avodah Zarah 20b-21a. Rabbi Meir interprets "Lo Techonem" as prohibiting "sale" and thus prohibits any kind of rental or sale of houses or land to gentiles. Rabbi Jose interprets "Lo Techonem" as prohibiting "permanent encampment," and thus, permits rentals, temporary sales and the sale of houses. The halakha follows Rabbi Jose and Rambam in Hilkhos Avodah Zarah 10:4 correctly states "Lo Techonem" prohibits encampment leading to permanent settlement; thus, once gentiles have obtained permanent settlement, the selling to them of other land does not violate "Lo Techonem."

Additional proof that Rambam believed that a temporary sale did not violate "Lo Techonem" stems from Avodah Zarah 19b in which Rabbi Meir prohibits the sale of anything attached to the land while Rabbi Judah permits the sale of attachments provided there is a stipulation to cut the product and it is cut. While the Rosh<sup>5/</sup> states the halakha follows Rabbi Meir, Rambam appears to follow Rabbi Judah in Hilkhos Avodah Zarah 10:4. There, Rambam brings "Lo Techonem" as the reason why one may not sell produce attached to the land but may sell it provided that there is a stipulation it will be cut. The reason Rambam brings in "Lo Techonem" there and not in Hilkhos Avodah Zarah 10:3,

<sup>5/</sup>Rosh, Avodah Zarah, Chapter 1, Paragraph 21.

regarding the sale of houses and fields, is precisely to show that the foundation of "Lo Techonem" is to prevent the gentile permanent settlement on the land, and a temporary sale is not covered by the prohibition.

C. A further issue is what is considered "Eretz Israel" for the purposes of "Torah and Mitzvah"; that is, to which land the laws dependent on the land apply. The major difference of opinion concerns whether the laws should be followed in all the lands conquered by those who fled from Egypt, or just those taken into possession by the returnees from Babylonian exile. The Chazon Ish, citing the Radbaz, prefers the former opinion, applying "Lo Techonem" to all lands conquered by those who fled Egypt.<sup>6/</sup> He notes that for purposes of priestly appointment, the former definition applies. However, the weight of opinion follows Rambam,<sup>7/</sup> which holds that priestly appointment is a unique situation, and that for all other purposes, laws dependent on the land refer to land taken by the Babylonian returnees. "Lo Techonem" would not apply to land originally conquered by those who fled from Egypt but not later repossessed by those who returned from Babylon, as stated in Minchat Chinukh, Commandment 94.

<sup>6/</sup>The opinion of Chazon Ish is found in Shevi'it 24, where he cites Radbaz, Sanhedrin 4:6, who in turn relies on Kaftor VeFerach.

<sup>7/</sup>Hilkhos Sanhedrin 4:6, Hilkhos Beit HaBechira 6:16 and Hilkhos Terumos 1:6 and 26.

D. The next question is whether "Lo Techonem" applies to the sale of land inside Israel to a gentile who has permanent residence outside Israel when the sale is transacted outside Eretz Israel. Rambam, in explaining the negative commandment from Ex. 23:33, "Lo Yeshvu," "do not let them settle in your land," brings in the prohibition "Lo Techonem," "do not give them an encampment." Accordingly, "Lo Techonem" is included within "Lo Yeshvu" and implies settlement by human beings. Ramban, in his explanation of the positive commandment for Jews to settle the land, writes that mere ownership of land without settlement by the Jewish owner does not fulfill the commandment.<sup>8/</sup> Accordingly, sale of land of Israel to a non-resident gentile does not violate "Lo Techonem" or "Lo Yeshvu"; an example of this is Solomon's exchange with Hiram of Tyre of 20 cities in the Galil for building material for the Temple, as related in I Kings 9:11 ff.

However, Rambam's position apparently raises redundancy and contradiction. Why need two prohibitions, "Lo Techonem" and "Lo Yeshvu"? The Sefer Mitzvah Gadol gives these as two distinct commandments,<sup>9/</sup> whereas Rambam includes "Lo Techonem" within "Lo Yeshvu." Various explanations follow.

<sup>8/</sup> Ramban, Commentary on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.

<sup>9/</sup> Negative Commandments 48 and 49, respectively.

Rabbi Chayim Benveniste in his book of commentary on the Sefer Mitzvah Gadol, explains that "Lo Techonem" prohibits the acquisition of any land in Israel by a gentile, even if the gentile lives outside Israel and "Lo Yeshvu" prohibits the settlement on the land by a gentile, in person or with property. But this position contradicts Rambam's statement that includes the principle of "Lo Techonem" within "Lo Yeshvu."

Rambam provides his own explanation in Hilkhos Avodah Zarah 10:6. "Lo Yeshvu" applies when Israel is stronger than the gentiles, in which instant, no gentile presence in Israel is permitted - permanent, temporary, or merely passing through the land - until the gentiles have accepted the seven Noachide laws. "Lo Techonem" applies when the gentiles are stronger than the Jews or have exiled the Jews. In this instance, the Jews do not have the power to exile the gentiles - merely to prevent their temporary settlement from becoming permanent by not permitting encampment.

Rabad criticizes Rambam's understanding of "Lo Yeshvu." First he argues that Rambam's proof rests on a verse that concerns only the seven nations, not all the nations of the world. Rashi, in Gittin 45a, and the Sefer Mitzvah Gadol, Negative Commandment No. 49, also state that "Lo Yeshvu" applies to the seven nations and "Lo Techonem" to all gentile nations.



Second, the plain sense of "Yeshvu" regards settlement - not merely passing through the land. Rabad's position that mere wandering is not included is supported by a passage in Shulchan Arukh, Orach Chayim 248:4, whereas Rambam's position is supported by a comment there by Magen Avraham. In any event, all agree that even temporary settlement is prohibited by "Lo Yeshvu."

Accordingly, the major difference between Rambam, on the one hand, and Rabad, Rashi and the Sefer Mitzvah Gadol on the other, concerns who falls under the prohibition of "Lo Yeshvu" with regard to temporary settlement. Rambam applies the rule to all gentiles, the others just to the seven nations. All four agree that all gentiles are prohibited from possessing land, that is gaining permanent settlement, by "Lo Techonem."

E. Gittin 44a presents the case that when a Jew sells a house to a heathen, the Jew is forbidden to receive the money. But, if the house is forcibly taken from the Jew and cannot be recovered, the Jew may receive the money and a deed is made out - it is as if money were rescued from the heathen's hand. Rashi adds: this concerns a house in the land of Israel where "Lo Techonem" applies. Rabbenu Tam adds: even though it appears as if one were selling a house to a heathen. Thus, it appears that in cases of compulsion, "because it rescues money from their hand," "Lo Techonem"

does not apply. From here, Kaftor VeFerach argues that "Lo Techonem" does not apply in a case of loss of money.

However, one may not stretch the sense of "compulsion" and "saving money" to any instance of losing money. Rather, compulsion indicates no longer having control over the disposition of one's property. One cannot even talk of "buying and selling" in these circumstances.

Rambam does not consider "Lo Techonem" as applying to buying and selling but providing a sense of permanence on the land. Indeed, even though one has been compelled, the signing of the deed has given a sense of legitimacy to the transaction, making the acquisition permanent, and apparently violating "Lo Techonem." The Tosafot do not apply "Lo Techonem" in this instance of compulsion because permitting the sale "rescues money." Rashi could mean that the essence of "Lo Techonem" refers to sale but that it does not apply here because one does not actually sell something not in his control. Or, Rashi could mean "Lo Techonem" concerns permanence on the land but that it does not apply where land has already been seized and possessed by the heathen.

Rambam refers to this Gittin 44a passage in Avodah Zarah 9:13, where he states that, "If one sold a house to an idolater, the price was forbidden property and had to be cast into the Dead Sea. But if idolaters forced an Israelite, embezzled his house and stuck up an idol in it,

the price was allowed and a complaint could be sent to their courts." The Kesef Mishna believes that Rambam applied this passage to idolaters outside the land of Israel based on the laws of idolatry, whereas Rashi and the Tosafot applied the passage to idolaters in the land of Israel based on "Lo Techonem." He reasons that if Rambam had thought "Lo Techonem" applied, he would have permitted the proceeds outright. This argument implies, in accord with Kaftor VeFerach, that in a case of loss of money, "Lo Techonem" does not apply, But this position was rejected by Rabbi Isserles, supra.

Rather, the application of "Lo Techonem" in Gittin 44a is rabbinic, not Toraitic. It is rabbinic, because of the appearance of sale. It is not Toraitic, because the gentile already has permanent settlement on the land as indicated by his ability to seize the land and compel the sale. Since the problem is the appearance of sale and the rabbinic application of "Lo Techonem," the rabbis can permit the enjoyment of the proceeds of the sale. However, no concern over loss of money could override the application of Toraitic "Lo Techonem."

The prohibition of "Lo Techonem" is as Rambam indicated - to prevent temporary settlement from becoming permanent by giving gentiles encampment. The essence of the rule does not regard the sale of land, but rather giving the gentile something which makes temporary settlement permanent.



Clearly, giving the Arabs sovereignty over land they own and possess before and after conquest is to make their settlement more permanent and is thus prohibited by "Lo Techonem." Even if they have full rights under Israeli sovereignty, their settlement will be less permanent than if they themselves have sovereignty.

As a final point, a dispute exists as to whether or not the prohibition of "Lo Techonem" applies to resale to gentiles of land previously owned by them. Rabbi Samuel Edels suggests that based on Gittin 47a, it may not. Rabbi Ephraim Mazolus correctly challenges this position based on Avodah Zarah 14b.

All in all, the Torah forbids the return of even an inch of Israeli soil to the gentiles. "Lo Techonem" prohibits the return of sovereignty to Arabs of the land, whether Jerusalem, Judea or Samaria. Economic and other non-halakhic considerations are irrelevant. While "Lo Techonem" does not apply to the Sinai, security reasons demand that it be kept.

RABBI ELIAHU BAKSHI-DORON:  
TRANSFER OF LAND OF ISRAEL TO GENTILES

[In a brief introduction, Rabbi Bakshi-Doron sets a somewhat obstreperous tone in which he argues that the commandment to settle the land is a commandment for all times. He notes that the territories should be an eternal possession, but that there are those who consider their return. While there are governmental, security and social aspects to the problem essentially it is a halakhic one.]

There are two aspects to every transfer of land - the termination of the seller's ownership and the commencement of the buyer's ownership. When speaking of a land transfer in Israel, both are bad. The first removes Jewish ownership and the second gives gentiles permanent ownership. The commandment to settle the land (a positive command according to Ramban)<sup>1/</sup> depends on possession and ownership. More than moving to land or conquering it, one must actually settle, possess and own it.

Even though other early sages like Rashi viewed this settlement not as a command but as a promise,<sup>2/</sup> the settlement of the land is viewed by them as a condition precedent to fulfilling the many commandments dependent on the land. For example, the tithes and offerings are not

<sup>1/</sup>Ramban, Commentary on Nm. 33:53 and Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.

<sup>2/</sup>Rashi, Commentary on Nm. 33:53

given when the land is owned by gentiles and not Jews, negating the holiness of the land. An example of this is Ramban's comment on the Jubilee year in Lv. 25:23-24, in which Jews are commanded not to sell the land in perpetuity, for ultimately the land is God's and the Jews are God's stewards.

Additionally, there are many takanot in the Talmud concerning the importance of settlement of the land - in the Bavli (Gittin and Shabbat) and Yerushalmi (Moed Katan).<sup>3/</sup> A passage from the latter is brought in Shulchan Arukh, Orach Chayim 306:11, where it is permitted to execute a deed on Shabbat in order to buy land from a gentile. The early rabbis, such as Rashba, Ramban and Isaac b. Sheshet stated that this exception to writing on Shabbat was limited to the purchase of land in Israel. The exception demonstrates the unique importance of the land to all of Israel, for all times, so that the land should not be settled permanently by gentiles (the words of Rabbi Issac b. Sheshet).<sup>3/</sup>

Also, as Rabbi Abraham Bornstein writes in Aglei Tal, the purchase of land from the gentile is like an individual conquest. Just as commanded wars to liberate the land override the Sabbath, so too does individual liberation of the land through purchase override the Sabbath. Accordingly, to sell the land would be the worst kind of withdrawal.

<sup>3/</sup>No specific citations given.

Thus, the rabbis have built a fence around the Torah. The profits from the sale of a house are not permitted (Gittin 44a and Rambam, Hilkhoh Avodah Zarah 9:13).

The second aspect of the sale is giving ownership of the land to a gentile, which is a violation of "Lo Techonem," not to give the gentile an encampment upon the land (Dt. 7:2). Similarly, one cannot sell the gentile attachments on the land but can sell them movables (Mishna, Avodah Zarah 1:8). Further, one cannot sell gentiles houses or fields in Israel, while one may lease a house in Israel or sell houses or fields outside Israel. All these rules are based on "Lo Techonem" - keep their settlement temporary.<sup>4/</sup>

A question exists whether "Lo Techonem" should be limited to its Scriptural context of the seven nations (as the Sefer Mitzvah Gadol writes)<sup>5/</sup> or against all gentiles as the majority of the early rabbis, including Rambam,<sup>3/</sup> Tosafot,<sup>6/</sup> Ramban<sup>3/</sup> and the author of Sefer HaChinukh <sup>3/</sup> argue. The Tosafot limit the first half of Dt. 7:2, "Do not make a covenant with them," to the seven nations, as indicated by the Scriptural context. However, they argue that the second half of Dt. 7:2, "Lo Techonem," applies to

<sup>4/</sup>Citing Talmud Bavli, Avodah Zarah 19b-21a and Rambam, Hilkhoh Avodah Zarah 10:3 and 4.

<sup>5/</sup>Actually Sefer Mitzvah Gadol limits "Lo Yeshvu" to the seven nations but in unclear words apparently applies "Lo Techonem" to all idolaters - see his Negative Commandments Nos. 48 and 49.

<sup>6/</sup>Bavli, Avodah Zarah 20a, Tosafot comment beginning "As Scripture states".

all gentiles, since regarding that law there is no logical reason to differentiate between the seven nations and other gentiles. They reason that "Lo Techonem" derives from Israel's ownership of the land, so therefore, all competing claims are forbidden.

Ramban and Sefer HaChinukh argue against the sale of land in Israel to the gentile not only on the basis of "Lo Techonem" but also "Lo Yeshvu." Rambam includes "Lo Techonem" within his Negative Commandment No. 51, "Lo Yeshvu." The doubling of the prohibition by the Torah and Ramban causes much commentary. In Mishmeret HaMitzvot, Rabbi Benvenisti says that the prohibition of settlement stems from "Lo Yeshvu." "Lo Techonem," prohibiting encampment, is really a support for "Lo Yeshvu," for there are other commandments learned from Dt. 7:2.

Rabbi Chayim Benvenisti in his book Dina DeChaye (commentary on the Sefer Mitzvah Gadol) disagrees. He notes that the Mishna and Gemara specifically mention "Lo Techonem." The difference between "Lo Yeshvu" and "Lo Techonem" is that "Lo Yeshvu" prevents settlement and residence of the gentile on the land and is concerned with gentiles leading Jews astray into idol worship as is written in Ex. 23:33. On the other hand, Dt. 7:2 does not mention idolaters leading Israel astray. Thus, "Lo Techonem" is to prevent the sale of any possessory interest in the land to

gentiles - it is concerned with the holiness of the land and its ownership.

Rashi and Rabad say "Lo Yeshvu" concerns the seven nations and "Lo Techonem" all gentiles.

Rambam says "Lo Yeshvu" prohibits any gentile presence on the land while Jews have superior strength, while "Lo Techonem" prohibits permanent settlement when Jews are in an inferior position.<sup>7/</sup> Rambam's position that "Lo Yeshvu" prohibits any gentile presence on the land, even temporary, when Jews have superior strength, is a creative broadening of the law on his part. Rabad criticizes Rambam for his extension of "Lo Yeshvu" beyond permanent settlement.

One must ask to whom these prohibitions apply when not following the position of Rashi and Rabad and whether any sales of land to any gentiles are permitted. Rambam says they apply to those who have not accepted the seven Noachide laws. If a gentile has accepted the laws he becomes a resident stranger - but a resident stranger can only be accepted in the time of the Jubilee. Therefore, the prohibition of sale applies to all gentiles. The Chazon Ish supports this position of Rambam.<sup>3/</sup>

On the other hand, there are those who limit Rambam's words to the seven nations and to other nations that practice idolatry. They believe the essence of the

<sup>7/</sup>The positions of Rambam and Rabad are found in Ramban, Hilkhos Avodah Zarah 10:6 and Rabad's comment thereon.



prohibition is "lest they lead you astray to worship other gods." Indeed, in context, "Lo Yeshvu" and "Lo Techonem" apply to the seven nations, and only by reasoning of the Tosafot was "Lo Techonem" extended to all the nations, considering them to be idol worshippers. Others have said Muslims, who do not worship figures and believe in one God, are not idol worshippers and not considered within "Lo Techonem." There are those (such as Rabbi Raphael b. Samuel Meyuchas, the author of Mizbach Adamah) who sold and permitted to be sold, according to this reasoning, land to the Arabs. Later authorities, relying on the words of Mizbach Adamah, have also permitted sales of land to the Arabs.<sup>3/</sup>

Additional support of sale of land to gentiles is found in Kaftor VeFerach, who permits the sale of land by a Jew to a gentile when a Jew is compelled to sell at great loss, having no available option to sell to another Jew.

Others have criticized this approach for the commandment "Lo Techonem" is a negative commandment that should not be overridden because of economic pressure. In a recent case, land was purchased to build a hospital and later the project became infeasible. No Jews wanted to buy the land. Some rabbis at first were willing to permit a sale to gentiles, relying on Kaftor VeFerach. Later, they changed their mind when another rabbi convinced them that loss to the public

could not be considered as loss to a poor person - there was no economic compulsion.

It is important to recall that permitted sales are to "Ishmaelites" who are not considered idol worshippers. For idol worshippers, a Jew is not even permitted to lease a house. To permit idol worship on the land is at the extreme opposite of settling the land. Jews are obligated to uproot idol worship on the land and to settle the land because of its holiness.

In summary: Selling the land to a gentile in Israel (i) transgresses the commandment to settle the land; and (ii) undermines the holiness of the land and all commandments dependent on it. Further, if talking of idol worship, one has the additional commandment of "Lo Yeshvu" and "Do not bring an abomination into your house." In essence, the redemption of the land by its acquisition from gentiles is at the heart of the commandment to settle the land. The redemption of the land permits its becoming sanctified by performance of commandments dependent on the land. The redemption must be eternal, for the settlement of the land is equal to all the commandments of the Torah.



RABBI YAKOV WARHAFTIG  
"LO TECHONEM" - ITS MEANING IN MODERN ISRAEL

With the establishment of the Jewish State, the problem of "Lo Techonem," concerning the relations of the Jewish people with the nations of the world, has arisen. There are four prohibitions within "Lo Techonem": (1) Do not have compassion upon them, (2) Do not give them encampment upon the land, (3) Do not show them mercy, and (4) Do not give them a free gift. The variant meanings come from the different possible vocalizations of the word, for the letters are the body of the word, and the vowels are its soul.

The first issue is whether all or part of the prohibitions are Toraitic or rabbinic. Based on Avodah Zarah 19b and 20b, it appears that encampment, mercy and free gift are all Toraitic prohibitions. Yet, the transfer of cities by Solomon to Hiram (I Kings 9:11 ff. and II Chronicles 8:2) would apparently violate "Lo Techonem" leading one to conclude the prohibitions are rabbinic. But the commentators, particularly Abravanel, have resolved the difficulty. Solomon did not give Hiram sovereignty over the cities - just the right to the produce therefrom. However, once again, the laws appear to be rabbinic based on Gittin 47a. There, the sale of a field to an idolater is discussed and seems permissible. Rashi comments that the Jewish seller is obligated to return and buy the first fruits and

bring them to Jerusalem to prevent abuses in the practice of these sales. Thus, at the Talmudic level it is difficult to ascertain whether or not "Lo Techonem" is Toraitic.

Accordingly, one must investigate whether "Lo Techonem" was included by those who compiled books of commandments.

Rav Sadya Gaon did not include "Lo Techonem," "Lo Yeshvu" or "Lo Techye" (Dt. 20:16-17) among his book of commandments. But Rabbi Perle, in his commentary on Sadya's work, states that Sadya's negative commandments Nos. 13 and 14, which require that a Jew does not make a covenant with or marry a gentile are general prohibitions that include the warning of "Lo Techonem" and so forth.<sup>1/</sup> According to Rabbi Perle, Toraitic "Lo Techonem" means to show no mercy toward the seven nations - that is, to kill them - and all other interpretations of "Lo Techonem" are rabbinic. However, the Toraitic prohibition of "free gift" could be based on "Lo Yeshvu."

Rambam, in his Sefer HaMitzvot, Negative Commandment No. 50, discusses the warning not to have compassion upon the idolater as coming from "Lo Techonem." In Negative Commandment No. 51, he discusses the prohibition of gentile settlement on the land as coming from "Lo Yeshvu," which is understood through "Lo Techonem" - do not give them encampment. In Mishneh Torah, Hilkhos Avodah Zarah 10:4, he

<sup>1/</sup>See footnotes 16 and 17 on page 196 of Warhaftig's article.

addresses the issue of not making a covenant with an idolater or showing him compassion. Here, he brings in also all the other meanings of "Lo Techonem," except that he derives the prohibition of the free gift from Dt. 14:21 and "encampment" is included also within "Lo Yeshvu." It appears that while all the prohibitions for Rambam are Toraitic, the literal interpretation of "Lo Techonem" is "not showing compassion" and the other interpretations of it are midrashic [which accounts for their absence from Sefer HaMitzvot].

Rabbi Benvenisti, in Dina DeChaye, states that Rambam understood "Lo Techonem" as prohibiting compassion upon the seven nations; the other interpretations of it were midrashic.<sup>2/</sup> Similarly, Rabbi Perle understood Rambam - with the prohibition of "free gift" Toraitically based in Dt. 14:21.<sup>3/</sup> The prohibition of encampment was Toraitically based on "Lo Yeshvu."

Sefer HaChinukh bases "not showing compassion" upon "Lo Techonem"<sup>4/</sup> and "not permitting encampment" upon "Lo Yeshvu."<sup>5/</sup> Minchat Chinukh prohibits sale upon "Lo Techonem" as did Mishneh LeMelekh, who believed that

<sup>2/</sup>Dina DeChaye, Neg. 48 (58a).

<sup>3/</sup>In his comments on Sadya, see footnote 1, above.

<sup>4/</sup>Commandment 426.

<sup>5/</sup>Commandment 94.

according to Rashi, the prohibition of "Lo Yeshvu" referred to the seven nations and no longer applied.<sup>6/</sup> The prohibition of sale was Toraitic, based on "Lo Techonem" and applied to all nations.

The Sefer Mitzvah Gadol noted "Lo Techonem" could be interpreted 3 ways: prohibiting encampment, compassion and mercy, leaving out the prohibition of free gift.<sup>7/</sup> In all events, the Sefer Mitzvah Gadol understands the prohibitions as Toraitic.

The remainder of authorities, including the Rif<sup>8/</sup> and the Rosh,<sup>9/</sup> also understand all the prohibitions of "Lo Techonem" as Toraitic. Similarly, authorities of this time believe the prohibitions of "Lo Techonem" are Toraitic (although the basic use they make of them regards sales of land during the sabbatical year. Rabbi Ovadiah Yosef brings in a teshuvah of Radbaz implying the prohibition of sale based on "Lo Techonem" is rabbinic).

The second issue is the four aspects of "Lo Techonem." First of these aspects concerns the prohibition of showing favor, which includes "showing mercy" - saving the life of and healing any person of the seven nations. "Not showing

<sup>6/</sup>In their commentaries on Sefer HaChinukh, Commandment No. 94.

<sup>7/</sup>Negative commandment 48.

<sup>8/</sup>Avodah Zarah 5b (according to Rif's pagination).

<sup>9/</sup>Avodah Zarah, Chapter 1, paragraph 17.

mercy" is interpreted according to the literal, contextual meaning of Dt. 7:2: Do not permit any member of the seven nations to live.

Not saving the life generally means that if an idolater is drowning in a well or river, he should not be saved. Rambam, in Hilkhos Avodah Zarah 10:1, further adds the prohibition of making a peace treaty with a member of the seven nations. A difficulty arises as to whether this prohibition of not saving the life applies to just the seven nations or all idolaters. Given Rambam's position concerning the prohibition of healing (applying it to all idolaters), his restricting the prohibition of not saving the life to a member of the seven nations appears inconsistent. Furthermore, nearly all other authorities apply the prohibition to all idolaters. In any event, this prohibition would not apply to Arabs who are not considered idolaters.

"Not providing a cure" is derived by Rambam from the prohibition of "not saving a life" and is applied by all authorities to all idolaters (including Christians, excluding Muslim Arabs). A broad exception to the rule is made on account of saving a life: if a Jewish doctor did not help a Christian patient, then the reverse would hold true, endangering Jewish life.

The second aspect of "Lo Techonem" is "do not give them encampment." An initial difficulty is to whom this

prohibition applies. The Tosafot, commenting on Avodah Zarah 20a, apply the prohibition to all idolaters, although the Toraitic context is restricted to the seven nations. They note that other passages requiring the destruction of the seven nations can be found in the Torah, such as Dt. 20:16-17. Therefore, prohibitions of the free gift, showing compassion and encampment, the essence of which do not differentiate between the seven nations and all idolaters, apply to all idolaters. The vast majority of authorities accord with the position of the Tosafot, including Rambam, Sefer Mitzvah Gadol and Sefer HaChinukh. Those who hold the prohibition to be Toraitic apply it rabbinically from idolaters to all gentiles; those who hold the prohibition to be rabbinic, such as Sadya, apply it to all idolaters. Most modern authorities follow the position of the Tosafot. The question is whether the prohibition applies to idolaters or all gentiles. Rashba<sup>10/</sup> and Bach<sup>11/</sup> limit the prohibition of free gift to idolaters and their reasoning and conclusion would be the same regarding encampment. There are others who limit the prohibition to

<sup>10/</sup>Rashba, Vol. 1, No. 8.

<sup>11/</sup>Choshen Mishpat 249.



idolaters, and those such as Minchat Chinukh <sup>12/</sup> and Chazon Ish<sup>13/</sup> who apply it to all gentiles (on the basis of Tosafot Avodah Zarah 20a and Shulchan Arukh, Yoreh Deah 151:8). In their opinion, those who applied the prohibition of encampment only to idolaters did so solely in terms of sales during the sabbatical year.

The next problem concerns to what land the prohibition of encampment applies. Minchat Chinukh connects the prohibition to the holiness of the land and applies it to the land seized by the immigrants from Babylon.<sup>14/</sup> Rabbi Avraham Kook connects the prohibition to commandments dependent on the land, which leads him to the same conclusion as Minchat Chinukh.<sup>15/</sup> Chazon Ish states that Rambam would apply the law to anywhere Jews reside, but as a matter of practicality limits it to "our land of Israel"; therefore, the land must be defined as broadly as possible and the law applies to the areas conquered by the immigrants from Egypt.<sup>16/</sup>

Numerous exceptions to the prohibition of encampment have been suggested by some: (a) when the sale benefits the

<sup>12/</sup>Commandments 284 and 285.

<sup>13/</sup>Shevi'it 24.

<sup>14/</sup>Commandment 94.

<sup>15/</sup>Shabbat HaAretz, Introduction, Section 12.

<sup>16/</sup>Shevi'it 24.

Jew - this has been deduced from similar exceptions regarding the free gift and healing, but the reasoning does not apply here, for even in a prohibited sale of land, the proceeds would benefit the Jew, and thus, additional benefit is not a reasonable exception;<sup>17/</sup> (b) when the sale is compelled - Kaftor VeFerach brings this exception based on Talmud Yerushalmi Avodah Zarah 1:9, but his position is challenged by the Gaon from Lublin;<sup>18/</sup> (c) when the gentile already owns land in Israel - many have suggested once the gentile owns land, his encampment cannot be further prevented, but many others have rejected this exception;<sup>19/</sup> (d) when the land sold has previously been acquired by a Jew from a gentile - Rabbi Shmuel Edels stands alone in this dubious exception (even he may have meant only when the original intent was resale to the same gentile);<sup>20/</sup> (e) when the land is sold to a gentile residing outside the land - Rabbi Perle, among many others, notes that the intent of the prohibition is to prevent settlement on the land and a gentile outside the land does not settle the land of Israel by mere ownership (the reasoning for this exception is similar to that in (f) below);<sup>21/</sup> and (f) when land is

<sup>17/</sup>See footnotes 97-103 in Warhaftig, p. 204.

<sup>18/</sup>See footnotes 104 and 105 in Warhaftig, p. 204.

<sup>19/</sup>See footnotes 106-109 in Warhaftig, pp. 204-205.

<sup>20/</sup>See footnotes 110-112 in Warhaftig, p. 205.

<sup>21/</sup>See footnotes 113-117 in Warhaftig, p. 205.



exchanged with the gentile - this exception applies when both parcels are in Israel on the basis that the gentile already resides there, but has been rejected when the parcel the gentile is exchanging lies outside the land.<sup>22/</sup>

The last problem in understanding the prohibition of encampment is to define whether it prohibits the actual sale of land itself or the actual taking possession of land. Minchat Chinukh believed it prohibited the actual sale, so the major issue for him was whether or not the sale was effective.<sup>23/</sup> The Gaon of Lublin believed that it was the result of a sale of land that was prohibited, that is, that the gentile acquired encampment upon the land.<sup>24/</sup> Thus, details of sale were not important, and sales that did not lead to encampment, such as for the term of a sabbatical year or to a gentile not on the land, were permitted. Any acquisition of encampment, whether by sale or other means, was prohibited.

The most important application of the law in these times concerns whether "Lo Techonem" prohibits the return of territory conquered in the Six Day War. As noted above, most authorities consider the prohibition Toraitic and it must be applied strictly. Yet the doctrine of saving a life

<sup>22/</sup>See footnotes 117 and 118 in Warhaftig, p. 206.

<sup>23/</sup>Commandment 426.

<sup>24/</sup>In his book, Zecher Simcha, section 297.

militates against the severity regarding other applications of the law, such as do not heal, and also generally overrides other laws of Torah. As Rabbi Ovadiah Yosef noted in Torah Sh'Bal Peh, Vol. 21, the matter of what will protect life should be determined by people expert in political and security considerations.

Furthermore, while many of the above exceptions may be applied to the issue of return of territory, it must be recalled that opinion is divided as to the correct rule. There are those who permit sale of land to the gentile for the good of the Jew, which return of the territories may be. Similarly, if this is seen as a matter of compulsion, there are those who would permit return of the territories. There are those who argue that "Lo Techonem" does not apply to Muslims. There are those who would permit return of the territory on which the gentile already resides, although a problem arises over governmentally held lands. There are those who would not apply "Lo Techonem" to those already owning land in Israel. Despite all the differences of opinion, these exceptions must be seen together, along with the need of saving a life.

But, the concept of saving a life can be understood on either an individual or community level. The community is obligated to fight war, even though individual soldiers will die as is discussed in Shevuot 35b. Essentially, the number of sacrifices in Israel does not prove any exception to "Lo

Techonem," and so have ruled Rabbis Goren and Aaronberg and the first Rabbinic Council.

[Warhaftig considers the problems of burial of dead and rental of apartments, both subjects beyond the purview of this thesis. He then addresses the third and fourth aspects of "Lo Techonem": do not give them favor and do not give them a free gift, also beyond the purview of this thesis.]

RABBI BEN TZION KRIEGER  
RETURN OF CAPTURED TERRITORIES

A. The commandment to settle the land in our time.

Ramban clearly enumerates as a positive commandment for all times the obligation to settle the land. The commandment to settle the land includes not leaving the land to others and not living outside the land.<sup>1/</sup>

Rambam does not enumerate as a commandment the obligation to settle the land. Megillat Esther explains that Rambam considered settlement was commanded from the time of Moses until the exile, but that the commandment lapsed until the coming of the messiah, according to Ketubot 111a, "for the Jews should not revolt among the nations." An examination of this perspective shows that the primary rationale for suspension of the commandment is that "Jews should not revolt among the nations."<sup>2/</sup> In these times, when Jews have the right among the nations to return to

<sup>1/</sup>Ramban's commentary on Nm. 33:53 and on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.

<sup>2/</sup>Megillat Esther on Rambam's Sefer HaMitzvot, Commentary on Ramban's Addendum No. 4.

their land and are no longer subservient to those nations, Rambam, too, would consider settlement commanded.<sup>3/</sup>

There are many passages from the Mishneh Torah that support the position that Rambam would consider settlement commanded in our times and that Megillat Esther's words concerning "the time of the Messiah" are unnecessary gloss on the matter. These passages include laws giving a spouse the right to divorce when the other spouse will not join in aliya and similar rights given to a servant. Rambam also enumerates many laws that are dependent upon settlement of the land.<sup>4/</sup> Thus, despite the words of Megillat Esther, Rambam believed the obligation to settle the land was commanded during the exile.

The reason Rambam did not list settlement as a commandment must be explored. Some, such as Rashbash and Kenneset HaGedolah explained Rambam considered the commandment rabbinic, not Toraitic.<sup>5/</sup> Some, such as Avnei Nezer, explained Rambam considered the commandment Toraitic but included it elsewhere, such as within "Lo Yeshvu" or

<sup>3/</sup>There are many who criticize Megillat Esther's understanding of Rambam, including Rashbash and Avnei Nezer; there are also many who advance the argument that with the permission of other nations, Jews are no longer "subject to them" and have the obligation to settle the land notwithstanding Ketubot 111a. See notes 4 and 5 in Krieger's article for further citations.

<sup>4/</sup>Rambam, Hilkhhot Iishut 13, Hilkhhot Avadim 8:9, Hilkhhot Shvittah V'Yovel 4:27, Hilkhhot Shabbat 6:11.

<sup>5/</sup>Rashbash, Teshuvot Nos. 1 and 2; Kenneset HaGedolah, Yoreh Deah 239.

Birkat HaMazon.<sup>6/</sup> Some say while the commandment is Toraitic, it is a general principle.<sup>7/</sup> Rambam does not count the reason or goal of a commandment as a commandment, nor a general commandment as a commandment, as explained in the third principle of the introduction to his Sefer HaMitzvot. Finally, some argue that while the commandment exists it is not compulsory - that is, like tzitzit, one should perform the commandment, but there is no penalty for nonperformance.

The Tosafot on Talmud Bavli, Ketubot 110b, cite Tosefta Ketubot 12:12 concerning the lapse of the law that permitted a spouse making aliya to divorce a spouse who refuses to make aliya. The Tosafot write that the law has lapsed because of the danger of the route; Rabbi Chayim HaCohen writes that it has lapsed because of the difficulty of performing commandments dependent on the land. Not one halakhic authority cites Rabbi Chayim's position as law. On the contrary, he is severely criticized by all. Moreover, according to Rabbi Chayim's reasoning, regarding ability to perform commandments dependent on the land, now settlement would be commanded because many commandments dependent on the land can be performed there as opposed to the diaspora.

<sup>6/</sup>Avnei Nezer, Teshuvot Orach Chayim, Part 2, Chapter 535.

<sup>7/</sup>E.g., Teshuvot Tzitz Eliezer, Part 7, Chapter 48.

Most halakhic authorities, whether following Ramban or Rambam, rule that the commandment to settle the land applies in our times.

B. The definition of the commandment.

According to Ramban, the commandment requires Jews to (1) dispossess all other inhabitants of the land and (2) settle upon the land. This commandment devolves upon the individual and the community. When Ramban speaks of conquest, he does not mean specifically by war. "Conquest" implies taking possession by war, settlement on open land or acquisition.

There are those who state that the commandment specifically requires acquisition of the land, whether by war or purchase. The most correct approach is that of Rabbi Mohliver.<sup>8/</sup> He states that the most important aspect of the commandment is taking possession of the land - in the time Israel was an integral nation, by war, and in this time, through purchase. The second aspect of the commandment requires settlement of the land, which includes dwelling on the land and developing it. Developing the land means planting vines, building houses and sowing crops, among other things. While taking possession, dwelling upon and developing the land fulfill the commandment in its entirety, each aspect of the commandment is independent.

<sup>8/</sup>Rabbi Mohliver's comments are brought by Rabbi Avraham Isaac Slotzky in Shivat Tzion, pp. 7-16.



Rashbash discusses the central aspect of the commandment, as actual dwelling on the land. Dwelling must be preceded by aliya to the land and generally leads to planting trees and building houses on the land. While Rashbash does not specifically discuss the requirement of acquiring land, his words imply that the essence of the commandment requires specifically dwelling upon it, not necessarily acquiring it.

Ramban, also, does not require specifically the acquisition of the land as necessary to fulfill the commandment to settle it. Ramban distinguishes the commandment to wipe out the seven nations, which commandment permits Jews to make peace with them if they renounce idolatry and subjugate themselves to the Jews. The conquest of the land is still considered complete if there is Jewish sovereignty over it - whether or not all the land is specifically acquired. Rambam's comment in Mishneh Torah, Hilkhos Melakhim 6:2 also supports the idea that the essence of settlement of the land requires sovereignty over it, not necessarily taking title of it.

There is further division of opinion as to whether the commandment devolves upon the individual or the community or both. Rashbash responds to Megillat Esther's criticism of Ramban (that the commandment cannot apply according to Ketubot 111a), stating that the commandment

devolves upon individuals.<sup>9/</sup> The "great one" of Minsk wrote the opposite, that the commandment devolved upon the community with the limitation of the oath of Ketubot 111a not to revolt among the nations.<sup>10/</sup> Some suggest that in principle the commandment devolves upon the community and through the community upon the individuals, but the difficulty with this position is that if the oath of Ketubot 111a suspended the community obligation then there no longer exists an obligation that devolves upon the individual.

The best approach is that the commandment obligates both the community and individuals. Now, with the establishment of the State with the support of the United Nations, the oath regarding the community no longer applies. Instead, the commandment applies to individuals and the community in all its aspects: conquest, whether by war or purchase, dwelling and development.

C. The land to which the commandment applies.

There are those, such as Rashbam on Baba Batra 71a, who state that the commandment to settle the land is based upon the ability to perform commandments on the land. The commandments dependent on the land concern that land possessed by the immigrants from Babylon.

<sup>9/</sup>Rashbash, Teshuvot, No. 1.

<sup>10/</sup>Sinai, Volume 6, pp. 210-221.

Many others argue that the commandment to settle the land is based upon the holiness of the land and concerns all the land promised to the Jews or at least the land possessed by the immigrants from Egypt.<sup>11/</sup> This is the majority view of authorities, both early and late, who believe that the commandment of settlement is independent from other commandments and connected to the sanctity of the land.

D. The land upon which gentiles reside.

There are those who suggest that political or military rule without actual ownership of the land does not fulfill the commandment to settle the land. They then argue that delivery of those lands to the gentiles does not violate the commandment to settle the land. This argument is fundamentally wrong. Even if the first premise were true, it would be incumbent upon Jews to purchase the land and settle it. Just because the entire commandment is not fulfilled does not lead to the conclusion that areas where it can still be fulfilled or has been fulfilled should be abandoned. In any event, according to Ramban (Section B above) sovereignty over the land is sufficient to fulfill the commandment of settlement. Furthermore, it is an egregious error to think that just because gentiles live on the land it belongs to them. The land is specifically

<sup>11/</sup>E.g., Ramban in his commentary on Sefer HaMitzvot and Dt. 1:7.

called the "land of Israel"; it belongs to the people of Israel, the Jews, as an eternal possession.<sup>12/</sup> When the government or individuals within Israel purchase land from gentiles, it is not because Jewish law requires that, but rather so as not to give the nations of the world an opening to say that Jews are murderers and thieves in their acquisition of the land.

E. The conquest in light of saving a life.

Rabbi Tzvi Yehuda Kook wrote many times that the conquest of the land requires a Jew to die so as not to transgress the commandment. Generally, die so as not to transgress applies only to the commandments against murder, idolatry and sexual transgression. However, it also applies to any commandment when the Jew is being forced to transgress the commandment as a sign of rejection of his religion.<sup>13/</sup> Rabbi Kook saw the wars of the Arabs and other nations over the generations as being based on deep hatred of Jews. The purpose of the wars was not solely to remove the Jews from the land, but also to destroy the Jews and their Torah. That the other nations do not want the land can be seen from its wanton desolation while the Jews were

<sup>12/</sup>Krieger quotes Rav Neriah's use of the Geonic legal fiction that "all Jews possess at least 4 cubits of the land of Israel." This fiction was developed solely in order to serve the purpose of commercial transactions in the Diaspora. Here it becomes a basis for claim of political sovereignty.

<sup>13/</sup>Sanhedrin 74a.

exiled from it. That it is a religious issue is seen from the fact that a Jew who lives outside the land is considered as an idolater, without God (Ketubot 110b).

While most authorities do not support Rabbi Kook's position, it has been the motivating rationale employed by the people and government of Israel in all their wars. Each soldier fights with strength, knowing that the potential sacrifice of his life is to insure the survival of the people of Israel. In many early sources it is written that the settlement of the land is equivalent to all other commandments, and that its importance requires the sacrifice of one's life.<sup>14/</sup>

Given the importance of the commandment - its application for all times to all the land of Israel - Jews cannot be pressured or threatened into giving the land away. Every country and people defends itself to preserve its land and existence thereon - in the halakha this is called commanded war.<sup>15/</sup> Any war, whether commanded or permitted to be fought, requires the sacrifice of life, as is learned from Sefer HaChinukh and Minchat Chinukh.<sup>16/</sup>

<sup>14/</sup>Kaftor VeFerach, Luntz edition, p. 218, commenting on Mekhilta, Yitro, Section 6.

<sup>15/</sup>See Eretz Chemda, p. 47; Rabbi Avraham Elkana Cahana Shapira in Morasha, Vol. 9.

<sup>16/</sup>On Commandment 425.

The prohibition of withdrawing from the territories results from the commandments to settle the land of Israel and to defend the land against attack. Those who argue that return of part of the territory will preserve the rest of it have the burden of proof. They must prove that under the current situation, Israel is threatened with destruction and that peace treaties will remove this threat. There is no serious group within Israel that believes that delivery of territory to the enemy is the only method to preserve the people.

F. The applications of "Lo Techonem." [The author cites the article by Warhaftig and summarizes it as follows.]

There are four prohibitions included within "Lo Techonem":

- (1) Do not give them encampment upon the land;
- (2) Do not give them favor;
- (3) Do not give them a free gift; and
- (4) Do not show them compassion or mercy.

There are three positions as to whom this law applies:

(1) The seven nations, as indicated by the plain meaning of the Scriptural text;

(2) All idolaters, based on Tosafot Avodah Zarah 20a that states there is no difference between the seven nations and other idolaters; and



(3) All gentiles, according to the opinion of Sefer HaEshkol, Rambam and a majority of authorities.

Sales of land have been permitted on a temporary basis to preserve Jewish settlement in light of the sabbatical year, both by Rabbi Abraham Isaac Kook and his son Rabbi Tzvi Yehuda Kook. But the latter was on record as opposing any permanent transfer of land to the enemy, which is a different issue and clearly a violation of "Lo Techonem."

A distinction must be made between "Lo Techonem" and "Lo Yeshvu." In Dina DeChaye, commentary on Sefer Mitzvah Gadol, Commandment No. 48, it is explained that "Lo Yeshvu" prohibits settlement of the foreigner on the land, in person and with property, and "Lo Techonem" prohibits the possession of any land, even when the foreigner lives outside the land. Dina DeChaye cites Rambam as support, explaining that possession of land could lead to settlement thereon. Chazon Ish, Shevi'it 24, explains that "Lo Yeshvu" applies when Israel is stronger, prohibiting any gentile presence on the land. When Jews are not strong enough to expel the gentiles, then "Lo Techonem" applies, prohibiting encampment upon the land.

G. The land to which the commandment applies.

Minchat Chinukh, Commandment No. 94, writes that:



(1) The commandments "Lo Techonem" and "Lo Yeshvu" apply only to the lands repossessed by the Babylonian exiles; and

(2) If the idolater has already acquired land in Israel, he should not be expelled, even if the Jews have the physical strength to do so.

Regarding the issue of which land the commandment concerns, Rabbi Abraham Isaac Kook wrote that the matter depended on whether "Lo Techonem" was connected to the holiness of the land itself or commandments dependent on the land. If the latter, then according to the Tosafot on Yebamot 81a, the application of "Lo Techonem" would be rabbinic. He ruled that it was the latter, permitting sale of land [during the sabbatical year].<sup>17/</sup> Rabbi Shaul Israeli also applied "Lo Techonem" only to the lands conquered by the immigrants from Babylon.<sup>18/</sup>

On the other hand, Chazon Ish,<sup>19/</sup> Rabbi Tzvi Yehuda Kook and others have connected "Lo Techonem" to the holiness of the land, which is eternal and unchanging. They would apply "Lo Techonem" to all the land conquered by those who came from Egypt. There are those who argue that the sanctity of those conquered lands ceased after the exile.

<sup>17/</sup>In his introduction to Shabbat HaAretz, Section 12.

<sup>18/</sup>Torah VeMedina, Vol 48, p. 114.

<sup>19/</sup>Chazon Ish, Shevi'it 24.

However, the reconquest of those lands by the army of the State of Israel has resanctified those lands and reobligated Jews to perform the commandments dependent on those lands.

Regarding the issue of lands on which gentiles are already present, some have used the reasoning of Minchat Chinukh to argue that the territories may be returned to the Arabs. There are many responses to this proposition:

(1) The matter (that gentiles may legitimately acquire land in Eretz Israel) is the subject of great debate, and in cases of doubt, one should not cancel an obligation.

(2) Most gentiles never acquired their land by legitimate means, but rather by force. Thus, the question must be asked whether gentiles may make legitimate acquisitions by force. The majority of early authorities, including Rashi, Ramban and Rabad say no, but some have argued to the contrary.<sup>20/</sup>

(3) Even those who state that a gentile may acquire land legitimately by force cannot apply this reasoning to the land of Israel, which is an eternal possession of the Jews as discussed in Section B.

(4) Even if the gentiles had acquired land in Israel by force, they lost their acquisition after the

<sup>20/</sup>See Krieger's list of citations on the bottom of his page 331.

conquest by the Israeli army, as explained in length in Tzitz Eliezer, Section 10:1.

(5) The entire reasoning of Minchat Chinukh is difficult to accept, for the commandment to conquer the land and expel the inhabitants thereon is eternal. In this light, a gentile could never acquire land from our hands.

(6) Even if points 1-5 could not be made, to transfer sovereignty over those lands on which gentiles already reside increases their permanence thereon and is a violation of "Lo Techonem", as noted by Rabbi Zolti in Volume 11 of Torah ShB'al Peh.

#### H. Exceptions from the prohibition.

First, one must examine whether the prohibition applies to gentiles who already own land in Israel. Many have explored this issue regarding the sabbatical year and whether a sale would be permissible.<sup>21/</sup> A central factor was raised by Minchat Chinukh, Commandment 426, concerning whether "Lo Techonem" prohibits the sale itself or the result of the sale - which is the giving permanence of possession. If it is the sale itself, then a sale for the term of the sabbatical year would be prohibited; if the result of a sale, then it would be permitted.

<sup>21/</sup> Such as Rabbi Abraham Isaac Kook, on page 54 of his introduction to Shabbat HaAretz.

Those who follow the lenient approach must be challenged severely. If a gentile owned a meter of land, he would technically be able to acquire all of Israel. According to the laws of conquest, "Lo Yeshvu," "Lo Techonem" and "Lo Timaker" this land should be appropriated from the gentile; instead, sin is being added to transgression in selling him more land. Also, the land of Israel must be seen as a single entity and "Lo Techonem" applies equally everywhere.<sup>22/</sup> Furthermore, even though the gentile may possess land in Israel, the conquest by the Israeli army made the land Israel's. The presence of some gentiles on the land does not nullify Israel's acquisition of the land through the conquest of the nation.

Second, there are those who would permit an exchange of houses or land within Israel. A basic part of "Lo Techonem" prohibits the sale itself, and thus, this type of exchange. Those who permit this exchange interpret "Lo Techonem" as only applying to the result of sale - increased permanency on the land. The Gaon of Lublin explained that it was through this type of exchange that Solomon gave Hiram 20 cities in the Galilee. On the other hand, Rabbi Betzalel Zolti, in Torah ShB'al Peh, Vol. 11, brings the words of Chazon Ish that such an exchange is a violation of "Lo Techonem."

<sup>22/</sup>Chazon Ish, Shevi'it 24:1.

Third, some make exceptions for "Lo Techonem" when the result of the transfer benefits the Jew. The notion was that certain transfers actually strengthened Jewish settlement. One problem is that every sale benefits the one who sells and this exception could swallow the rule.

Second, those who would make an analogy between the sale of land and transfer of territory do so falsely. The original sale permitted "for the good of Israel" concerned temporary, formal sale to actually strengthen Jewish possession of the land sold. A permanent transfer of territory out of Jewish hands does not compare. Rabbi Tzvi Yehuda Kook strongly criticized such an analogy, rejecting any application of this exception to a transfer of territory.<sup>23/</sup>

I. Individual Sales and Transfer of Governmental Sovereignty.

Rabbi Chayim David HaLevy established a new interpretation of "Lo Techonem" in Torah ShB'al Peh Vol. 21. There he stated that the prohibition applied only to the individual, not the community. He learned this from the prohibition of "Lo Yeshvu," which applies to the individual who should not be led astray into idolatry. But, the context of "Lo Techonem," including "you shall completely destroy" and "you shall not make a covenant with them,"

<sup>23/</sup>Netivot Israel, p. 90.

concerns the community. The prohibition concerns, then, the community and the individuals within it.

A problem is raised concerning King Solomon's transfer of 20 cities in the Galilee to Hiram. Of all the people who have commented on this verse, not one has resolved it like Rabbi HaLevy. His reasoning comparing "Lo Techonem" to "Lo Yeshvu" does not make sense, for "Lo Yeshvu" prohibits even the rental of houses or temporary presence on the land by gentiles. The prohibitions have different aspects and reasons. The rationale behind "Lo Techonem" concerns the holiness of the land. Accordingly, it is far worse to deliver sovereignty over land to the gentile than to sell an individual house. In the latter instance, it is possible that Jewish sovereignty may still be restored. As Rabbi Zolti said, there is no greater violation of "Lo Techonem" than the transfer of sovereignty over the land.

J. The sanctity of the land and the sale of it in perpetuity.

There are those who suggested that a sale of land to a gentile residing outside the land may not violate "Lo Techonem." But the gentile could show up the following day and thus gain permanent presence on the land. Rambam, Hilkhoh Avodah Zarah 10:3, forbids the sale to gentiles of land in Israel but permits it for land outside of Israel because it is "not our land." His reasoning implies that a



sale of land of Israel to a gentile no matter where he lives is forbidden. A further prohibition of sale of land and houses to gentiles is from Lv. 25:23, "Lo Timaker" - you shall not sell the land in perpetuity.

K. Summary of the prohibitions of "Lo Techonem":

(1) The majority of authorities applies the prohibition to all nations, not just the seven nations, without any differentiation whether they are idolaters or not.

(2) The prohibition applies to all territories within the Toraitic borders of Israel.

(3) The prohibition applies to the houses in and lands on which gentiles dwell.

(4) There is no difference in the application of "Lo Techonem" to gentiles who already own land and those who do not.

(5) There are those who also forbid an exchange of territory.

(6) The exception "for the benefit of Israel" does not apply to a permanent transfer of land.

(7) There is no difference between an individual sale and delivery of territory by governmental authority; if anything, the latter is worse.



(8) Delivery of territory violates not only "Lo Techonem" but also the rules of tithing and the prohibition against sale of land in perpetuity.

## Analysis

### 1. Toraitic Context.

The major prohibition against gentile presence on the land of Israel derives from Dt. 7:2, "Lo Techonem," which in the context of the Torah passage means something like "do not show them mercy." The prohibition against gentile presence also derives from Ex. 23:33, "Lo Yeshvu," which clearly reads, "They shall not remain in your land."

Liberal Jews who have left the halakhic tradition are free to understand these texts in their historical and linguistic context and to limit their meaning accordingly. But traditional rabbis of the contemporary period are bound to the classical rabbinic interpretations of these texts. Some of these interpretations, including the crucial ones of the Talmud, are considered as divinely authoritative as the original text itself. In the halakhic tradition, the application of "Lo Techonem," in particular, has grown far beyond its original context.

One must recognize the original historical and linguistic context to appreciate the expansion of the prohibition. Clearly, both "Lo Techonem" and "Lo Yeshvu" refer to the seven Canaanite nations. The seven nations are explicitly listed in Dt. 7:1 and are the clear antecedent to the "them" of "you shall show them no mercy" (modern JPS: "you shall give them 'no quarter'"). Similarly, the

Canaanite nations are partially listed in Ex. 23:23 and 28 and form the clear context for "Lo Yeshvu." Thus, the two biblical passages refer to the original inhabitants of the land.

The treatment these inhabitants are to receive depends on linguistic analysis. "Yeshvu" is relatively simple. It is the third person masculine plural imperfect Qal form of the root y-sh-v, meaning remain or dwell.<sup>1/</sup> Thus, in its context, "Lo yeshvu" prohibits the continued dwelling on the land by the original inhabitants, the Canaanite nations, after the Israelites have entered the land. "Techonem" is the second person masculine plural imperfect Qal form (with the third person masculine plural objective suffix) of the root ch-n-n, meaning show favor or be gracious.<sup>2/</sup> In its context it forms part of a litany calling for the total destruction of the original inhabitants of the land: defeat them, doom them to destruction, grant them no terms and give them "no quarter" (again the modern JPS translation). Essentially, it demands that the Israelites not be favorably disposed to the inhabitants of Canaan; i.e., they are to

<sup>1/</sup>Brown, Driver and Briggs. A Hebrew and English Lexicon of the Old Testament, p.442a.

<sup>2/</sup>Ibid, p. 336a.

show them no mercy.<sup>3/</sup> Since the Talmudic rabbis understood Scripture as eternally true and divinely commanded - that is, always relevant and never redundant - they interpret, in tractate Avodah Zarah, the words "Lo Techonem" beyond their original context.

## 2. The Tannaitic Legislation.

The Tannaitic rabbis who wrote the Mishna enacted certain legislation proscribing the ownership by idolaters (ovdei gilulim) of real property - houses, land and fixtures - in Israel.<sup>4/</sup> The Mishna gives no Biblical citations or precedents for a series of laws listing items that may not be sold to idolaters. These rabbinic enactments most probably originate from the period after the destruction of the Second Temple (70 C.E.) or the Bar Kochba uprising (135-138 C.E.) "when the danger of non-Jews gaining control of Jewish lands was most imminent."<sup>5/</sup> Any Tannaitic exegetical sources to Dt. 7:2 do not survive; the Targumim simply translate "Techonem" as "do not have mercy on them." Furthermore, Ex. 23:33 is not raised by either the Tannaim or Amoraim in this context of land transfers.<sup>6/</sup> The Amoraic rabbis in the Gemara to Mishnayot Avodah Zarah 1:5 and 1:8

<sup>3/</sup> Botterweck and Ringgren. Theological Dictionary of the Old Testament, p.35.

<sup>4/</sup> Mishna, Avodah Zarah 1:5 and 8.

<sup>5/</sup> Sperber, Dine Israel, Vol. IV, p. xxi.

<sup>6/</sup> Ibid., p. xxi, fn 15.

are the ones who establish the Toraitic connection of "Lo Techonem" to prohibited land transfers.

### 3. The Talmudic Level.

The Amoraic rabbis deftly combine Toraitic command and Tannaitic legislation. They provide three interpretations of "Lo Techonem," all of which extend its meaning beyond the original context of destroying the original inhabitants of the land. The interpretation of Talmud Bavli, Avodah Zarah 20a, closely parallels that of Talmud Yerushalmi, Avodah Zarah 1:9.

The Yerushalmi gives the first interpretation as "you will not admire their gracefulness" (based on the original root meaning).

The second interpretation is "you will not give them a free gift" (based on a new reading of the root as ch-n-m; making the suffix "m" part of the root and requiring one to infer the objective pronoun "them").

The third interpretation is "you will give them no place to settle" (based upon a reading of the root ch-n-h).

The Babylonian rabbis give the first interpretation as "give them no place to settle" and thus make explicit the connection between Mishna, Avodah Zarah 1:5 and "Lo Techonem"; the Palestinian rabbis make the connection between Mishna Avodah Zarah 1:8 and "Lo Techonem."

While on the Tannaitic level the prohibition against sale or lease of land was a rabbinic enactment, the Amoraim

gave it Toraitic authority and severity; the causes for this shift were socio-economic pressures on the Jewish community in Eretz Israel in the third century.<sup>7/</sup>

A question exists, therefore, whether "Lo Techonem" is a rabbinic enactment which carries less significance than a Toraitic commandment. Liberal Jews will note the obvious historical development of the law; they will also note that the Amoraic rabbis are still speaking contextually of idolaters. Some of the current halakhic authorities acknowledge these issues; however, their understanding of the problem does not recognize socio-economic factors or historical settings. Rather, they read the Talmudic passages as recast by medieval tradition - primarily the commentaries on the Talmud and the various codes and books of commandments written around the years 1000-1300.

#### 4. The Medieval Level.

The medieval rabbis restated the prohibitions in their commentaries and codes. In so doing, inadvertently, they made clear for later readers some of the difficulties one now encounters in the application of the prohibition of gentile settlement. The major issues are: (i) what is the biblical basis of the law and (ii) to whom does the prohibition of settlement apply? A determination of the former sometimes influences the understanding of the latter.

<sup>7/</sup>Ibid., p. xxiii.

In the 1100s, Rambam stated as Negative Commandment No. 50 of his Sefer HaMitzvot the prohibition of showing mercy to or praising idolaters on the basis of "Lo Techonem" as learned from Avodah Zarah 20a. In Negative Commandment No. 51, he prohibited idolaters from dwelling in the land on the basis of "Lo Yeshvu"; he also prohibited the sale or rental to an idolater of a house or a field on the basis of "Lo Techonem" as learned from Avodah Zarah 20a. Rambam repeats this prohibition of sale or rental in his Mishneh Torah, Hilkhot Avodah Zarah 10:3. The prohibition of settlement is further explained in Hilkhot Avodah Zarah 10:4 and 10:6. In Hilkhot Avodah Zarah 10:4, Rambam prohibits idolatrous settlement on the basis of "Lo Techonem." In Hilkhot Avodah Zarah 10:6, Rambam explains that "Lo Yeshvu" prohibits the idolater to be present on the land for even a moment when Israel has the power to exclude him. Rambam further adds in his Mishneh Torah the statement that only a proselyte could live on the land, since a resident stranger was acceptable only when the provisions of the Jubilee were in effect. (Compare Rambam's language in Sefer HaMitzvot.) Rambam adds a great deal of confusion to the prohibition of gentile presence by basing it on "Lo Yeshvu" in the Sefer HaMitzvot and both "Lo Techonem" and "Lo Yeshvu" in the Mishneh Torah. His apparent explanation that "Lo Yeshvu" prohibits even temporary presence when Israel is stronger is harshly criticized by Rabad. Rabad writes on



Avodah Zarah 10:6, "I have never found this or heard this explanation (concerning 'Lo Yeshvu')."

In the 1200s, Rabbi Moses of Coucy, the author of Sefer Mitzvah Gadol, prohibited in Negative Commandment No. 48, the encampment of idolaters upon the land by forbidding sale to them of land or houses in Israel, on the basis of "Lo Techonem" as learned from Avodah Zarah 20a. In Negative Commandment No. 49, the Sefer Mitzvah Gadol limits "Lo Yeshvu" to its Scriptural context - the prohibition against any of the seven nations settling on the land. Apparently, the Sefer Mitzvah Gadol distinguishes between sale to idolaters on the basis of "Lo Techonem" and the settlement of the seven nations on the basis of "Lo Yeshvu."

In the 1300s, the anonymous author of Sefer HaChinukh, in his Commandment No. 94, prohibited idolaters from dwelling in the land on the basis of "Lo Yeshvu." However, a resident stranger, one who has rejected idolatry, is permitted to dwell on the land. Sefer HaChinukh thus extends "Lo Yeshvu" beyond its biblical application to the seven nations by applying that prohibition to all idolaters. Nevertheless, he does not follow the position of Rambam in Hilkhos Avodah Zarah 10:6; instead, he apparently allows the resident stranger to dwell in the land. Strangely, in his Commandment No. 426, the Sefer HaChinukh does state that a resident stranger may be accepted only during the time the Jubilee is in effect. This comment

follows his discussion of "Lo Techonem" as showing the idolaters no mercy and giving them no gifts. The prohibition of encampment, sale and rental on the basis of "Lo Techonem" is not stated by the Sefer HaChinukh; he bases all those prohibitions on "Lo Yeshvu."

Meanwhile, those who commented on the Talmud add their own array of interpretations. Rashi basically explains the Talmudic interpretation of "Techonem" - how one word could be understood three ways. He adds that the resident stranger is permitted to stay on the land, based upon his reading of the continuing passage of Avodah Zarah 20a that interprets Dt. 14:21: "You shall not eat anything that has died a natural death; give it to the stranger in your community to eat, or you may sell it to a foreigner."

The Tosafot then point out that the textual basis for these rules, "Lo Techonem," refers specifically to the seven nations. However, they reason by analogy that since the commandment "not to marry" in Dt. 7:3 refers in concept to the seven nations but has been extended to all nations, there is no logical reason not to apply "Lo Techonem" to the other nations as well. They conclude that for the purposes of "Lo Techonem" there is "no reason to differentiate between the other idolaters and the seven nations." The Tosafot, consequently, are ambiguous. They are often read by current authorities as applying "Lo Techonem" to all nations - but the general meaning of the passage appears to

differentiate not between the seven nations and gentiles, but between the seven nations and idolaters. In his interpretation of Avodah Zarah 20a, Meiri explicitly applies "Lo Techonem" to idolaters and unequivocally holds that Christians are not idolaters.

Minchat Chinukh in Commandment 94 states forthrightly the basic contradictions raised by the medieval rabbis: Rambam (and the Tosafot whom he does not mention) apply the prohibition of dwelling on the land to idolaters while the Sefer Mitzvah Gadol, Rabad, Rashi, Sifte Cohen and Sefer HaChinukh apply the prohibition only to the seven nations. (Minchat Chinukh is analyzing the prohibition on the basis of "Lo Yeshvu".)

One sees the disarray in the understanding of the prohibition of gentile presence. No one is quite sure what is the real source or its legal application. The sources themselves are so ambiguous that an accurate and consistent reading of them is difficult at best.

The basic problem is that one can derive the prohibition of gentile presence from two verses in the Torah that have different ranges of meaning. One who bases the prohibition on "Lo Yeshvu" must adhere to the context or rationale of that verse. The context of that verse is the seven nations; the rationale (lest they lead you astray) allows for the inclusion of all idolaters. Among the rishonim, only Rambam gives a different interpretation. Basing the prohibition of

gentile presence on "Lo Techonem" one encounters the problem that the prohibition may be rabbinic or may not apply to the issue of return of territory, particularly given an apparent treaty made between King Solomon and King Hiram, referred to in I Kings 9:11.

#### 5. The Current Halakhic Authorities.

Among the current halakhic authorities, there is generally an openness in acknowledging the problematic areas of "Lo Techonem."

Rabbi Yakov Warhaftig delineates the broad range of interpretations mentioned above, but tends to dismiss certain problems. While Warhaftig is the only one to note that the prohibition of "Lo Techonem" may in fact be rabbinic, he quickly explains away support for that position: the deal between Solomon and Hiram, the Talmudic passages apparently permitting land sale, and the absence of "Lo Techonem" as proscribing encampment in certain books of commandments. "Lo Techonem" is not cited as a commandment by Sadya and is cited only as a subset of "Lo Yeshvu" by Rambam. Warhaftig concludes that most rabbis of this time hold that the prohibition is Toraitic. He recognizes that those who limited "Lo Techonem" to idolaters did so solely in terms of sales during the sabbatical year. One can infer from Warhaftig's statement that a strict construction of "Lo Techonem" should be considered in terms of the sabbatical

year, but that a broad construction should be used when considering other kinds of land transfers.

The resolution of the problem of whether "Lo Techonem" is Toraitic is crucial to its application to Arabs. As Warhaftig notes, one can extend the Toraitic application another degree. Therefore, assuming "Lo Techonem" is Toraitic, it can be applied rabbinically from idolaters to all gentiles. If "Lo Techonem" is rabbinic, it may only apply to idolaters. Rabbis Bakshi-Doron and Krieger argue the point in the same manner as Warhaftig. It should be noted that they do not all read the sources the same way, as this chart shows:

<u>Lo Techonem</u>	<u>Warhaftig</u>	<u>Bakshi-Doron</u>	<u>Krieger</u>
Rashi	_____	All gentiles	_____
Tosafot	Idolaters	All gentiles	Idolaters
Rambam	Idolaters	All gentiles	All gentiles
Rabad	_____	All gentiles	_____
<u>Sefer Mitzvah</u> <u>Gadol</u>	Idolaters	Seven nations	_____
<u>Sefer HaChinukh</u>	Idolaters	All gentiles	_____

One major lesson learned from this chart is the blurring by modern halakhic authorities of the distinctions between idolaters and gentiles. In his conclusion, Krieger asserts that most authorities apply "Lo Techonem" to all nations, without any differentiation whether they are idolaters or not. This failure to determine whether Arabs are indeed

idolaters shows loose legal analysis. First, the case for extending the law to all gentiles is far from persuasive. Second, no effort is made to show that Arabs can be classified as idolaters, should the extension of the law to all gentiles prove invalid.

Bakshi-Doron fluctuates the most in his language. When using his own language, he uses the word "nokhrim," gentile. Yet, when quoting the halakhic sources he is forced to use their language of "akum" or idolater. At that point he confronts the issue as to whether or not Arabs are idolaters.

On one hand, Bash-Doron notes that among 20th century authorities, the Chazon Ish follows Rambam's position that only a resident stranger - one who has formally accepted the Noachide laws - may acquire property in Eretz Israel. On the other hand, Bakshi-Doron acknowledges that the laws of "Lo Yeshvu" and "Lo Techonem" were only extended to idolaters by rabbinic logic and that many rabbis permitted land to be sold to Arabs who were not considered idolaters. While acknowledging this position, Bakshi-Doron gives it short shrift, immediately returning his focus to gentiles in general. At this point, Bakshi-Doron argues for the settlement of the land and its redemption by Jews on account of the holiness of the land and the commandments that can be performed on it.

The other major issue that arises concerning the dual prohibition of "Lo Techonem" and "Lo Yeshvu" is what can "Lo



Techonem" prohibit if "Lo Yeshvu" prohibits some sort of settlement. The modern halakhic authorities recognize three positions in general:

1. "Lo Techonem" prohibits presence of all gentiles and "Lo Yeshvu" prohibits presence of idolaters;
2. "Lo Techonem" prohibits the gentile possession of the land of Eretz Israel no matter where the gentile lives, and "Lo Yeshvu" prohibits gentile presence on the land in person or with property; and
3. "Lo Techonem" prohibits any gentile settlement when Israel is weak, and "Lo Yeshvu" prohibits any gentile presence - even for a minute - when Israel is strong.

The authorities rejecting the possibility of exchange of territory endorse the third and most strict explanation, originally proffered by Rambam.

There is a fourth possibility of the differences between the laws - at least on the Talmudic level. That is, the Talmudic prohibition of "Lo Techonem" essentially concerned sale of land to an idolater, a possibility reinforced by the nature of the discussion by the current halakhic authorities. In the Talmud, "Lo Techonem" is used as the explanation of the Mishnaic prohibition of sale of land or houses (Avodah Zarah 1:8). In the Talmud Yerushalmi, this prohibition is explicit. In the Talmud Bavli, this prohibition is implicit - "Lo Techonem" is used as an explanation for the prohibition of selling to idolaters that



which is attached to the soil (Avodah Zarah 1:5). But later in the chapter (Avodah Zarah 21a) the focus shifts to sale of fields and houses, which sales are prohibited so as not to allow an idolatrous settlement.

In reviewing the treatments of "Lo Techonem" by Bakshi-Doron and Warhaftig, one notes that their language, as well as the language of the majority of sources they cite, refers to land sales. When considering sales of land, numerous exceptions to "Lo Techonem" have been applied permitting such sales to Arabs. Bakshi-Doron mentions some of these instances but does not detail them. Warhaftig enumerates the exceptions but summarily distinguishes and dismisses them. Warhaftig also notes the question whether "Lo Techonem" prohibits the actual sale itself or the "permanence" on the land that is a result of the sale. (Warhaftig even notes that the combination of these exceptions - the difficulties of interpretation of "Lo Techonem," the question of whether it applies to Arabs and the issue of saving a life - could be grounds for permitting return of territories, but he does not commit himself firmly to this position.) Krieger to a certain extent follows Warhaftig's analysis but expands more on the concept of whether "Lo Techonem" actually prohibits sale itself or the result of a sale. Krieger, who is unwilling to allow any possibility of return of territories, at this point in his argument follows Rabbi Zolti, the chief proponent among

current halakhic decisors that "Lo Techonem" prohibits not sale but transfer of sovereignty.

Rabbi Zolti engages in some creative reasoning to prove that "Lo Techonem" prohibits permanent gentile presence on the land and does not apply to land sales that do not alter the gentile's status on the land.

One interesting aspect of Zolti's treatment of "Lo Techonem" is that since he is attempting to prove that it does not necessarily prohibit sale of land, he is willing to explore in depth Talmudic passages that indicate that certain land transfers are permissible. In particular, he treats Gittin 47a, which concerns a sale of land by a Jew to a heathen in Eretz Israel, and Gittin 44a, which concerns the conditions under which payment for those sales may be accepted. These passages, which apparently contradict "Lo Techonem," are not discussed by those who believe "Lo Techonem" prohibits sale or transfer of land. Rabbi Breur does mention Gittin 47a to support his position that "Lo Techonem" does not apply to Arabs living on the land. He gives credit to Zolti for noting this and other exceptions to "Lo Techonem" while not addressing Zolti's major point that these exceptions only apply to sales, not issues that concern giving permanence to the gentile.

The one basis for Zolti's position that "Lo Techonem" prohibits the giving to the gentile permanence on the land is an isolated statement in Hilkhos Avodah Zarah 10:4.

Nevertheless, Zolti asserts that the original proof for his position is Talmud Bavli, Avodah Zarah 20b-21a. There, Rabbi Meir argues that "Lo Techonem" prohibits any rental or sale of houses in Eretz Israel. On the other hand, Rabbi Jose states that "Lo Techonem" permits rentals and temporary sales of houses but not fields. (The Talmudic concept of a temporary sale may incorporate the modern concept of a lease. It also refers to a type of conditional sale that was developed by the rabbis to avoid the restrictions of the sabbatical year.) The Talmudic argument is that there is a twofold objection to the sale of fields - the heathen settles on the soil and tithes are no longer given. Thus, a safeguard is enacted - the prohibition of temporary sale of fields guards against their permanent sale. For houses, on the other hand, since the only objection is to that of the heathen settling on the soil, no safeguard is needed, and the rental of houses is permitted.

The halakha follows Rabbi Jose, but not for the reason Zolti suggests. Zolti postulates that Rabbi Meir interprets "Lo Techonem" as prohibiting sale and thus rules against any sale - permanent or temporary. Rabbi Jose, he argues, interprets "Lo Techonem" as prohibiting permanent encampment and thus permits rentals and temporary sales of houses. Zolti's position is not supported by the Talmudic argument; in fact, one can assume that if Zolti were correct, the leasing of fields would be a permissible temporary sale according to Rabbi Jose. This is not the case.

Despite the error in his understanding of Avodah Zarah 21a, Zolti presses his point. In fact, he uses the proof of "Rabbi Jose" arguing that Rambam followed Rabbi Jose in holding that "Lo Techonem" prohibited any encampment leading to permanent settlement. He then adds the argument that in Hilkhos Avodah Zarah 10:4, Rambam cites "Lo Techonem" as the reason why one may not sell to idolaters. Zolti infers that the sale about which Rambam writes is of produce attached to the land. He notes that Rambam provides a legal rationale in Hilkhos Avodah Zarah 10:4 (where his language is that of Avodah Zarah 19b) and not in Hilkhos Avodah Zarah 10:3 (where he summarizes Avodah Zarah 21a without reference to Rabbis Meir and Jose) to show that the foundation of "Lo Techonem" is to prevent permanent gentile settlement on the land. Yet, Rambam's language explaining "Lo Techonem" in reference to sale to idolaters may be seen as including not only the sales of produce severed from the land but also the houses and fields discussed in Hilkhos Avodah Zarah 10:3. Furthermore, Rambam's explanation that prohibiting sale keeps the idolater's settlement temporary may be just that - an explanation of the rationale underlying "Lo Techonem's" prohibition of sale.

Moreover, Zolti's postulate here contradicts his first assertions and shows that he was in error concerning Rabbis Jose and Meir. All Rambam has done is condense the Talmudic argument. The Talmud Bavli, as noted before, uses "Lo

Techonem" to explain why produce attached to the soil may not be sold to idolaters unless it is severed. While the reasons are not stated, one may infer that the sale of something attached to the soil would lead to possession, settlement or encampment on the soil. As stated above, the Talmudic passages in general concern the sale of that which leads to gentile settlement on the land. Nothing in the Rashi or Tosafot supports Zolti's position that these Talmudic passages constitute a general prohibition against existing gentile settlements becoming more permanent.

Zolti's argument is further undermined by a reading of Rambam's Sefer HaMitzvot. There, Rambam cites "Lo Techonem" as the Toraitic basis for not showing mercy or ascribing grace to idolaters. He further cites it as support (Commandment No. 51) for not selling or renting land - the parallel to Hilkhos Avodah Zarah 10:3 where he does not cite "Lo Techonem." Zolti fails to mention this apparent contradiction between Rambam's Negative Commandment No. 51 and Hilkhos Avodah Zarah 10:3. Either Rambam is inconsistent, or "Lo Techonem," in fact, regulates sales that lead to settlement.

Zolti does note the apparent contradiction in Rambam concerning whether settlement is prohibited by "Lo Yeshvu" or "Lo Techonem." Zolti also acknowledges that Rambam resolves the uncertainty in Hilkhos Avodah Zarah 10:6. There Rambam writes that "Lo Yeshvu" prohibits gentile presence on the land while Israel is stronger. Thus, logic leads one to conclude



that "Lo Techonem" prohibits the sale of land or houses that can lead to gentile presence when Israel is not strong enough to prevent it (note carefully Rambam's language in Negative Commandment No. 51 and Hilkhos Avodah Zarah 10:1-6). By not selling land, houses or things attached to the soil to the idolater, one keeps whatever presence he may have on the land temporary. It is irrelevant to state that "Lo Techonem" prohibits increasing the permanence of gentile settlement. While that may be the rationale of the law, it is not the letter of it as learned in the Talmud and Rambam.

In essence, Zolti attempts to reinterpret "Lo Techonem" according to its supposed legislative intent instead of its actual legislative enactments. In so doing, Zolti overstates his case, holding that "Lo Techonem" does not legislate land sales. This is an example of the broadest legal construction imaginable - the actual legislative enactments are overridden to preserve the legislative intent. There is no halakhic legislation forbidding transfer of sovereignty per se. Only by Zolti's reasoning and reliance on the legislative intent behind "Lo Techonem" can he reach the conclusion that the halakha prohibits land transfers between a Jewish and gentile sovereignty as part of a peace treaty. Naturally, those who favor the concept of "land for peace" interpret "Lo Techonem" strictly.

Indeed, Rabbi HaLevy, among others, argues that Rambam's presentation of the prohibition of "Lo Techonem" is primarily

connected to the selling or leasing of houses. Rambam connects "Lo Techonem" to "Lo Yeshvu" so that they will be applied to all idolaters - for although they are Toraitically found in the context of the seven nations, the rationale is given in "Lo Yeshvu" that "they shall not lead you astray into idolatry." From here HaLevy develops the unique argument that "Lo Techonem" prohibits sales to individual idolaters who can lead individual Jews into idolatry; "Lo Techonem" does not apply to relations between governments. Unlike the others, HaLevy cites many texts to prove that in any event, Muslims cannot be considered idolaters subject to the prohibition of "Lo Techonem." He also supports his argument that "Lo Techonem" does not apply to governments by addressing I Kings 9:11ff.

In I Kings 9:11ff, Solomon apparently delivers land in the Galil to King Hiram of Tyre in exchange for building material for the Temple; this exchange being an apparent violation of "Lo Techonem," it is instructive to see how each current halakhic decisor responds to it.

Since Zolti holds that sale of land of Israel to a non-resident gentile does not violate "Lo Techonem," he has no problem with I Kings 9:11ff.; indeed, Solomon's exchange with Hiram of 20 cities in the Galil for Temple building material is an example of such a sale. Most who treat "Lo Techonem" as prohibiting sale, such as Warhaftig, offer Abravanel's explanation of the deal: it was not truly a land exchange;



rather Hiram got paid the produce from the 20 cities. Bakshi-Doron simply ignores this passage. HaLevy, who holds that "Lo Techonem" does not apply to governments, cites the various interpretations of this passage and concludes that "an exchange of territories was made to strengthen the peace between the two kings." Krieger, who applies "Lo Techonem" to prohibit both sale of land and transfer of sovereignty criticizes HaLevy for his innovative proposition that "Lo Techonem" applies to the individual and not the community. Krieger notes that the contextual meaning of the verse clearly concerns the community. Yet Krieger himself has recognized that the contextual meaning of the verse also concerns the seven nations, a factor with which he was willing to dispense when necessary for his argument. Furthermore, Krieger never offers his interpretation of the deal between Solomon and Hiram, which is not surprising considering his inconsistent position that "Lo Techonem" prohibits both sale of land and transfer of sovereignty. (That is, Krieger wants to be a strict and broad constructionist at the same time. Krieger refers to Zolti's citation of the Chazon Ish that such an exchange violates "Lo Techonem" without mentioning Zolti's conclusion that such an exchange was not a violation.)

The above analysis shows that halakhic authorities will rely on different sources or at least weigh them differently depending on their political agenda. There are certain basic parameters with which each must deal. These include the

Toraitic sources for prohibiting gentile presence on the land, "Lo Techonem" and "Lo Yeshvu," their treatment in the Talmud, and the subsequent interpretations of the Rishonim - particularly Rambam, Rabad, Sefer Mitzvah Gadol and Sefer HaChinukh. These sources basically establish that some sort of gentile presence on the land is prohibited, but many questions are raised. One is whether or not the prohibited presence is of idolaters or all gentiles; the weight of authority seems to indicate idolaters, but the point is spiritedly argued. Here, the "strict constructionists" would limit the prohibition to idolaters; some of these, though, then consider Arabs idolaters or find other ways to prohibit their presence on the land.

A second question concerns the purpose of the law, since none is given for "Lo Techonem" and the one given for "Lo Yeshvu" concerns prohibiting idolatry. Again, a strict construction of the law indicates that the purpose of the law is to prevent idolatry on the land. One notes that Zolti goes to great extent to show that the purpose of the law is to prevent gentile settlement from becoming permanent. He must discredit the notion that "Lo Techonem" applies to sales, and in so doing counters the arguments of others who would reach the same conclusion as he would: that on the basis of "Lo Techonem" it is forbidden to return the territories, or sovereignty over them, to the Arabs. One decisor, Breur, picks up on some of Zolti's arguments and uses them to counter

the proposition that "Lo Techonem" applies to the Arabs living in Eretz Israel.

A third question, raised by HaLevy and also applicable to the issue of the commanded settlement, to be considered next, is whether or not the halakha actually speaks to the issue of sovereign governments making peace treaties. His readings of the sources and of the halakhic tradition may be the most historically accurate. The laws seem to apply to individuals and, strictly construed, allow the government the most flexibility in resolving the situation while addressing halakhic concerns.

Without doubt, the modern authorities are affected by their subjective political agendas in rendering their halakhic analysis. The flexibility of halakha allows different interpretations of halakhic sources, dependent on the political solution favored by the interpreter - the author included.

CHAPTER II

COMMANDED JEWISH SETTLEMENT,  
COMMANDED WAR

### Halakhic Sources

NM. 33:53 VEHORASHEM

And you shall take possession of the land and settle in it, for I have assigned the land to you to possess.

Rashi: You shall dispossess the land of its inhabitants and then you shall dwell in it, that is, you will be able to remain in it; but, if you do not [dispossess it] then you will not be able to remain in it. [Rashi puts this verse in context. The previous verse contains the command to dispossess the land; the following verses explain the consequences for failure to do so.]

Ramban: In my opinion this is a positive commandment, in which He is commanding them to dwell in the land and inherit it, because He has given it to them and they should not reject "the inheritance of the Eternal." [1 Sm. 26:19]. Thus, if the thought occurs to them to go and conquer the land of Shinar or the land of Assyria or any other country and settle therein, they are [thereby] transgressing the commandments of God. And that which our rabbis have emphasized, the significance of the commandment of settling in the land of Israel, and that it is forbidden to leave it [except for certain specified reasons] and [the fact] that they consider a wife who does not want to

emigrate with her husband to live in the land of Israel as "a rebellious [wife]" and likewise the man [who refuses to emigrate with his wife] - the source of all these statements is here [in this verse] where we have been given this commandment, for this verse constitutes a positive commandment. This commandment He repeats in many places, such as "Go in and possess the land." (Dt. 1:8). Rashi, however, explained [as above, conditionally]. But our interpretation is the principal one.

DT. 20:16-18 "LO TECHYE" and "HACHAREM TACHARIMEM"

In the towns of the latter peoples, however, which the Lord your God is giving you as a heritage, you shall not let a soul remain alive. No, you must proscribe them - the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites - as the Lord your God has commanded you, lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the Lord your God.

Rashi comments (v.17) that the words "as God has commanded you" are intended to include the Girgashites. On "lest they teach you . . ." (v. 18), he writes that, "if they repent of their abominations and wish to become proselytes you are allowed to accept them as such."

Ramban explains that the forbidden practice referred to here is human sacrifice to God. He also connects this passage to Ex. 23:33, stating that it is a warning against idolatry, "for if you make a covenant with them and their gods, they will dwell in your land and many of them will entice you to worship the idols. He added here to explain that 'thou shalt save alive nothing that breatheth; for even one of them that



remains among you to serve you, will remind you of the worship of their gods and perhaps you will be persuaded to do so to 'the Glorious Name' and you will sin against Him, blessed be He."

MISHNA SOTAH 8:5 (some sources 8:7)

When is this the case? [that under certain conditions men were to turn from the battle front or stay behind at home] - In the case of a political battle; but in a battle for religious causes all must go forth, even a bridegroom from his chamber and a bride out of her bridal chamber. R. Judah said, When is this the case? - In the case for a battle for religious causes [mitzvah], but in a battle of duty [chovah] all have to go forth, even the bride groom from his chamber and the bride out of her bridal chamber.

Rambam's Commentary: There is no disagreement amongs them concerning the war against the seven nations and war against Amalek; all agree they are commanded. And there is no disagreement amongst them that the killing of the remainder of the people in the remainder of the areas is discretionary. The disagreement concerns the preemptive war against those coming to kill or weaken them before arriving in Israel to actually fight war against them.

The Tanna Kamma calls this war permissible and Rabbi Yehuda calls this a comanded war. According to R. Yehuda, whoever was involved in this killing was exempt from the commandment, since the principle among us is known that one performing a commandment is exempt from the other .

commandments. According to the Tanna Kamma, he is not performing a commandment. The halakha does not follow R. Yehuda.

Our Rabbis taught: If [the husband] desires to go up and his wife refuses she must be pressed to go up; and if [she does] not [consent] she may be divorced without a ketubah. If she desires to go up and he refuses, he must be pressed to go up; and if [he does] not [consent] he must divorce her and pay her ketubah. If she desires to leave and he refuses to leave, she must be pressed not to leave, and if [pressure is of] no [avail] she may be divorced without a ketubah. If he desires to leave and she refuses he must be pressed not to leave, and if [coercion is of] no [avail] he must divorce her and pay her ketubah.

Our Rabbis taught: One should always live in the Land of Israel, even in a town most of whose inhabitants are idolaters, but let no one live outside the Land, even in a town most of whose inhabitants are Israelites; for whoever lives in the Land of Israel may be considered to have a God, but whoever lives outside the Land may be regarded as one who has no God. For it is said in Scripture, "To give you the Land of Canaan, to be your God." Has he, then, who does not live in the Land, no God? But [this is what the text intended] to tell you, that whoever lives outside the Land may be regarded as one who worships idols. Similarly it was said in Scripture in [the story of] David, "For they have driven me out this day that I should not cleave to the inheritance of

the Lord, saying: 'Go, serve other gods.'" Now, whoever said to David, "Serve other gods"? But [the text intended] to tell you that whoever lives outside the Land may be regarded as one who worships idols.

R. Zera was evading Rab Judah because he desired to go up to the Land of Israel while Rab Judah had expressed [the following view:] Whoever goes up from Babylon to the Land of Israel transgressed a positive commandment, for it is said in Scripture, [111a] "They shall be carried to Babylon, and there shall they be, until the day that I remember them, saith the Lord." And R. Zera? - That text refers to the vessels of ministry. And Rab Judah? - Another text also is available. "I adjure you, O daughters of Jerusalem, by the gazelles, and by the hinds of the field, [that ye awaken not, nor stir up love, until it please]". And R. Zera? - That implies that Israel shall not go up [all together as if surrounded] by a wall. And Rab Judah? - Another "I adjure you" is written in Scripture. And R. Zera? - That text is required for [an exposition] like that of R. Jose son of R. Chanina who said: "What was the purpose of those three adjurations? - One, that Israel shall not go up [all together as if surrounded] by a wall; the second, that whereby the Holy One blessed be He, adjured Israel that they shall not rebel against the nations of the world; and the third is that whereby the Holy One, blessed be He, adjured the idolaters that they shall not oppress Israel too much. And Rab Judah? - It is written in

Scripture, "That ye awaken not, nor stir up." And R. Zera? - That text is required for [an exposition] like that of R. Levi who stated: 'What was the purpose of those six adjurations? - Three for the purposes just mentioned and the others, that [the prophets] shall not make known the end, that [the people] shall not delay the end, and that they shall not reveal the secret to the idolaters'.

[Our authority further says that] a field bought in Syria is like one bought on the outskirts of Jerusalem. What rule of conduct can be based on this? - R. Shesheth says: It means that a contract for selling it [to a Jew] can be drawn up even on Sabbath. What? On Sabbath? - You know the dictum of Raba, 'He tells a non-Jew to do it.' So here, he tells a non-Jew to draw up the contract. And although there is a Rabbinical prohibition against telling a non-Jew to do things on Sabbath [which we may not do ourselves], where it was a question of furthering the [Jewish] settlement of Eretz Israel the Rabbis did not apply the prohibition.



Rab Judah stated in the name of Rab: If foreigners besieged Israelite towns it is not permitted to sally forth against them or to desecrate the Sabbath in any other way on their account. So it was also taught: If foreigners besieged Israelite towns it is not permitted to sally forth against them or to desecrate the Sabbath in any other way on their account. This, however, applies only where they came for the sake of money matters, but if they came with the intention of taking lives the people are permitted to sally forth against them with their weapons and to desecrate the Sabbath on their account. Where the attack, however, was made on a town that was close to a frontier, even though they did not come with any intention of taking lives but merely to plunder straw or stubble, the people are permitted to sally forth against them with their weapons and to desecrate the Sabbath on their account.

TO WHAT DOES ALL THE FOREGOING APPLY? TO VOLUNTARY WARS ETC. R. Jochanan said: [A war] which is [designated] voluntary according to the Rabbis is commanded according to R. Judah, and [a war] which is [designated] commanded according to the Rabbis is obligatory according to R. Judah. Raba said: The wars waged by Joshua to conquer [Canaan] were obligatory in the opinion of all; the wars waged by the House of David for territorial expansion were voluntary in the opinion of all; where they differ is with regard to [wars] against heathens so that these should not march again them. One calls them commanded and the other voluntary, the practical issue being that one who is engaged in the performance of a commandment is exempt from the performance of another commandment.

**RAMBAM NEGATIVE COMMANDMENT NO. 48**  
**MAKING A COVENANT WITH THE SEVEN NATIONS OF CANAAN**

By this prohibition we are forbidden to make a covenant with the heretics and leave them undisturbed in their heresy. It is contained in His words (exalted be He), "Thou shalt make no covenant with them." [Dt. 7:2].

We have already explained, in dealing with Positive Commandment No. 187, that the war against the seven nations, and the other injunctions relating to them, are proper to be included [in the 613 Commandments], and are not [to be excluded as being] limited in time.

RAMBAM, NEGATIVE COMMANDMENT NO. 49  
FAILING TO OBSERVE THE LAW CONCERNING THE SEVEN NATIONS

By this prohibition we are forbidden to spare the life of any man belonging to one of the seven nations, so that they may not corrupt people and lead them astray into idol-worship. This prohibition is contained in His words (exalted be He), "Thou shalt save alive nothing that breatheth." [Dt. 20:16]. To slay them is a positive commandment, as we have explained in dealing with Positive Commandment No. 187.

Whoever contravenes this prohibition, by failing to slay any of them whom he could have slain, thereby infringes a negative commandment.

RAMBAM, POSITIVE COMMANDMENT NO. 187  
THE LAW OF THE SEVEN NATIONS

By this injunction we are commanded to exterminate the seven nations that inhabited the land of Canaan, because they constituted the root and very foundation of idolatry. This injunction is contained in His words (exalted be He), "Thou shalt utterly destroy them." [Dt. 20:17]. It is explained in many texts that the object was to safeguard us from imitating their apostasy. There are many passages in Scripture which strongly urge and exhort us to exterminate them, and war against them is obligatory.

One might think that this commandment is not binding for all time, seeing that the seven nations have long ceased to exist; but that opinion will be entertained only by one who has not grasped the distinction between commandments which are binding for all time and those which are not. A commandment which has been completely fulfilled by the attainment of its object, but to the fulfillment of which no definite time limit has been attached, cannot be said not to be binding for all time, because it is binding in every generation in which there is a possibility of its fulfillment. If the Lord completely destroys and exterminates the Amalekites - and may this come to pass speedily in our days, in accordance with His promise (exalted be He), "For I will utterly blot out the remembrance of Amalek" [Ex. 17:14] - shall we then say that the injunction "thou shalt blot out the remembrance of Amalek" [Dt. 25:19] is

not binding for all time? We cannot say so; the injunction is binding for all time, as long as descendants of Amalek exist, they must be exterminated. Similarly in the case of the seven nations, their destruction and extermination is binding upon us, and the war against them is obligatory: we are commanded to root them out and pursue them throughout all generations until they are destroyed completely. Thus we did until their destruction was completed by David, and this remnant was scattered and intermingled with the other nations, so that no trace of them remains. But although they have disappeared, it does not follow that the commandment to exterminate them is not binding for all time, just as we cannot say that the war against Amalek is not binding for all time, even after they have been consumed and destroyed. No special condition of time or place is attached to this commandment, as is the case with those commandments specially designed for the desert or for Egypt. On the contrary, it applies to those on whom it is imposed, and they must fulfill it so long as [any of those against whom it is directed] exists.

Generally speaking, it is proper for you to understand and discern the difference between a commandment and the occasion for it. A commandment may be binding for all time, and yet the occasion [for its fulfillment] may be lacking at a particular time; but the lack of occasion does not make it a commandment which is not binding for all time. A commandment ceases to be binding for all time when the contrary is true:

when, that is, it was at one time our duty in certain conditions to perform a certain act or carry out a certain ordinance, but this is not our duty today, although these conditions still obtain. An example is the case of the aged Levite, who was disqualified for service in the desert [Nm. 8:25-26], but is qualified among us today [Chullin 24a], as is explained in its proper place. You should understand this principle and lay it to heart.



1. A king may not wage [other wars] before a "milchemet mitzvah". Which are considered as "milchamot mitzvah"? The war against the seven nations [who occupied Eretz Yisrael,] the war against Amalek, and [a war] fought to assist Israel from an enemy which attacks them.

Afterwards, he may wage a "milchemet reshut", i.e. a war fought with other nations in order to expand the borders of Israel or magnify [the king's] greatness and reputation.

2. There is no need to seek the permission of the court to wage a "milchemet mitzvah". Rather, he may go out on his own volition and force the nation to go out [with him.] In contrast, he may not lead the nation out [to wage] a "milchemet reshut" unless the Court of Seventy-One [Judges approves].

If Israelite cities are besieged by heathens, the rule is as follows: If the heathens have come because of a dispute over money, the Sabbath may not be violated on their account, nor may war be waged against them, unless the city is situated close to the border of the Land of Israel, for in that case one may sally forth armed with weapons and may violate the Sabbath on their account, even if they have come because of a dispute over mere stubble and straw. If, however, the heathens have come to take life or are preparing for battle, or if the motive for the siege is unknown, then wherever the city may be situated, one may sally forth armed with weapons and violate the Sabbath on their account.

Furthermore, it is a religious duty for all Israelites who are able to do so, to come and sally forth on the Sabbath to assist their besieged brethren and to deliver them from the heathens; indeed, it is forbidden to postpone doing so until after the Sabbath. Having delivered their brethren, they are likewise permitted to return home with their weapons on the Sabbath, in order that they should not be tempted to stay away on a future occasion.

RAMBAM, HILKHOT TA'ANIT 2:3

What is to be understood by oppression of Israel by their enemies? If heathens come to wage war against Israel, or to exact tribute from them, or to annex their land, or to enforce a decree interfering with the observance of even a simple commandment, the community affected should fast and sound an alarm, until mercy is vouchsafed to them from heaven. All neighboring cities should likewise fast, but need not sound an alarm, unless its purpose is to assemble a rescuing force.

RAMBAN: COMMENTARY ON RAMBAM'S SEFER HAMITZVOT,  
ADDENDUM NO. 4 TO RAMBAM'S POSITIVE COMMANDMENTS

We are commanded to take possession of the land that God gave to our patriarchs, Abraham, Isaac and Jacob and not to abandon it to anyone else or leave it desolate, as he said to them, "You shall take possession of the land and settle in it, for to you I have given the land to possess it."

[Nm. 33:53]. Also, "and you shall take possession of the land." [Nm. 33:54]. (This commandment is similarly repeated in other places, such as where God says, "Go, take possession of the land that I swore to your fathers." [Dt. 1:8.] And, in particular, the commandment to them includes the land in its entirety as it is written, "Start out and make your way to the hill country of the Amorites and to all their neighbors in the Aravah, the hill country, the lowlands, the Negev, the seacoast, the land of the Canaanites, and the Lebanon, as far as the Great River, the river Euphrates" [Dt. 1:7] - so that you should not leave alone one place. The proof that this is a commandment is as He said in regard to the spies, "Go up, take possession, as the Lord God of your fathers 'dibber' [Ramban understands as 'commanded'] you. Fear not and do not be dismayed." [Dt. 1:21]. It is further written, "And when the Lord sent you on from Kadesh-barnea, saying, 'Go up and occupy the land that I am giving you,' you flouted the command of the Lord your God; you did not put your trust in him nor obey Him," [Dt. 1:23] proving that it was a commandment, not a

future assurance and promise. This is what the sages refer to as commanded war. Thus it is written in the Gemara, Sotah 44b, "Rav Judah, [sic; in Gemara, Raba] said, 'The wars waged by Joshua to conquer [Canaan] were commanded in the opinion of all; the wars waged by the House of David for territorial expansion were optional in the opinion of all.'" Also, in Sifrei, [Parashat Shoftim, page 156], commenting on "take possession of it and settle in it" [Dt. 17:14], states, "By merit of your taking possession of it you shall dwell in it." Do not err and say that this commandment is the same as the commandment to war against the seven nations, as we were commanded to destroy them, as it is written, "And you shall utterly destroy them." [Dt. 20:17]. But the matter is not so, for we are commanded to kill these nations in their wars with us, but if they wanted peace we could make peace with them, leaving them alone given certain known conditions [acceptance of the seven Noachide laws and subjugation to Jewish sovereignty]. However, the land could not be left to them or any other nations at any time. Similarly, if these nations fled and went away, as it is written [Deuteronomy Rabbah, Parashat Shoftim, chapter 13], "The Girgashite went away and God gave them a good land like theirs, this is Africa; we were commanded to come to the land, conquer the governments and settle our tribes there." Also, after we wiped out these people, if our tribes wanted to leave the land and conquer the land of Shinar or Assyria, or other places, they were not

permitted to do so, for we were commanded regarding conquest and settlement. Accordingly, since the sages say "Joshua's war was one of conquest," know that the commandment is the conquest, as it is written in Sifrei [Parashat Ekev, p. 51], "'Every spot on which your foot treads shall be yours . . . ' [Dt. 11:24]. He said to them every place that you conquer other than these places shall be yours. Also, since you might think that you are permitted to conquer land outside the land before you have conquered the Land of Israel, Scripture states, 'You will dispossess nations greater and more numerous than you' [Dt. 11:23] and then immediately afterward, 'Every spot on which your foot treads . . . [Dt. 11:24].'" It is also written there, "If you ask why David conquered Aram Naharayim and Aram Tzova and the commandment is not operative there, it is said, David did not do according to Torah, for the Torah states that after you conquer the land of Israel you are permitted to conquer outside the land, and he did not do so." Behold, we are commanded regarding the conquest for all times. And I say that the sages emphasize this commandment to live in the land of Israel, so they say, "Everyone who leaves it and lives outside the land should be in your eyes as an idolater," as it is written, "For they have driven me out today, so that I cannot have a share in the Lord's possession but am told 'Go and worship other gods.'" [1 Sm. 26:19]. Besides this, all of the other hyperbolic statements made by our sages stem from

this positive commandment that we are commanded to take possession of the land and settle it [that is, they prove its existence]. This positive commandment is eternally binding upon each individual, even during the time of exile, as is known from many places in the Talmud. In the Sifrei it is written, "A story about Rabbi Yehuda Batira, Rabbi Mattiya ben Heresh and Rabbi Natan who left the land of Israel and arrived at Palatia [sic, Palatus in Sifrei] and remembered the land of Israel. They raised up their eyes, their tears flowed, they rent their clothes and read this portion from Scripture: 'When you have occupied it and are settled in it take care to observe all the laws and rules I have set before you this day.' [Dt. 11:31-32]. They said that the settlement in Israel is equivalent to all the other commandments." [Sifrei, Reeh, p. 80].



MEGILLAT ESTHER ON RAMBAN'S ADDENDUM NO. 4 TO  
THE POSITIVE COMMANDMENTS OF RAMBAM'S SEFER HAMITZVOT

It seems to me that Rambam did not count the commandments of inheritance of the land and settlement thereon because they were operative only in the days of Moses, Joshua, David and all the time that they [the Israelites] were not exiled from their land; these commandments do not apply to the remaining generations until the time of the coming of the messiah. For, on the contrary, we are commanded according to that which is written in Ketubot 111a that we should not rebel against the nations to go to conquer the land by force, and it is proved from the verse [Song of Songs 2:7], "I adjure you, O daughters of Jerusalem, by the gazelles, and by the birds of the field that ye awaken not, nor stir up love, until it please." They interpreted from this [verse] that Jews should not immigrate to the land in force [i.e., in numbers, in mass]. Regarding Ramban's position that according to the sages the conquest of the land is considered a commanded war, this is only when Jews are not subservient to the nations. And regarding what he further said that the sages differed regarding settlement of the land, this was specifically during the time the Temple existed. However, now there is no commandment to live there, and so wrote the Tosafot there concerning "to immigrate." Further proof that there is no commandment to settle the land is from what is said there that everyone who immigrated from Babylon to Eretz Israel transgresses the positive commandment,

as it is written [Jer. 27:22], "They shall be brought to Babylon, and there they shall remain, until I take note of them - declares the Lord of Hosts - and bring them up and restore them to this place." If there were a commandment to live in Eretz Israel [applicable] for all times, how could a prophet come after Moses to contradict his words, for a prophet is not permitted to make innovations. [Finally, I address] the quotation Ramban brought from Sifrei that they cried and read this passage from Scripture, "And you have possession of it and settled it" [Dt. 17:14]. It seems to me that they did not have the power to fulfill this commandment because of the destruction of the Temple [on account of which] they cried. And the proof of this is that they rent their clothes since it was on account of the destruction that they were mourning, and if the commandment had still been operative after the destruction, why would they cry and rend their clothes? Were they not now able to fulfill it? Accordingly, we say that certainly this commandment was not operative after the destruction of the Temple - may it be rebuilt speedily in our day.

SHULCHAN ARUKH, ORACH CHAYIM 229:6

Re: Gentiles who besieged a city of Israel. If they came for business one does not defile the Shabbat on account of them; but, if they came to take life, or even for no known purpose and there is suspicion that they came to take life or if they have not yet come but their coming is imminent, then we go out against them with weapons and defile the Shabbat. And, in a city on the border, even if they only come for business, we defile the Sabbath against them lest they surround the city, for from there the land would be more easily conquered.

SEFER HACHINUKH, COMMANDMENT 425  
THE PRECEPT OF KILLING OUT THE SEVEN NATIONS

To put to death the seven nations that held our land before we captured it from them - these being the Canaanite, Amorite, Hittite, Hivite, Perizzite and Jebusite - and to eliminate them wherever we may find them: for it is stated about them, "you shall utterly destroy them" (Dt. 7:2); and the precept was reiterated in Sidrah Shoftim, since it is stated there, "for you shall utterly destroy them - the Hittite and Amorite," etc. (Ibid. 20:17).

At the root of the precept lies the reason that these seven nations are the ones that started to perform all kinds of idol-worship, and every abomination to the Lord, which He detests. Therefore, since they were a main (root) element of idolatry and its first foundation, we were commanded about them to extirpate and eliminate them from under heaven, that they may not be remembered or recalled in the land of the living. And in this precept of ours about them, to destroy them, a benefit will result for us: we will eliminate their remembrance from the world, and [thus] we will not learn from their actions. It is, moreover, for us to learn a moral lesson from this - that we should not turn toward idol-worship: For when we pursue every man in this evil family [of nations] to kill him, because they occupied themselves with idolatry the thought will not arise in the heart of any man to do acts like theirs under any circumstances.

Now, it should not be asked at all: Why were these evil nations created, since ultimately they were to be completely removed from the world? For we have previously known [learned] that the free choice is given to a man to be good or evil, and the Eternal Lord will not impel a man toward either one of them. And since it is so, we have to say that these seven peoples corrupted their ways of action and turned wicked until they all incurred the fate of elimination and death, although at the beginning of Creation they were fit also for goodness. Now to this reason we would [also] ascribe the precept of extirpating Amalek, in Sidrah Ki Tetze, the last of the positive precepts in the sidrah (Commandment No. 604).

If we like, we could further say that perhaps they had at some certain time a brief period of worthiness, and because of that brief period they merited to be created. Or perhaps we could say that from among them all, one worthy person emerged; and for his sake they all merited to be created - in keeping with what we find that the Sages of blessed memory said, that there was one wise man among the descendants of Amalek, namely Antoninus. It is not out of the question for the Creator to produce any number of persons for the sake of one: for He (blessed is He) experiences no wearisome effort in whatever He desires to do. As His desire is established, whatever He wishes is done; and He (blessed is He), who comprehends all our actions, knows what need there is for others because of

the one particular person, so that all should be created for his sake.

Among the laws of the precept there is what the Sages of blessed memory said: that a king of Israel may wage first nothing but a war of religious duty, which means a war against the seven nations mentioned [above], war with Amalek, and war to help the Israelites against an oppressor that attacks them; and for these campaigns he does not need to have permission from the beth din [the Sanhedrin, supreme court]. The rest of its details are clarified.

This precept is in effect for both man and woman everywhere and at every time that the power lies in our hands to put them to death. Now, R. Moses b. Maimon of blessed memory wrote: One might think perhaps that this is a precept which is not in effect for all generations, since the seven nations perished in the past. In truth, though, only one who does not understand the concept of something being in force for all generations or not being thus in force, could think so.

The sum import of his words (be his memory for a blessing) is that this should be known: If there is any precept whose observance is not lacking, because its time has passed - for example, the precepts that existed in the wilderness but not afterward in the land [of Israel], and so too the precept about diverting an inherited estate, which was not [applicable] to any but that generation who were [involved] in



the apportionment of the land, upon their entry into the land - the like of these are what we consider as not in effect for all generations. However, any precept that we are lacking because it is not available to us so that we should be able to observe it, but Scripture does not make it dependent on a particular period of time - for instance, this one, of eliminating the seven nations and Amalek, where the Writ commanded us to eradicate their name and destroy them from the world forever, in every generation where they are found - then even if we previously did with them what was obligatory, through our Kind David, who demolished them and destroyed them until none but a small number remained of them, who became scattered and disappeared among the nations, until we could not find their traces, and now we have not the means to pursue them and kill them - this precept is nevertheless not called (considered) on that account a commandment not in effect [any longer]. Understand this main principle, and retain it firmly.

If someone transgresses it, when one of them comes into his hand and he is able to kill him without imperiling himself in the matter, and he does not take his life, he disobeys this positive precept, apart from violating the negative precept stated about them, "you shall save alive nothing that breathes" (Dt. 20:16), as we will write toward the end of Sidrah Shoftim (Commandment No. 528), with the Eternal Lord's help.



To kill the seven nations possessing our land, as it is written, "you shall utterly destroy them" (Dt. 7:2), as is discussed in Rambam's Hilkhos Melakhim 5:1. There are questions as to if this applies whether they ask for peace or attempt to repent. Likewise, it is asked if there is a distinction whether they are found in the land of Israel or outside it. Also, whether the commandment applies only before Joshua's conquest or afterward as well. It is spoken of at great length; see Rambam and Rabad on Hilkhos Melakhim 6 and also the Lechem Mishneh there. Also, see Sotah 35b and Tosafot there. God willing, I will explain this in another work that I intend to compose regarding Hilkhos Melakhim, but there is no room to expand now. And know that in Sanhedrin 63 that deals with not allowing a sorceress to live. Rabbi Yossi HaGalil and Rabbi Akiva agree that killing the seven nations is only by the sword and I am amazed that neither Rambam nor Sefer HaChinukh brought this passage. And regarding what is said in Hilkhos Melakhim 9 concerning the death of the Bnei Noach by the sword - it concerned only for their transgression [i.e., in their own courts, as punishment for their laws] and not as a result of this commandment. This commandment is operative for all Jews, both men and women, as is explained in the Talmud that for a commanded war even the bride from her chuppah [must go out to war]. The author of Sefer HaChinukh

wrote that if an idolater came upon a Jew and the Jew could kill the idolater without endangering him or herself, he violated the commandment if he did not kill the idolater. This matter needs investigation for if a commandment were overridden by danger in all events, so too would this commandment to make war upon them be overridden. And it is known that the Torah does not make the performance of a commandment dependent on miracles as Ramban has noted. Further, it is the way of the world that in a war people on both sides are killed. Accordingly, we see that the Torah commands us to fight war against them even if we endanger ourselves. In this instance, danger is overridden and the commandment to fight war is applicable even if one will endanger him or herself. The matter needs more investigation.

### Current Halakhic Authorities

#### RABBIS JOSHUA MENACHEM AARONBERG AND SCHNEUR ZALMAN SHRAGAI AN EXCHANGE OF LETTERS CONCERNING THE LIBERATED TERRITORIES AND THE COMMANDMENT OF SAVING LIVES

1. [Aaronberg writes Shragai that he read an article by Shragai in which Shragai followed the error of many who say that the commandment to save a life permits the return of the occupied territories.] Their reasoning is based on the halakha that saving a life overrides the Sabbath, even in a doubtful case; similarly, the possibility of saving a life overrides the conquering of the land and the obligation to fight a war to maintain Israel's hold on the land. If this is true, then Israel should abandon the land because of the danger of loss of life through war. Their reasoning is obviously incorrect.

Rather, the positive commandment of conquering the land continues to obligate all Jews, whether residing inside or outside Israel, to fight any necessary war.<sup>1/</sup> Those who refuse to participate in this war because of fear further transgress the commandment of "Do not fear," and the

<sup>1/</sup> Ramban, Commentary on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.

punishment for that transgression is severe.<sup>2/</sup> If Jews are obligated to endanger themselves to conquer the land, how could the possibility of danger (to life) permit the return of any part of the land Jews are obligated to conquer?

There is an apparent contradiction between Sefer HaChinukh and Minchat Chinukh regarding the obligation to endanger oneself in war. Sefer HaChinukh appears to write that the possibility of danger to one's life supersedes the obligation to kill one of the seven nations. On the other hand, Minchat Chinukh refers to Ramban, noting that the commandments of the Torah are not dependent on miracles; accordingly, the risk to life is inherent in fighting a war which is commanded.

The apparent contradiction, however, can be resolved. Sefer HaChinukh refers to an individual matter and Minchat Chinukh to a public matter. An individual acting on his own behalf is not obligated to kill another individual of one of the seven nations at potential risk to his own life. On the other hand, if the political leader declares war against any of the seven nations, all individuals are obligated to fight in that war at risk of their own life.

In conclusion, there is no doubt that the danger of war and the risk to life in no way permits the return of any territory of Israel. However, if there are other

<sup>2/</sup>Sefer HaChinukh, Commandment No. 525, based on Dt. 20:3.

circumstances like fear that in war territory of Israel already in possession of Jews would be lost, then the matter is not so cut and dry and requires further elucidation.

2. [Shragai responds to Aaronberg that Aaronberg has misunderstood his article for Shragai does not believe withdrawal from the territories is permissible in order to save lives. Rather, his article was a response to those who rely on the words of Rabbi Soloveitchik to that effect.] Four points need to be stressed:

- a. Soloveitchik said the question of withdrawal from the territories was a matter of national politics and security. This shows his comments have no halakhic import.
- b. Ramban establishes a legal rule that Jews are not allowed to abandon Israel to gentiles.
- c. Just as one must understand the laws of the Sabbath before one can permit the law of saving a life to override the law of the Sabbath, so too, one must understand the laws of maintaining Jewish sovereignty over Israel before one can discuss whether or not the law of saving a life overrides the law to preserve Jewish sovereignty over Israel.
- d. Just as halakhic authorities are divided about whether or not saving a life permits the return of territories, so too are political and

military authorities. The strict position should be followed in this disputed matter.

Indeed, some political/military authorities say saving a life permits the return of territory. Their position is based on the fear that the USSR will send forces against Israel, endangering the lives of two and half million Jews and the existence of Israel itself. However, the issue is a matter of split opinion.

In conclusion, the concept of commanded war in these times must be addressed. Sefer HaChinukh requires a war to be fought against the seven nations that do not include Arabs; therefore, it does not appear as a good source for commanded war. However, an obligatory war is a public, not individual, responsibility. Moreover, since according to Ramban an offensive war to liberate Israel is obligatory, all the more so is a defensive war when Israel is attacked by others.

3. [Aaronberg apologizes for misunderstanding Shragai, but says it was due to Shragai's writing style. He then responds to Shragai's request to clarify his position on the Sefer HaChinukh and the seven nations.] While Sefer HaChinukh speaks of obligatory war only against the seven nations in accord with Rambam's position, Ramban's position is that Israel should fight obligatory wars against all nations. Since Minchat Chinukh concludes that saving a life does not override obligatory war, and Ramban and a majority of rishonim call a war against Israel as leading to an obligatory war,



saving a life does not override the obligation to respond to an attack against Israel.

Furthermore, even though Minchat Chinukh applies this doctrine specifically to obligatory war, it must also apply to permissible war - or how else could the Torah permit such a war? In his book Meromi HaSadeh, Rabbi Naftali Tzvi Yehuda Berlin comments regarding Eruvin 45a, stating that danger in a war, whether commanded or permissible, is not treated the same halakhically as other dangers. Thus, even with Rambam's position of permissible war, one cannot use the idea of danger in war as a reason to return territory.

Moreover, Rambam's restriction of obligatory war to a war against the seven nations refers only to wars to conquer Israel, not to a war fought to defend against an attack once Israel already is in Jewish hands, in which case also Rambam would call for an obligatory war against any nation.<sup>3/</sup>

In any event, all authorities apply the prohibition "Lo Techonem" to prevent encampment upon the land as long as any of the nations have not accepted the seven Noachide laws of their own volition.<sup>4/</sup> Presently, the Jewish power in the land is not strong enough to expel non-Jews off the land - it would cause too much enmity in the world, which would see this act as brutal. Historically, sages have permitted those

<sup>3/</sup> Rambam, Mishneh Torah, Hilkhos Melakhim 5:1.

<sup>4/</sup> Rambam, Mishneh Torah, Hilkhos Melakhim 8:10.



things forbidden by the Torah because of fear of enmity of the nations. But, to return the territories is not because of fear of enmity, rather, it is to prevent war. To prevent war is not a sufficient reason to override either a rabbinic or Toraitic law; a war to prevent the transgression of a negative commandment (Lo Techonem) is a commanded war.

The next issue is that of war to defend Israel. In Mishna Sotah 8:5, there is divided opinion whether or not it is permissible or obligatory to engage in a preemptive war - to attack and kill others in their land to prevent their attacking Israel and killing Jews. Rabbi Yehuda calls this war obligatory, the Tanna Kama (and Rambam in his commentary on the Mishna) calls the preemptive war permissible.

However, Rambam and all would agree that a defensive war against enemy attack is obligatory as proved by these three passages from the Mishneh Torah:

- (1) Melakhim 5:1. Rambam states that a king may order an obligatory war to defend Israel from enemy attack.
- (2) Shabbat 2:23. Rambam states that when idolaters besiege a city of Israel, Sabbath laws may be violated to fight them if they came to take life, but not property, unless the city is a border town, in which case it may be defending when idolaters come for either property or life. (One may infer from Rambam's repetition

of "taking life, arranging war or simply besieging" that an attack to conquer the land of Israel is considered as an attack on Jewish life and all Jews are obligated to make war.)

- (3) Ta'anit 2:3. Rambam writes that the public must protest if an enemy comes to besiege or seize part of the land. Rambam's position would include a part of the land under Jewish sovereignty, even if no Jews live there.

In conclusion, if Jews were to return even a part of the conquered territory, the enemy would be closer to the land settled by the Jewish population and cause greater fear that the enemy would conquer this land. The conquered territories provide a buffer zone between the border of Israel and the other nations. Therefore, the situation is similar to a border town described in Eruvin 45a, where if an enemy comes merely to acquire property, the Jewish population is obligated to resist with military force, even on the Sabbath. Thus, Jews must not return the territories to the enemy and must rely on God, the maker of all wars.<sup>5/</sup> Jews cannot return even a portion of God's holy land to the sinning nation, and as God helped the Jews capture the land, so too will God continue to maintain the land in Jewish hands.

<sup>5/</sup> Avodah Zarah 2b and Ex. 15:3.

RABBI RAPHAEL KATZNELBOGEN  
THE LAW ABOUT CONQUERING THE LAND OF ISRAEL

There exists an apparent division of opinion in the halakha concerning the obligation of a person to put his life at risk in order to save one in certain danger. The later authorities note the opinion of Hagahot Maimaniyot, apparently based on the Talmud Yerushalmi, that one is obligated to risk his life.<sup>1/</sup> They also note that the early authorities - Rif, Rambam, Rosh and Tur omit this obligation, as does the Shulchan Arukh, all apparently relying on the Talmud Bavli. While the matter needs further exploration, the general conclusion of the halakha is that no such obligation exists on the individual level. [Katznelbogen then shifts his attention from the obligation of the individual to save a life to that of the community.]

<sup>1/</sup>Katznelbogen notes that he cannot find the source of this law in the Yerushalmi, although perhaps its basis is at the end of Chapter 8 in Terumot, where it is related that R. Shimon b. Lakhish put himself at risk in order to save R. Immi from certain danger.

Rambam,<sup>2/</sup> Tur ,<sup>3/</sup> Rif,<sup>4/</sup> Rosh<sup>5/</sup> and Shulchan Arukh <sup>6/</sup>  
present the law based on Talmud Bavli, Eruvin 45a that all  
Israel is obligated to come to the aid of a city besieged by  
the enemy. According to the Minchat Chinukh, Commandment 425,  
a person cannot rely on miracles to save himself at war. That  
is, war necessarily involves a risk to life. Minchat Chinukh  
notes that the commandment to make war on the seven nations  
clearly involves the risk of danger and apparently contradicts  
the general rule, as discussed above, that one should not risk  
his life to save another. However, the contradiction is  
resolved by understanding that the obligation to fight as  
discussed in Eruvin 45a is not based upon the notion of rescue  
or Shabbat. Rather, it is based upon the commandment to  
conquer Eretz Israel. The conquest is a commanded war that  
overrides the laws of saving a life; accordingly, the  
prohibition against placing oneself in danger is not  
applicable here.

[Katznelbogen then proceeds on a lengthy digression as to  
whether the law of commanded war is only obligatory in the  
land of Israel or if it also applies in Babylon, which in some

<sup>2/</sup>Rambam, Hilkhos Melakhim 5:1 and Shabbat 2:23.

<sup>3/</sup>Tur, Orach Chayim 229:6.

<sup>4/</sup>Rif, Eruvin 45a.

<sup>5/</sup>Rosh, Eruvin 45a.

<sup>6/</sup>Shulchan Arukh, Orach Chayim 229:6.

other instances has laws contingent upon the land applied to it. The major purpose of the digression is to note that all the halakhic authorities - Rif, Rambam, Tur, Rosh and Shulchan Arukh discuss the law of a besieged city and the obligation to defend it, even upon the Sabbath. The import of the discussion is that generally, only Rambam discusses theoretical laws and all the other sages limit their halakhic works to matters still relevant in their times. Therefore, reasons Katznelbogen, since all the rabbis discuss it, the law to defend Israel against an attack that threatens life, or a border town against an attack that just threatens property, still applies to all Israel in this time.]

While all authorities agree that it is necessary to defend Israel against attack, the obligation to conquer the land of Israel from the gentiles is not as definite. The only authority to mention the obligation to conquer Israel from the gentiles as an ongoing obligation is Ramban.<sup>7/</sup> Nevertheless, all the authorities can be inferred to agree with Ramban. The law to go to war to defend a border town even when gentiles are coming for business and not for war is, as Rashi says, to guarantee the land will not be susceptible to being

<sup>7/</sup>Ramban, Commentary on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Comandments.

conquered.<sup>8/</sup> Thus, an offensive war to conquer the land should be fought, for it makes the land less susceptible to attack. Just as other obligatory wars supersede the Sabbath, so too does an offensive war fought to conquer the land. An offensive war may even be begun on the Sabbath according to the Talmud Yerushalmi.<sup>9/</sup>

Further proof of the importance of settling the land vis a vis the Sabbath is found in Gittin 8b where it is written that one may have a gentile write the contract for purchase of the land on the Sabbath because of the importance of settling the land. Rashi explains the basis of the rule stems from Shabbat 129b, where a gentile is permitted to help an invalid on the Sabbath when a Jew may not. The author of Aglei Tal questions how settlement of land compares to assisting the sick. But Ramban also makes the connection in his commentary on Shabbat 130b, explaining that technically prohibited Sabbath work (the caring for the invalid) is permitted in certain instances such as the settlement of the land. Ramban's position is supported by Rabbi Isaac b. Sheshet in his responsum No. 387. Accordingly, if an individual can violate the Sabbath to buy the land of Israel, it is as if a limb of a sick person were healed on the Sabbath; since the entire body can be healed on

<sup>8/</sup>Rashi, Commentary on Eruvin 45a.

<sup>9/</sup>Yerushalmi, Shabbat 100:8 and Moed Katan 2:4.

the Sabbath, the entire body (community) of Israel may fight on the Sabbath to conquer the land.

One may violate the Sabbath to conquer the land of Israel, even to the point of beginning a war on the Sabbath, for all this is considered as saving the life of the community of Israel. All the rabbis agree with this basic principle of Ramban - from Alfassi to the Shulchan Arukh (of course, when there are prospects of victory).



RABBI YITZCHAK GLICKMAN  
DELIVERY OF ISRAELI TERRITORY TO GENTILE SOVEREIGNTY  
IN THE LIGHT OF THE TORAH

The halakha requiring the blessing over the land to be said as part of Birkat HaMazon by Jews at all places and all times indicates that the land is eternally a Jewish possession. Despite the exile, there has been no surcease of Jewish ownership from the time God promised the land to Abraham in Genesis to the present; while the Jewish people have been physically distanced from the land, their ownership of it has been constant.

One should not think that any sin of the people cancels the promise. In Lv. 26:42 it is written, "I recall my covenant with Jacob, Isaac and Abraham . . ." The covenant regards ownership of the land and Jacob is mentioned first because he is the central figure in the covenant (to distinguish ownership from the descendants of Abraham who could include the Arabs through Ishmael). Abraham and Isaac are also mentioned to strengthen the covenant.

Essentially then, the land of Israel belongs to the Jews for all times under all circumstances and conditions. The question is whether or not that gives the Jews the right, assuming proper circumstances, to take the land from others by force and keep them off of it.

As a prelude, one must distinguish between the concept of commanded and permitted war.<sup>1/</sup> The latter, in particular, must be sanctioned by a Bet Din.<sup>2/</sup> Since no Bet Din can be formed currently, no permitted war may be fought. Accordingly, attention must be focused on what circumstances lead to commanded war, for that does not require the authority of the Bet Din.

Of course, a difference of opinion exists. On one hand, Rashi in his commentary on Nm. 33:53 states that "you shall inherit" is in the nature of a promise. Ramban, in his commentary there and on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments, disagrees, stating that "you shall inherit" implies a commandment. Ramban refutes any other possibility of interpretation in his commentary on the Sefer HaMitzvot.

First, Ramban addresses the issue that the words imply promise and not commandment. He comments that the verses in Deuteronomy discussing the conquest and inheritance of the land are in the nature of commandment, for there it says "you rebelled against the word of God."

Second, Ramban addresses the issues that: (i) if there is a commandment to conquer the land, it applied only to the seven nations residing there in the time of Moses and Joshua;

<sup>1/</sup>Beyond that which is noted in Sotah 44b.

<sup>2/</sup>Sanhedrin 2a.

and (ii) the commandment to conquer the seven nations is based on Dt. 20:17 and thus there is no need to repeat the commandment a second time in Nm. 33:53. Ramban argues that the commandment from Dt. 20:17 does concern the seven nations and the concept that they should be eliminated if they do not accept the seven Noachide laws. That is, the Deuteronomy passage concerns judgment upon the seven nations; it does not concern the requirement to settle the land after the destruction (or reform) of the seven nations. It is the commandment from Numbers, an entirely separate commandment, which requires at its essence the conquest of the land from whoever is on it and the subsequent settlement of it by Jews.

Third, Ramban addresses the issue that indeed Numbers commands a conquest, but only for the time of Moses and Joshua, not all generations. According to Rambam, a commandment that is not given for all generations is not counted as one of the 613 commandments.<sup>3/</sup> But Ramban argues the conquest is a commandment for all times, since in Sifre, referring to King David's conquest of Aram, it says Aram was not sanctified because David did not first fulfill the commandment to conquer the land of Israel.<sup>4/</sup> Since the commandment was still operative in David's time, it reasons it is still operative for all times.

<sup>3/</sup>Sefer HaMitzvot, Principle No. 3 and Positive Commandment No. 187.

<sup>4/</sup>Sifrei, Parashat Ekev.

Accordingly, for Ramban, the passage from Nm.. 33:53 constitutes a threefold commandment: (1) VEHORASHEM ET HAARETZ - conquer the land and take it from its current inhabitants; (2) VISHAVTEM BAH - settle the land, an obligation upon each individual; and (3) KI LACHEM NATATI ET HAARETZ LARESHET OTAH - settle the entire land, an obligation upon the community not to congregate in one place and leave part of the land uninhabited.

There appears to be a problem with Ramban's position stating that the land may only be left in Jewish hands. This position appears to contradict the commandment based on Dt. 20:17 that states if the members of the seven nations accept the Noachide laws, they are to be made peace with and not destroyed. The resolution of the apparent contradiction is that if the non-Jews who have accepted the seven Noachide laws subjugate themselves to Jewish sovereignty, then it is as if all the land were settled by Jews, and the non-Jews may remain.

The problem remains as to why Rambam did not bring the passage from Nm. 33:53 into his count of the commandments. Regarding settlement of the land, he may have believed, like Rashi, that it was merely a promise not a commandment. But the other part of the verse, concerning conquest, especially in light of the other passages in Deuteronomy, seems to be a commandment, as Ramban argues.

The author of Megillat Esther <sup>5/</sup> explains that Rambam considered the conquest to be applicable during the time of Moses, Joshua and David, but inoperative from the exile until the coming of the Messiah. Support of this position comes from Ketubot 111a, in which two of the three oaths God administers to Jews are not to revolt against the nations and not return to the land of Israel in mass.

Yet, Rambam points out that in two ways David's conquest leads to the same conclusion that conquest is commanded. On one hand, if the commandment to conquer was just for the time of Moses and Joshua, then it was renewed with David. On the other hand, if the conquest begun by Moses was completed by David, the obligation still continues. This position is explained through Rambam's discussion of the conquest of the seven nations, in which he notes that a commandment lapses only when the obligation lapses, even assuming static conditions. On the other hand, a commandment is operative for all times even though it may not be implemented for a period of time when the conditions precedent for it have themselves ceased.<sup>6/</sup>

According to Rambam's reasoning, it appears more likely he believed that Nm. 33:53 was operative for all times but applied only to the seven nations. For him it was not

<sup>5/</sup>In his commentary on Rambam's Addendum No. 4 to the Positive Commandments of Rambam's Sefer HaMitzvot.

<sup>6/</sup>Rambam, Sefer HaMitzvot, Positive Commandment No. 187.

necessary to mention Nm. 33:53 as the support for conquest for he used the passage from Dt. 20:17. The other two segments from Nm. 33:53, concerning settlement, were in the nature of a promise.

The next issue is whether Rambam believed at all in a commandment to settle the land. Magen Avraham and the Bach said no, citing the passage from Ketubot 111a. The later sages have disputed this conclusion, noting that Rambam counts as commandments all those obligations that can be performed only on the land. Further, Rambam discusses the permissibility of otherwise forbidden work on Shabbat in order to conclude a land sale with a gentile.<sup>7/</sup> Thus, the commandment to settle the land is important for Rambam, but what is its Toraitic support?

The support comes from Nm. 33:53, which for Rambam is not specifically a commandment from God, but a revelation of God's will. There are many examples of Toraitic obligations that are not specifically stated as commandments and thus, not included by Rambam in his Sefer HaMitzvot. One example is the obligation to recall the Exodus from Egypt every morning and evening, which is not listed as a commandment by Rambam because Torah reveals, but does not command (linguistically), the obligation. According to this explanation, the difference between Rambam and Ramban regarding settlement of the land is

<sup>7/</sup>Rambam, Hilkhhot Shabbat 6:11.



slight. The former considers it an obligation; the latter counts it as a commandment.

There exists a greater difference between them regarding conquest. For Rambam, conquest applies only against the seven nations, and once they have been eliminated, the only commanded war is against Amalek or one of defense. For Ramban, conquest applies as a commanded war against all nations at all times. The passage from Ketubot 111a appears to contradict Ramban.

However, one must understand the essence of Ketubot 111a. Some oaths are personal oaths and others are communal: the one who swears on behalf of others also take upon himself the oath, as in the giving of Torah. The author of Avnei Nezer raised the same point.<sup>8/</sup> But the true intention here is not of an oath, but rather a warning, an attempt to imbue the consciousness of the people so that they would not endanger themselves with daring deeds and attempt to conquer the land with the aid of miracles. The people cannot rely on miracles and can only attack when by natural methods they have the upper hand.

Based on the above principles, one can determine how Jews should act in these days of an independent government and strong, well-armed military with the ability to win decisive victories.

<sup>8/</sup>No citation given.



Before the Six Day War, when large areas of Israel were in the hands of Arabs, according to Rambam, a war of conquest would not have been permissible, for commanded offensive wars are permitted only against the seven nations and descendants of Amalek.<sup>9/</sup> Permitted offensive wars, which this would be, can only be ordered by the Great Sanhedrin, not functioning at this time. According to Ramban, this would be a commanded war and one to be fought when realistic opportunities for winning existed. It would not be superseded by the need to "save a life," for that rule does not operate vis a vis a commanded war.

Yet, even according to Ramban, it would have been forbidden to start the war without provocation from the Arabs, for the nations of the world would have risen together in outcry. Further, the unity of both the enemies and friends of Israel that forced it to withdraw from the conquered territory, as in Sinai in 1956, would be reason to militate against beginning a battle. These issues may be underlying the warning in Ketubot 111a, not to revolt against the other nations, for still the Jews are not liberated from the yoke of the gentiles.

The situation after the Six Day War is different. The war broke out on the heels of Arab provocation, and God made the Jews successful in their conquest of the territory of Israel,

<sup>9/</sup> Rambam, Hilkhot Melakhim 5:1.

except for the land on the east side of the Jordan river. The world has no opening to accuse the Jews of plunder - the Arabs brought the situation upon themselves. The Jews were forced to conquer the territories for their own defense. The post-1967 situation no longer requires offensive war - just a defensive war to protect the territories, and all authorities agree that that is a commanded war.<sup>10/</sup>

Another problem arises since the territory is in Jewish hands. The prohibition "Lo Techonem" prohibits the encampment of gentiles upon the land. Yet some in the world of Torah state that the prohibition may be transgressed in order to "save a life." Others counter, relying on Ramban, that in a situation of commanded war, the doctrine of "saving a life" does not apply. But where life is at stake, one must consult Rambam as well as Ramban. As discussed above, Rambam only considers defensive war a commanded war. The question thus becomes whether Jews are obligated or permitted to hold on to the territories and perhaps bring on a war in which they would have to defend themselves and risk life.

The essence of the argument in favor of the return of the territories is that to do so will prevent danger. This position is very dubious. First, [as of 1978] the Arabs are not ready or able to wage war, so the question remains one of the future. Yet no one can predict what the future will

<sup>10/</sup> Minchat Chinukh, Commandment 425.

bring. Second, the rabbis have warned that Jews should not rely on the promises of gentiles, whether given orally or in writing. Third, to return territories and postpone war may be more dangerous, for if war should break out in the future, the Arabs would be based in the territories and perhaps, cause greater loss to Jewish life. Based on all these considerations, it is better shev v'al ta-aseh - sit and do not act - that is, refrain from doing that which may be commanded to do.

Moreover, no one is talking about a unilateral withdrawal or arms treaty; rather, a bilateral written agreement to give the Arabs an eternal right to a portion of the land. This agreement would support the Arabs' right to the land and defeat the Jews, for it would make the dispute seem to be merely one over territory or historical right. These concepts are flexible and give Jews no firm basis to the land. The one, exclusive basis for the right to the land is from the Torah, from Jewish faith. If the Jewish government, on behalf of the Jewish people and with support of certain religious leaders, signs a peace treaty, it will appear to all as an agreement that the Jews do not have exclusive right to the land, as based on the Torah. This borders on that written by Radbaz, quoted in Pitchei Teshuvah, Yoreh Deah 157, regarding the Arabs. Although they are not idolaters, if they force Jews to transgress even one commandment, Jews are obligated to "die so as not to transgress" - even if it is a matter of the

Arabs own benefit. The signing of the peace treaty would be in public. countering any argument of "their own benefit" and initiating the obligation "to die so as not to transgress."

In conclusion, it is important to bring Rashbam's commentary on Genesis 22:1, "And it was after these things." Rashbam writes: "After these things - that Abraham made a covenant with Avimelech [binding their descendants] and gave him seven sheep and angered God, for the land of the Philistines was given to Abraham . . . . Accordingly, God aggrieved Abraham, vexing and troubling him, as if to say, 'You became so haughty because I gave you a son that you made a treaty between your descendants and theirs. Now go and sacrifice him and see what benefit that son has.' Indeed, later on we find in the Midrash on Samuel: And the Ark of the Lord was in the land of the Philistines seven months. Scripture states, seven sheep you will take from me. God said, 'You gave him seven sheep! On your life! His descendants will make seven wars with your descendants and defeat them each time.' Another interpretation: 'On your life! His descendants will kill seven righteous men of your descendants.' Another interpretation: 'On your life! His descendants will destroy seven tabernacles.' Another interpretation: 'The ark will be in the fields of the Philistines seven months.'"

Indeed, while halakha cannot be learned from aggada, the words of our sages should teach us to act in trepidation.

These are very serious matters that should be approached with sincerity and respect. God will provide the path and establish that which is written in Scripture, "God will give strength to his people, God will bless his people with peace."

RABBI YEHUDA NACHSHONI  
THE PROBLEM OF SAVING A LIFE AND SETTLEMENT ON THE LAND

The Camp David agreement and discussion of return of territories has led to discussion in the halakhic community as to whether such return is halakhically permissible. Both sides rely on early and late scholars and conclude that the doctrine of saving a life either permits or prevents the return of territory. While the real issue regarding return does not concern the doctrine of saving a life, that issue has become the focus of attention and will be addressed herein.

It must be noted that the halakhic discussion of the doctrine of saving a life is precipitous. First, no one in the government considered the halakhic import of the question when returning the Sinai. Second, political and military questions must be answered before the halakhic issue can be addressed. Any halakhic debate before that time merely fuels the secularists who can point to division of opinion among the halakhists.

The essential security question is what endangers Jewish life more - the return or continued possession of the territories? The average landowner would feel less threatened the further away the enemy is. Similarly, Israel was more secure with the situation before the Six Day War, when the Sinai served as a buffer zone between it and Egypt. Also,



Israel is more secure when the Sinai oil wells are in its hands, not Egypt's.

The "Doves" state that giving up these security needs leads to peace. Yet, with return so far of half the Sinai, there has been little normalization between Israel and Egypt. Some Egyptian diplomats have visited Israel, but Egypt calls for the establishment of a Palestinian government in exile and a Palestinian State in Judea and Samaria. This is not peace worthy of return of the rest of the Sinai - the oil wells, air fields and Jewish settlements near Rafiah. The security and strategic situation in which Israel is left is one of certain danger, in which only God can save the Jews - the opposite of "saving a life."

The sad situation is that the return of the Sinai is a fait accompli. A Palestinian State is on the threshold. The return of the Sinai has weakened Israel's hold on Judea, Samaria, Jerusalem and the Galilee - every place is in greater danger. The essential question is the distance of the enemy from Israel's border.

The leftists who make this an issue of "Mysticism and Messianism" should be condemned. It is a question of the survival of Israel. It is not a matter of what is Israel's according to Torah and history. A Palestinian entity at the heart of Israel makes it that much easier for the enemy to seize the land remaining in Jewish hands and destroy the State of Israel itself. Mr. Begin has forgotten his words about the



"inheritance of the ancestors." He has been ensnared in a trap set by Carter and Sadat. The return of the Sinai and the establishment of Palestinian autonomy in Judea and Samaria was based on an illusion. Soon Mr. Begin will be forced to live up to the words of Camp David.

Thus, the question of "saving a life" is not at first one of Torah but a complicated one of strategy and security. Those who say saving a life permits the return of territory do so on the assumption that indeed return will save Jewish life. But these assumptions are based on strategic and security considerations - and who is the expert who can make those evaluations?

The laws of saving a life are complex. Possible danger activates the doctrine as does certain danger. The doctrine applies when the danger is only for a short while, or when there is a fear of danger. Also, one expert against the opinion of many may declare a situation exists activating the doctrine of saving a life. In these circumstances, can one make a halakhic decision as to which side the doctrine of saving a life supports, return or continued possession?

The better approach to the problem of what to do with the territories is based upon the law of conquest and settlement of the land, operative for all times, according to Ramban. Rabbi Chayim Eliezar Shapira and Rabbi Teitlebaum, of our generation, basing themselves on the author of Megillat Esther who noted the passage of Ketubot 110 [sic, Ketubot 111a],

argue that the commandment to settle the land is not operative at this time. However, the rabbis of organized halakhic Judaism follow the position of Ramban.

Assuming the commandment to conquer the land is operative, certain questions arise. Regarding territories that are not the land of Israel (that is, either part of the Sinai or the whole Sinai, depending on how the halakhic borders of Israel are determined) there is no doubt that the doctrine of saving a life can apply there. But the other parts of Israel are inherited land from our ancestors to which the law of conquest applies (according to the general opinion with the above noted exception). Is it possible to perform the commandment of conquest without endangering life? Since the creation of the State, five wars have been fought - of liberation, prevention and defense. Is it justifiable to return lands conquered with great risk to life on the doctrine of saving a life? To press the argument, since war endangers life, to give up the entire land would therefore save life. What makes Tel Aviv and its surrounding valleys different than Jerusalem, Hebron and other holy cities when speaking of saving a life?

To determine ownership of the land of Israel on the basis of the doctrine of saving a life would negate the commandment of conquest. Except for David's war, in all the wars of Jewish history, many people have died and many have been endangered. Sefer HaChinukh has stated that the commandment to war against the seven nations still operates in our times,

except that one should not endanger himself in the matter. The Minchat Chinukh challenges the Sefer HaChinukh, noting that all wars require a person to endanger himself.<sup>1/</sup> But Ramban has noted that the basis for conquest of the land is not the war against the seven nations.<sup>2/</sup> What then are the applications of saving a life regarding the commandment of conquest, the essence of which is danger?

Ramban's concept of conquest and settlement is found in his commentaries on Rambam's Sefer HaMitzvot and Nm. 33:53, the verse on which Ramban bases the commandment. Ramban states the commandment is operative for all times and that all matters of settlement of the land flow from the commandment to conquer it.

Rashi does not discuss conquest and settlement in his commentary on Nm. 33:53, and from that one might think he disagrees with Ramban. However, Rashi's comments on Gittin 8b, regarding the writing of a contract to purchase

<sup>1/</sup> Sefer HaChinukh and Minchat Chinukh, Commandment 425.

<sup>2/</sup> Ramban, Commentary on Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.

land on the Sabbath, and on Sanhedrin 2a regarding Joshua's war of conquest, indicate Rashi's agreement with Ramban.<sup>3/</sup>

While Ramban criticizes Rambam for not counting the commandment to conquer and settle the land, many of Rambam's laws are based upon settlement of the land. Many wonder why, therefore, Rambam did not count as a commandment the conquest and settlement of the land. Some believe that although Rambam did not enumerate settlement as commanded, he nevertheless considered it to be so. The Chazon Ish wrote that the commandment to settle the land was declared by Rambam, Ramban and a vast majority of other halakhic authorities.<sup>4/</sup> Thus, Rambam and Ramban agree.

This is not to ignore the opposing view of Rabbis Shapiro and Teitlebaum, mentioned above. However, they oppose participation in elections and do not even grant de-facto recognition to the secular state. There is nothing to say to them.

<sup>3/</sup>The passage in Gittin 8b states that the rabbis did not apply the prohibitions against having a gentile perform work on Shabbat that a Jew may not do when it came to a question of furthering settlement of the land of Israel. Rashi comments that furthering settlement implies the expulsion of the idolater from the land and the settlement of Jews on it. The passage in Sanhedrin 2a states that a permitted war can be waged only by the authority of a court of seventy one. Rashi comments that all wars are called permissible except for "Joshua's war which was to conquer the land of Israel."

<sup>4/</sup>Chazon Ish, Letter 175.

Rather, the words of Rabbi Yakov Emden must be recalled - the essence of which is that settlement of the land should take place in all events, even through war and conquest.<sup>5/</sup>

There exists a difference of opinion as to what constitutes a commanded war and what a permitted war, focusing on the issue of preemptive war (based on Mishna Sotah 8:5).

According to Rambam, commanded war is against the seven nations, against Amalek, or in defense of the land of Israel. A permitted war is like David's, to broaden the boundaries of the land. The Lechem Mishneh thinks that Rambam believes a preemptive war is permitted; the Chazon Ish and Joseph Karo believe Rambam considered a preemptive war to be commanded.<sup>6/</sup> The Chazon Ish questions, though, why Rambam did not specifically enumerate the preemptive war as a commanded one.

The Tur and Shulchan Arukh <sup>7/</sup> bring in Eruvin 45a and Rashi's comment thereon, stating that it is permitted to violate the Sabbath to fight to protect a border town from gentiles, even if they are coming to take property and not life. As one authority explains, the rationale is that if Jews do not let the gentiles come and plunder, they will take

<sup>5/</sup>Rabbi Yakov Emden, Mitpachat Sofrim, p. 77.

<sup>6/</sup>Chazon Ish and Joseph Karo; on Hilkhos Melakhim.

<sup>7/</sup>Tur and Shulchan Arukh, Orach Chayim 229:6.

lives. From this point one sees it is futile to trust the gentiles, for it is known that "Esau hates Jacob."

From the above, it is clear that the halakha concludes that one should not deliver territory in Jewish hands to the gentiles, for from there it will be easier to conquer the land. The halakha does not trust gentiles. The government should not either. If war breaks out because of the refusal to deliver territory, all agree this is a defensive, commanded war in which one must endanger himself. Certainly, a war of conquest, according to Ramban, requires a person to endanger himself.

Some might argue that one needs a king or prophet to declare a war of conquest. Yet the Meiri states that later conquests of the land partake of the sanctity of the first.<sup>8/</sup> Similarly, Rambam speaks of the conquest by Ezra as by right of possession. Also, Rabbi Abraham Isaac Kook states that in a time when there is no king, judges and governmental officers stand in their place.<sup>9/</sup>

The meaning of the halakha is clear. The law of conquest of the land has a unique position in the halakha - the law of saving a life does not apply; one is obliged to endanger

<sup>8/</sup>Meiri, Niddah 40a.

<sup>9/</sup>Rabbi Abraham Isaac Kook, Mishpat Cohen, Section 144.

himself. All parts of the land are treated equally in this regard. One can neither return any part of the land or give the Arabs any control over it.



RABBI NACHUM ELIEZER RABINOWITZ  
NACHMANIDES - THE CONQUEST OF ISRAEL

Ramban's comment on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments, discusses conquest and settlement of the land. One must understand that conquest does not necessarily mean "war" but rather "having control" over something - in this instance over the land through sovereignty. Ramban's comment on Gn. 1:28 interprets the word "Kivshuha" as "Memshela," that is, Kibush, "conquer" means "rule over." One possible method of obtaining rule is through war, but it is not the only one. Rambam, in Mishneh Torah, Hilkhos Terumos 1:10 defines "individual conquest" as acquisition through money and taking. The essence of "conquest" then is "having rule over," whether it be by war, purchase, taking possession of ownerless property, gift or other means.

Ramban believes that the original command to emigrate to Israel did not contemplate war; however, because the Jews sinned and rebelled in the wilderness, they received a double punishment.<sup>1/</sup> First, the generation of the wilderness died and could not enter the land. Second, their children had to obtain rule over the land through war. This conquest through

<sup>1/</sup>Ramban, Commentary on Nm. 14:9.

war applied only to the generation of Joshua.<sup>2/</sup> The only command to fight an offensive war that applies for all times is against the seven nations [and Amalek after Israel defeated the other nations]. This opinion flows from the passage in Bavli Sotah 44b, in which David's war to broaden the border is called optional, but his war to capture Jerusalem is called by some commanded and others optional. In II Samuel 24:18-25, Scripture states that after David fought the war to capture Jerusalem, some Jebusites survived and from them David bought the area for the altar on Mt. Moriah. Commentators on those verses posit that the surviving Jebusites were either not from the seven nations or had accepted the seven Noachide laws. But the aspect of war is entirely separate from the aspect of conquest. Whether David's war against Jerusalem was commanded or optional depends on the status of the inhabitants of Jerusalem - that is, their connection to the seven nations. But the actual conquest, that is, the acquisition of Mt. Moriah to build the altar, was accomplished not through war but through purchase. Essentially, "kibush" does not automatically create a situation of commanded war.

The situation regarding Joshua's conquest of the land differs, for there Joshua was commanded to conquer the land by the specific means of war. According to Ramban, this commandment was independent of any commanded war against the

<sup>2/</sup>Ramban, Commentary on Dt. 1:41.

seven nations. Rambam, however, in his commentary on Mishna Sotah 8:5, believes that Joshua's war was commanded because it was against the seven nations, and any war against other nations, even for Joshua, would have been optional. Further, in his introduction to Sefer HaMitzvot, Rambam writes that all commandments dependent on king or prophet, including war and conquest of the land, are not operative for all generations. Ramban does not comment on this passage, from which we learn that both Rambam and Ramban did not believe in an ongoing commandment to conquer the land by means of war. (This does not refer to defensive wars, such as have been fought since the establishment of the State of Israel, which all agree are commanded wars.)

Thus, it is clear Ramban did not believe in commanded war to conquer the land, and this is borne out by his commentary on Rambam's Sefer HaMitzvot. His comment that the land should not be left desolate or in the hands of other nations indicates that the land should be taken by any possible means. Since the land should be taken by any possible means when desolate, so too when occupied. An example is seen in Gittin 55b, where Rabbi assembled a Bet Din and declared that property seized for more than 12 months by Roman soldiers from Jews could be purchased by a third party who would gain clear title by giving the original owner 1/4 of the purchase price. The rationale for this provision which apparently

rewards the Roman's theft was so that the land would not be settled permanently by the gentile.

Ramban next brings the passage from Dt. 9:23, in which the obligation to occupy the land is expressed as a commandment; there, it is written that the Jews rebelled against "the word of God." However, the initial commandment (Nm. 33:53) did not command war in conjunction with settlement. The commanded war with settlement comes from Dt. 9:1 ff., but applies specifically to Joshua. It is not to be confused with the war against the seven nations, against whom one may war without settling the land. And, if the seven nations fled (and there was no war against them), the commandment to settle the land would still be operative, for it applies for all generations. Ramban writes, "When the rabbis write that Joshua's war of conquest is commanded, understand that the commandment is the conquest." There is no need to command Joshua to fight a war, for the commandment to fight war against the seven nations applies to all generations. The essence of the commanded conquest, then, is to live permanently in the land, not to fight war over it. That Ramban believes this is confirmed in his commentary on Nm. 33:53, which is an abridged form of his comments on the Sefer HaMitzvot. There he does not even mention war, for the essence of the commandment to settle the land has no connection to war.

For Ramban, the commanded conquest requires settlement of land by permitted means. War is not included in these means, unless it is a defensive war against enemy threat or attack.

For Rambam, the possession of the land is the goal or purpose of many other commandments and is not counted as a separate commandment. Rambam explains in the 5th principle in his introduction to the Sefer HaMitzvot that he does not count the reason or explanation for a commandment as a separate commandment. Another reason he does not consider settlement to be commanded is that it is written in scripture as a revelation of God's will, not a commandment. However, Rambam considers settlement an obligation.

Accordingly, it is incumbent upon all Jews to settle the land, but in peaceful methods. God will give his people strength and bless them with peace.

RABBI YAKOV ARIEL  
THE CONQUEST OF ERETZ ISRAEL - THE VIEW OF NACHMANIDES

In his article regarding Ramban's view of the conquest, Rabbi Rabinowitz came up with a new and radically different interpretation: Ramban does not believe that offensive war is part of the conquest, except in Joshua's time. In other words, there is no commandment to conquer the land operative in this time.

Rabinowitz argues that only defensive wars can be fought in our time. Indeed, war is a choice of last resort, and peace is ideal. But, sometimes, temporal circumstances require that war be fought. Given this, it is clear that Ramban did not conceive that the conquest of Israel should be by the sole, specific means of war. Rather, Ramban envisioned complete rule over the land - preferably by political or economic means, but also by military means when those others failed. The conquest of the land includes military options and Rabinowitz is obdurate to deny this.

The simple meaning of conquest is rule or dominion, but "rule" includes military rule. It does not refer strictly to political rule. The term includes both political and military aspects. In Kiddushin 35a, the commandment from Gn. 1:28, "be fruitful and multiply" (and fill the earth and conquer it), is held to be an obligation of men and not women. Rashi writes that conquest implies war, and since war only applies to men, so too "be fruitful and multiply." Rabbi Samuel Edels



criticizes Rashi for not understanding the connotation of "conquest"; i.e., "to dominate the woman," as it is used in Gn. 1:28,<sup>1/</sup> but Rashi could not ignore the root meaning of the word, which is military conquest.<sup>2/</sup>

Rabbi Ovadiah Bartanora, who states that it is the way of man to conquer woman, that is, rule over her, does not contradict Rashi. In Midrash Tanchuma, both interpretations of "conquer" are given, and it is stated that they are not contradictory.<sup>3/</sup> Thus, Ramban includes military aspects in "conquest."

That Joshua's war of conquest was punishment is agreed upon - all wars for all people are punishment. If Israel were able to conquer the land without war, or with God's intervention as at Jericho, it would; if not, it must resort to military means. One does not learn from the Talmud's statement, "Joshua's war of conquest is obligatory" that the conquest only applied to Joshua. It is used as an example, just as is "David's war to broaden the borders is optional." There are thousands of terms used as examples in the Talmud, for its language is casuistic, speaking in terms of specific examples.

<sup>1/</sup>Chidushei Agadot, Yebamot 65b.

<sup>2/</sup>As in Kiddushin 2b: it is the way of man, not a woman, to wage war . . .

<sup>3/</sup>As cited in Torat Shelomo, Bereshit 1:793.



As for David's purchasing Mt. Moriah, clearly purchase is preferable to war and in all instances of acquisitions of land of Israel, war is only turned to as a last resort. Other factors may have led to Mt. Moriah being taken by purchase not war. It is the central holy place for all the world, the place from which Torah emanates. It should be built with whole stones, not fire and brimstone. Just because David was a man of war he was not allowed to build the Temple. Thus, it was necessary that the land not be acquired by war. Minchat Chinukh, Commandment 284, states that David was permitted to conquer Mt. Moriah, but by using non-military means instead, the land was acquired for all times. After the fall of the Temple in 586 B.C.E. to Nebuchadnezer, the holiness of the site did not cease, for it remained a Jewish possession. From all this it is clear that David could have conquered Mt. Moriah but for special reasons chose to purchase it.

It is important to understand that for Ramban, war is an essential aspect of the conquest [i.e., it cannot be excluded as a means of conquest]. Rabbi Shelomo b. Shimeon Duran writes that on the basis of Ketubot 111a, the conquest no longer applies to the community of Israel in exile, but to each individual who must make aliya.<sup>4/</sup> According to Rashbash, the conquest has two aspects: the public conquest, including war, forbidden while Israel is in exile, and private aliya.

<sup>4/</sup> Rashbash, Responsum No. 2.

How did Rashbash arrive at this public/private distinction? By understanding that Ramban's commandment included war, an obligation which is strictly public in nature, as we learn in Sadya Gaon's Sefer HaMitzvot and elsewhere.<sup>5/</sup> A similar distinction between public and individual obligations in war concerns the war against the seven nations as discussed in Sefer HaChinukh, and as interpreted by Minchat Chinukh.<sup>6/</sup> In war, the community is thought of as a whole, and each individual as a limb of the communal body that may be endangered in war. The communal aspect of the commandment requires war and risk to life and devolves upon men of the community; the individual aspect of the commandment devolves upon every man and woman.

In explaining Rambam in light of Ramban, Megillat Esther brings in Ketubot 111a, that Jews are not to revolt against the nations or come to Israel in mass. One can infer that Megillat Esther understands that Ramban's commanded conquest includes the possibility of war. Since this is an essential aspect of the commandment that cannot be carried out in these times, the entire commandment is not included by Rambam in his Sefer HaMitzvot.

It is possible to conclude that this proves Ramban did not consider war central to the conquest; rather, war was temporal

<sup>5/</sup>Sadya's Commandments 11 and 61, commandments of war, are included in his "public" section.

<sup>6/</sup>Commandment 425.

and the conquest applied as a commandment to all generations. While this conclusion is possible, it is not necessary. A simple explanation of Ramban's commandment is that while in its entirety it is applicable for all generations, because of technical delays it cannot be fulfilled presently. This explanation would not prevent the commandment from being included in the counting of commandments. Indeed, Rambam uses a similar rationale when he includes the commandment to wipe out Amalek in his Sefer HaMitzvot. (Megillat Esther would say the difference is that settlement of Israel is delayed not only because of external reasons, but also existential ones. That is, the Torah itself commands settlement of the land as the fundamental goal and exile as the punishment for not living up to the laws of Torah.)

Rabbi Abraham Bornstein, in his work Aglei Tal cites Yerushalmi Moed Katan 3:4 regarding the taking of land from a gentile on the Sabbath. He notes that just as the conquest of the land supersedes the Sabbath regarding work (as in the conquest of Jericho), so too, does the purchase of land from the gentile, which is like an individual conquest. The source of the permission for war to supersede the Sabbath is Dt. 20:20 as understood in Shabbat 19a. Thus, the Aglei Tal believes war is commanded for all generations. [That is to say, one cannot find a permit to purchase land on Shabbat except by analogy from the permit to fight war.]

Finally, if Ramban did not believe in conquest through military means, why would he even mention the conquest through war in his comments? Clearly, Ramban includes war as a permissible means of conquest and taking possession, albeit the means of last resort. This commandment devolves upon the public when circumstances permit [and the oath of Ketubot 111a no longer applies], as they do in these times now that the State of Israel exists.

RABBI NACHUM ELIEZER RABINOWITZ  
THE CONQUEST OF ERETZ ISRAEL: THE VIEWS OF NACHMANIDES AND  
MAIMONIDES

A. Possession of the land means sovereignty of the people.

The essence of possession of the land concerns the entire community of Israel, as learned in Rambam's Hilkhot Terumot 1:1, where the land of Israel is defined as land obtained through public conquest, not individual acquisition. In Hilkhot Beit HaBechira 6:16, Rambam explains that the original conquest of the land was rendered ineffective by the Babylonian conquest. Ramban also accepts this definition. While individuals may settle and work the land, it is only when their settlement has a collective consciousness that the possession of the land as "the land of Israel" is effected.

B. Ramban's understanding of the commandment: community and individual obligations.

One must understand that Ramban perceives the commandment to settle the land as having two parts. First, the entire community of Israel is commanded to take possession of the land and establish sovereignty over it. Second, each individual is commanded to live in the land. Ramban mentions this commandment in his commentary on Nm. 33:53 and then brings further scriptural supports and proofs from the Talmud in his Addendum to Rambam's Sefer HaMitzvot. In the

commentary on Nm. 33:53, Ramban discusses the importance of the commandment to settle the land as learned from Ketubot 110b, where a man can divorce his wife if she does not make aliya with him. In the addendum, Ramban brings further proof that it was a commandment "by the word of God."

C. The connection of war to fulfilling the commandment.

In his commentary on the Torah, Ramban wrote that at the time of the first command to enter the land, there was no need for war, for the nations would have fled, as is learned from Ex. 14 and 15, the splitting of the Red Sea. Ramban wanted to support his counting the settlement of the land as a commandment with the words of the Sages. He needed a text that would connect settlement of the land with the word "commandment." That text was the commanded war in context of the conquest of the land.

Indeed, war in itself is forbidden, for the spilling of blood is a great sin. Yet there are three categories in which war is commanded. First is war that in and of itself is commanded. These are the wars against the seven nations and against Amalek. Rambam, in his introduction to Sefer HaMitzvot proscribes many limitations to this kind of war. Ramban follows Rambam, even bringing proof from Scripture that a war that in and of itself is commanded can be fought only under the authority of King, Sanhedrin, and Urim and Turim and



so forth.<sup>1/</sup> These wars certainly cannot be fought in our time. [We thus deduce Ramban's opinion.]

Second is war that is one of the many permitted methods for obtaining a goal that is commanded, as is the war to defend Israel against enemy attack (fulfilling the commandment to save life). Ramban reasons that Joshua's commanded war to conquer is another example in which war is one of the methods for reaching a commanded goal. If the war of conquest were commanded in and of itself, it could not be obligated in our time. Rather, the conquest is the goal commanded for all times, and war was one of the permissible means. The sages would not have mentioned the goal of conquest in context of the commanded war unless the conquest itself was that which was commanded. "Conquest" does not mean war, but rather settlement on and possession of the land.

Third, is war that is ordered under emergency or temporary circumstances. In a sense, this is a subset of the second category. One might think that just as the war in defense of Israel is obligatory for all times, so too is the war to achieve the conquest. However, the sages specifically wrote "Joshua's war of conquest" to limit it to Joshua's time. Even though David fought to conquer Jerusalem, his war was not considered a commanded war. Similarly, in these times, a war to achieve conquest of the land is not

<sup>1/</sup>Ramban, commentary on Sefer HaMitzvot, end of Negative Commandments.



commanded. Joshua's war of conquest was commanded in his time only as punishment because of the people's failure to follow the first command to take possession of the land.

One might think that since David's war was not commanded that the goal to settle the land is not commanded. However, David was reproved for attempting to annex the territory outside the land before the land of Israel itself was completely conquered, that is, settled. The conquest of the land is so important that a war for limited purposes was permitted to obtain the goal. Yet Ramban's position clearly is that while the "conquest = settlement" of the land is commanded for all times, the war to obtain that goal is limited to Joshua's time.

D. Taking Possession of the Land According to Rambam.

Rambam, in the fifth principle of the introduction to his Sefer HaMitzvot, states that something that is the reason or goal of a commandment is not counted as a separate commandment. Rambam, on the other hand, believes that for an obligation to be binding, it must have its roots in one of the 613 listed commandments. In his Sefer HaMitzvot, Rambam has counted many commandments that pertain to settlement on the land. Thus, Rambam needs to show settlement itself is commanded. For Rambam, settlement is the central goal and motivation of Torah, but not counted as a separate commandment.

## Analysis

### 1. The Halakhic Background to Commanded Settlement and Commanded War.

Regarding settlement of the land of Israel, the Toraitic and Talmudic sources seem straightforward but remain open to multiple interpretations. The Toraitic basis that settlement is commanded for Jews comes from Nm. 33:53. The key word in that verse, "VeHorashtem," is the hiphil form of the root y-r-sh. Generally, it has the meanings of "possess" (land) and "disposses" (the current inhabitants on that land).<sup>1/</sup> When viewed in its context of Nm. 33:50-56, "VeHorashtem" clearly requires the displacement of the current inhabitants of Canaan so that the children of Israel can live on the land in peace. The question is whether that verse applies to these times.

The Talmudic rabbis complicated the issue as to whether settlement was commanded. In some passages, particularly Ketubot 110b, they stated that nothing was more important for a Jew than to live in the land of Israel. Ironically, immediately after that passage, in Ketubot 111a, the rabbis presented the oaths sworn by the Jews to God, including the oaths not to immigrate to Israel en masse and not to revolt among the nations.

<sup>1/</sup>Brown, Driver and Briggs, op cit., pp. 139-140.

Furthermore, not all rishonim considered settlement to be a specific commandment. While some interpreted "VeHorashtem" as a commandment, others considered it to be a conditional promise and others as a principle underlying other commandments.

Regarding commanded war, there are many passages in the Torah concerning the wars to be fought against Amalek and the seven nations, the inhabitants of Canaan before the Israelites arrived. The commanded war against these nations derives from Dt. 20:16-18, which calls for the utter destruction of the seven nations. Talmudic traditions concerning commanded war, such as the passage in Eruvin 45, generally discuss the conditions under which wars may be fought on the Sabbath.

There is an additional concern, as expressed in Sotah 44b, over which wars are commanded and which are permitted. The rabbis define "Joshua's war of conquest" as commanded. The question that remains open for later authorities is which war is commanded - Joshua's war or war of conquest.

The major authority that settlement and conquest of Eretz Israel are commanded is Ramban. In his Addendum No. 4 to the Positive Commandments of Rambam's Sefer HaMitzvot, Ramban connects the settlement of the land with its conquest, based on his reading of Nm. 33:53.

Rambam, on the other hand, separates the two issues as do most rishonim. Rambam, like most early authorities, specifically connects the conquest of the land to its

historical situation, the war against the seven nations. For Rambam, the war against the seven nations is commanded for all times. However, Rambam does not mention the settlement of the land as being commanded. Rambam's failure to include settlement as commanded raises many questions for later authorities.

The primary question confronted by the current halakhic authorities concerns whether or not settlement is commanded. As a secondary issue, they ask whether settlement requires war to be fought, and if so, whether that includes offensive wars of conquest or only defensive wars to retain territory already settled.

## 2. Current Halakhic Authorities on Commanded Settlement.

Nearly all current halakhic authorities agree that settlement of the land of Israel is either an obligation or a commandment. Their major point of disagreement is whether that obligation devolves upon the individual Jew or the community of Israel. Glickman allows that among other early commentators on Nm. 33:53, Ramban stands virtually alone in his holding "VeHorashtem" requires commanded settlement. Yet Glickman follows Ramban. Rashi and others understand the verse as either conditional or promissory. Glickman believes that Ramban's Addendum No. 4 to the Positive Commandments of Rambam's Sefer HaMitzvot clearly refutes the notion that "VeHorashtem" is only a promise and not a commandment.

Glickman and the others who follow Ramban's position that settlement is commanded must deal with the problem that most rishonim who wrote books of commandments, particularly Rambam, did not include settlement as commanded. One explanation used by Glickman, Bakshi-Doron, Krieger and others is that those who do not prescribe settlement as a commandment know that settlement is a condition precedent to the performance of many commandments on the land. Furthermore, the importance of settlement on the land is stressed in numerous Talmudic passages. Two that are often cited are Ketubot 110b, which declares aggadically that a Jew who lives outside the land is considered as an idolater, without God. (Technically, aggada, or discourse, is any non-halakhic discussion of the Talmud. Generally, it can include moral exhortation, theological speculation, legal dicta and a broad variety of folklore.) The other is Gittin 8b, which provides that although there is a rabbinical prohibition against telling a non-Jew to do things on the Sabbath that a Jew may not do, where it was a question of furthering the Jewish settlement of Eretz Israel, the rabbis did not apply the prohibition.

A second approach concerns the specific notion of "commandment." Glickman explains that for Rambam, certain statements in Torah may not be commandments per se, but may still be revelation of God's will. Thus, for Rambam, settlement was an obligation, if not a commandment. This position is also stated by Rabinowitz. Krieger lists this

among other explanations in his detailed review of halakhic sources that discuss Rambam's omission of settlement from his Sefer HaMitzvot.

The most problematic source for those trying to harmonize Rambam with Ramban is Rabbi Isaac DeLeon. In Megillat Esther, his commentary on the Sefer HaMitzvot written to defend Rambam against Ramban, he cites in Ketubot 111a. Ketubot 111a basically states that the people Israel have been sworn by God not to come to the land of Israel as a community and not to rebel amongst the nations. It is interesting to see the various interpretations by modern halakhic authorities of Megillat Esther.

Krieger, strongly against any return of territory, is most critical of Megillat Esther. First he argues that the oaths of Ketubot 111a are no longer binding on Israel, for their basic rationale is that the Jews should not revolt among the nations. Krieger argues that Jews presently have the right to return to the land and are not subservient to the nations. Accordingly, he reasons that since the rationale for the oaths no longer applies, neither do the oaths. Here, Krieger, attempts to interpret the legislative intent. He also infuses political elements into his understanding of the law. He mentions Jews have "permission" from the other nations to settle on the land and are thus "no longer subservient." He does not identify the source of this permission - it could be the Balfour Declaration or the United Nations mandate and



resolutions. In any event, Krieger fails to mention that this permission was given after intense pressure by the Jews on the gentiles. Moreover, he does not deal with the possibility that permission once given can be thereafter revoked.

In a side issue - a reference to the holiness of the land - Krieger equates the resanctification of the land by the immigrants from Babylon in the 5th century B.C.E. to the reconquest and resulting resanctification of the land by the Israeli Defense Forces. In other words, Krieger generally approaches these issues with a political and historical agenda which then influences his legal analysis.

In the second prong of his attack, Krieger argues that notwithstanding Ketubot 111a, Megillat Esther simply misunderstood Rambam's position on commanded settlement. He cites many sources as critical of Megillat Esther, without mentioning that there are sources that support Megillat Esther. Others are not so dogmatic. For example, Glickman notes that there are authorities, such as Magen Avraham and the Bach, who agree with Megillat Esther's understanding of Rambam. Glickman is content to leave the differences of opinion between Rambam and Ramban as existing but of little consequence. (Settlement is an "important obligation" as opposed to a "commandment.") Krieger, on the other hand, wishes to show that both settlement and conquest are commandments that apply to the community. He does not discuss



in great depth either the traditional supports of Megillat Esther or the attempts to reconcile Rambam with Ramban.

Most modern authorities, regardless of their position on the return of territories, wish to show that settlement in Israel is important. Thus, Glickman discusses commandment or obligation and minimizes the syntactic difference of terms. Others, such as Israeli, follow Rashbash's attempt to reconcile Rambam with Ramban. Basically, Rashbash analyzes the language of Ketubot 111a that forbids Jews to return to the land en masse. He thus states that the commanded settlement devolves upon the individuals, and that this was implied in Ramban's language.

The general point of agreement among the majority of current halakhic authorities is that settlement of Israel is at least an obligation, perhaps even a commandment, on each individual Jew. These solutions regarding settlement, however, still leave open the question of the commanded conquest, which will then have greater import for the issue of exchange of territory.

### 3. Current Halakhic Authorities on Commanded Wars of Conquest.

Modern authorities who oppose the possibility of return of territories take two different tacks. One follows the commanded defensive war, an issue that will be discussed in Section 4 below. The other is to say, as do Katznelbogen, Krieger and Nachshoni, that war to conquer the land is still

commanded in this time. This position relies solely on Ramban, and ignores the words of Rambam, many other sages and the oath of Ketubot 111a not to revolt amongst the nations.

Even though Ramban is the solitary voice holding that conquest of Israel is commanded, Katznelbogen makes the giant leap that all offensive wars are commanded. First he argues that, according to Rashi on Eruvin 45a, defensive wars are fought to make the land less susceptible to attack. Consequently, since offensive wars also make the land less susceptible to attack, they too are commanded. Katznelbogen does not sufficiently raise or respond to the question: If offensive wars can be logically reasoned to be commanded, why in fact are they not explicitly commanded?

Indeed, Katznelbogen does not sufficiently analyze the fact that most authorities explicitly state that offensive commanded wars are those against Amalek and against the seven nations. Nor does he deal with Rambam's commentary on Mishna Sotah 8:5 that indicates that the only difference of opinion on the issue of commanded war concerns the issue of preemptive war. In fact, the legal conclusion is that preemptive wars are not commanded. From this, one can just as logically conclude that offensive wars, even those making Israel less susceptible to attack, are not commanded.

Katznelbogen also makes an analogy between the Sabbath and offensive wars regarding the need to preserve life. Since defensive wars can be fought on the Sabbath to save life, so

too can offensive wars. While this proposition may be true, Katznelbogen fails to support adequately his proposition that the conquest of the land is one of the commanded offensive wars. His essential argument is that the conquest is considered as saving the life of the community of Israel and is therefore commanded. In overstating the case by the assertion that offensive wars are commanded, Katznelbogen fails to support Ramban's position that the conquest of the land is commanded. Interestingly, underlying this whole argument is Katznelbogen's political/military perspective found in his concluding parenthetical: [conquest is commanded] "of course, when there are prospects of victory."

At the opposite end of Katznelbogen's approach is the unique analysis of Rabinowitz. Unlike any other modern authority - and without much support from halakhic sources themselves - Rabinowitz attempts to prove that Ramban himself did not believe settlement by conquest was commanded for all times. Rabinowitz attempts to show by linguistic analysis that the word "conquest" means to have sovereignty over the land, not necessarily by means of war. He attempts to limit conquest by commanded war to Joshua's time and thereby argues for settlement by peaceful means.

Ariel takes Rabinowitz to task for his approach, first showing that by linguistic analysis conquest can mean war. Second, Ariel shows that assuming conquest implies sovereignty, that sovereignty can be achieved by military

means among other means. Third, Ariel demonstrates that other halakhic sources have analyzed Ramban as assuming that conquest includes war - including those critical of Ramban, such as Megillat Esther. Accordingly, Ariel lambasts Rabinowitz for his radical innovations and obduracy. (One sees the general risk here in attempting innovative approaches to accepted understandings of halakhot.)

Ariel then takes the rather bold approach also found in Krieger and Nachshoni in attempting to hold that conquest by war is commanded for this time. Krieger, as mentioned above, posits that with the establishment of the State of Israel, the oath of Ketubot 111a no longer applies. Nachshoni tries to isolate those who maintain the oath still applies as radicals aligned with Satmar and Neturei Karta, rejecting the existence of the State. Similarly, Ariel claims that the oath of Ketubot 111a no longer applies when the State of Israel exists. But their assertions are undermined by their rhetoric.

First, to hold that the oath of Ketubot 111a no longer applies is merely the opinion of certain authorities such as Ariel, Krieger and Nachshoni. Their opinion is flatly rejected by other authorities. Second, the inapplicability of Ketubot 111a is not necessary to their argument against return of territories. Rabinowitz himself argues similarly to Krieger that Jews must maintain sovereignty over the land - albeit by peaceful means. Moreover, those who speak of

offensive war to settle the land as being commanded do not press their point in calling for conquest of lands of Israel not yet controlled by the State of Israel. Rather, the essence of the argument is that territories now controlled may not be relinquished.

4. Current Halakhic Authorities on Commanded Defensive War.

The obligation to fight a defensive war to maintain possession of the land of Israel appears to be the strongest position of those arguing against return of territory. They do not have to deal with the inconsistencies and contradictions of the halakha either prohibiting certain gentile settlement or commanding Jewish settlement. Rather, there is a strong tradition of the commanded defensive war, acceded to even by those current halakhic authorities who argue for the return of territory. The halakhot concerning defensive war are the most clear and the least subject to varied interpretation. Beginning with Eruvin 45a, through Rambam's Hilkhot Melakhim 5:1 and Hilkhot Shabbat 2:23, to Shulchan Arukh, Orach Chayim 229:6, the law is consistent: defensive wars, particularly to protect border areas, are commanded to be fought. Moreover, based on the generally accepted reading of Sefer HaChinukh Commandment No. 425 and Minchat Chinukh, Commandment No. 425, it is difficult to argue that the doctrine of saving a life can preclude the obligation to fight a commanded war. As Rabbi Aaronberg explains in an early article, the halakha is clear that war necessarily entails



danger to life and by simple logic, the law of saving a life cannot apply to war.

Glickman explains the implications of commanded defensive war most cogently. Like Aaronberg and many others arguing against return of territories, he offers his proposals on the assumption that Israel has an independent government and strong, well-armed military with the ability to win decisive victories. Since 1967, certain territories have been gained that are the eternal possession of Israel. The question boils down to this: may they be returned to avoid a defensive war? No, seems the initial response as indicated by the halakha, but Glickman reinforces this point with political and military analysis. First, politically, the Jews cannot rely on the promises of the gentiles. Second, militarily, to return the territories and postpone war may be more dangerous because the Arabs would be able to cause greater loss of life by attacking from the territories. In taking the argument off the purely halakhic level, Glickman creates the opportunities for response.

Israeli presents the best counter argument to Glickman's contention, and in a sense shows how one's position can evolve. In his early 1967 article, Israeli mentioned no return of territory was permissible halakhically. The 1967 war, he stated, was a commanded defensive war. Then, he added, that the people's self-defense required them to hold the land. In basing his position partly on military concerns, he

left himself an opening for a later change of mind. Indeed, in his 1977 article, Israeli acknowledges that the decision of whether or not to fight a commanded war is a governmental, not a halakhic one. He further states that one cannot speak of commanded war, an obligation that devolves upon the entire Jewish community, when the majority lives outside of Israel and would not participate in such a war.

HaLevy amplifies this distinction between the modern State of Israel and the apparent demands of halakha. He notes that the halakhot discussing defensive wars only require that such wars be fought on Shabbat - they do not detail the circumstances that require the declaration of a commanded defensive war. Basically, the government that represents the people must have the ability to negotiate to protect their survival, for these are issues beyond the realm of halakha. In short, settlement of Israel is an issue for individuals and halakha. But the issue of commanded war is decided not by halakhic interpretation but by governmental necessity.



CHAPTER III

THE OBLIGATION OF SAVING A LIFE  
AND OTHER ISSUES

### Halakhic Sources

LV. 18:5 "CHAI BAHAM"

"You shall keep My laws and My rules, by the pursuit of which man shall live: I am the Lord."

Rashi: [This] means that he shall live through them in the world to come (eternal life). For if you say it means that he shall live in this world, is it not a fact that in the end he must die!

MISHNA. THERE WAS NO SICARICON IN JUDEA FOR THOSE KILLED IN WAR. AS FROM [THE TERMINATION OF] THE SLAUGHTER OF THE WAR THERE HAS BEEN SICARICON THERE. HOW DOES THIS RULE APPLY? IF A MAN BUYS A FIELD FROM THE SICARICON AND THEN BUYS IT AGAIN FROM THE ORIGINAL OWNER, HIS PURCHASE IS VOID. BUT IF HE BUYS IT FIRST FROM THE ORIGINAL OWNER AND THEN FROM THE SICARICON IT IS VALID. IF A MAN BUYS [A PIECE OF A MARRIED WOMAN'S PROPERTY] FROM THE HUSBAND AND THEN BUYS IT AGAIN FROM THE WIFE, THE PURCHASE IS VOID. BUT IF HE BUYS IT FIRST FROM THE WIFE AND THEN FROM THE HUSBAND IT IS VALID. THIS WAS [THE RULING] OF THE FIRST MISHNA. THE SUCCEEDING BET DIN, HOWEVER, LAID DOWN THAT IF A MAN BUYS PROPERTY FROM THE SICARICON HE HAS TO GIVE THE ORIGINAL OWNER A QUARTER [OF THE VALUE]. THIS, HOWEVER, IS ONLY THE CASE WHEN THE ORIGINAL OWNER IS NOT IN A POSITION TO BUY IT HIMSELF, BUT IF HE IS HE HAS THE RIGHT OF PRE-EMPTION. RABBI ASSEMBLED A BET DIN AND THEY DECIDED BY VOTE THAT IF THE PROPERTY HAD BEEN IN THE HANDS OF THE SICARICON TWELVE MONTHS, WHOSOEVER FIRST PURCHASED IT ACQUIRED THE TITLE, BUT HE HAD TO GIVE A QUARTER [OF THE PRICE] TO THE ORIGINAL OWNER.

GEMARA. If there was no sicaricon for those killed in the war is it possible that there should have been after the termination of the war? - Rab Judah said: It means that the rule of sicaricon was not applied. For R. Assi has stated:

They [the Roman Government] issued three successive decrees. The first was that whoever did not kill [a Jew on finding him] should himself be put to death. The second was that whoever killed [a Jew] should pay four zuz. The last was that whoever killed a Jew should himself be put to death. Hence in the first two [periods], [the Jew], being in danger of his life, would determine to transfer his property [to the sicaricon] but in the last [period] he would say to himself, Let him take it today; tomorrow I will sue him for it.

At this point a messenger came to him from Rome saying, Up, for the Emperor is dead and the notables of Rome have decided to make you head of the State. He had just finished putting on one boot. When he tried to put on the other he could not. He tried to take off the first but it would not come off. He said: What is the meaning of this? R. Johanan said to him, Do not worry, the good news has done it, as it says, "Good tidings make the bone fat." What is the remedy? Let someone you dislike come and pass before you as it is written, "A broken spirit drieth up the bones." He did so, and the boot went on. He said to him: Seeing that you are so wise, why did you not come to me till now? He said: Have I not told you? - He retorted, I too have told you.

He said: I am now going, and will send someone to take my place. You can, however, make a request of me and I will grant it. He said to him: Give me Jabneh and its Wise Men and the family chain of Rabban Gamaliel and physicians to heal R. Zadok. R. Joseph, or some say R. Akiba, applied to him the verse, "[God] turneth wise men backward and maketh their knowledge foolish." He ought to have said to him: Let them [the Jews] off this time. He, however, thought that so much he would not grant, and so even a little would not be saved.

R. Jochanan said in the name of R. Simeon b. Jehozadak: By a majority vote, it was resolved in the upper chambers of the house of Nithza in Lydda that in every [other] law of the Torah, if a man is commanded: 'Transgress and suffer not death' he may transgress and not suffer death, excepting idolatry, incest, [which includes adultery] and murder. . . .

When R. Dimi came, he said: This was taught only if there is no royal decree, but if there is a royal decree, one must incur martyrdom rather than transgress even a minor precept. When Rabin came, he said in R. Jochanan's name: Even without a royal decree, it was only permitted in private; but in public one must be martyred even for a minor precept rather than violate it. What is meant by a 'minor precept'? - Raba son of R. Isaac said in Rab's name: [74b] Even to change one's shoe strap. And how many make it public? - R. Jacob said in R. Jochanan's name: The minimum for publicity is ten. . . .

Raba said: When they [sc. the persecutors] demand it for their personal pleasure, it is different. For otherwise, how dare we yield to them [sc. the Parsees or fire worshipers] our braziers [or fire bellows] and coal shovels? But their personal pleasure is different; so here too [in Esther's case]. This [answer] concurs with Raba's view expressed elsewhere. For Raba said: If a Gentile said to a Jew, 'Cut

grass on the Sabbath for the cattle, and if not I will slay thee,' he must rather be killed than cut it; 'Cut it and throw it into the river,' he should rather be slain then cut it. Why so? Because his intention is to force him to violate his religion.



1. It is a positive command to the whole house of Israel to sanctify the great and Holy Name, as was said: "I will be hallowed among the children of Israel" (Lv. 22:32), and they are warned not to profane the Holy Name, as the above verse states: "Neither shall ye profane my Holy Name."

What was to happen when an idolater forced an Israelite to transgress one of the commandments of the Torah on pain of death? He transgressed and did not suffer death because it was said of the commandments that when man performed them he must live by them and not die (Lv. 18:5). If he is killed and did not transgress, he is guilty of his own life.

2. To what do these words refer? To all the commandments except idolatry, immorality and bloodshed. Regarding these three, if one says "transgress one of them or die," one must die and not transgress. And how do the words apply when the idolater purposes to benefit himself, as when he forced an Israelite to build his house or cook his meals on the Sabbath or violated a Jewish woman and the like. But if he intended only to make him violate a commandment when they were alone and not in the presence of ten Israelites, he might transgress and not die. In the presence of ten Israelites, he might not transgress but must die. This even if the idolator did not intend to make him transgress any other commandment.

3. All those instructions apply at a time when there is no special persecution. But at a time of special edicts, as when a wicked king like Nebuchadnezzar and his associates pronounce an edict on Israel to forsake its religion or one of the commandments, he must die and not transgress any one of the commandments, whether in the presence of ten Israelites or alone with the idolater.

### Current Halakhic Authorities

#### RABBI ISSAR UNTERMAN AND RABBI SHAUL ISRAELI QUESTIONS REGARDING TERRITORIES LIBERATED BY THE ISRAELI ARMY

Because of the recent liberation of the territories, certain questions have arisen regarding their return and other religious problems. The questions concern:

1. Whether or not territory liberated by the Israeli army may be returned to the enemy;
2. Whether or not the sacred places may be returned and the implications of their liberation;
3. The religious obligation of redemption of the Western Wall; and
4. Whether the day of liberation of Jerusalem should be celebrated as a religious holiday.

[The fourth question is beyond the purview of the thesis. Two rabbis responded to the above questions.]

#### Rabbi Issar Unterman, Chief Rabbi of Israel:

1. The phrasing of the question does not define the issues, which include the realistic possibility of acquiring the territories on Israel's own authority and whether Israel would want to exchange territory for other goals. Before 1967, attempts were made to negotiate the exchange of territories without raising halakhic problems, for the borders were not finally fixed and the exchange would have been for Israel's benefit and peace.

Furthermore, an individual Jew may sell or exchange a house, plot or field with a non-Jew when the Jew derives some benefit thereby. However, the situation is markedly different when discussing the return of an entire settlement or city in exchange for other assets. Yet, given the many protests by Israel's enemies over the conquest of the territories and the need to move for peace, one cannot give a fixed rule that would apply equally to each and every instance. Nevertheless, in places where possession of the land is permanently fixed, it may not be given up in exchange for other objectives, for acquisition of Holy Land is not given for exchange.

2. The Western Wall is a part of the holy site of the Temple where Jews have always prayed. [Unterman discusses at length the importance of the Temple for Jews.] Even though there are other holy sites - such as the ancestors' graves where Jews pray - nothing compares in importance to the Temple. There people have prayed; further, people continue to study its structure as described in Maseket Midot and pray for its being rebuilt. There is no way, given the bloodshed in the capture of the Temple site, to return it or its surrounding area, no matter what endeavors the Jews' enemies make to take it away.

However, [in response to question 2], the remainder of the holy sites is a different issue. We must demand [writes Unterman] the right of people to pray there - particularly at the graves of ancestors - but one cannot

fix this point with precision; i.e., no unequivocal answer can be given.

In conclusion, if the non-return of territories delays peace with Israel's neighbors and causes continuation of hostility and confrontation, then there may be justification in returning the territories.

Rabbi Shaul Israeli:

"To Hold the Liberated Territories Vehemently."

1. The return of the territories is a broad question that cannot be fully considered in this analysis. Some outside factors not in control of the Jews may determine the outcome. However, we can approach the problem from solely a halakhic perspective, from which the answer is that it is not permitted to return the territories.

The historical, religious perspective is that Israel did not conquer, but liberated, the territories from which they were expelled 2,000 years ago. The whole land belongs to Israel - based on its entire history, from the patriarchs and prophets to the formation of the people through the Oral Torah. The partition of 1947 had been forced upon the Jews, who are coming not to steal, but to return to their inheritance that strangers have stolen.

Further, the territories were gained in a war forced upon the Jews. The Arabs are not willing to be content with the return of the territories and have no concern that partition takes from the Jews part of the Land of Israel. The 1967 war was the third instance of a war of

self-defense forced upon Jews. In this situation, the seizing of land was forced upon the Jews in order to insure that the danger of destruction will not return.

While prior to 1967, Israel was not under halakhic imperative to liberate the territories, the war fought was of self-defense, and in that sense a commanded war, in which acquisition of the territories was compelled upon Israel. The proof of God's assistance in this matter is that the Jews were not only saved from the Arabs but also caused to return to their inheritance.

However, it is not necessary to evict the Arabs who stay in the land. While Jews should endeavor to give them a fair chance to establish themselves, they may not give up their Jewish right to the land. The right was promised by God, confirmed by many years of historical continuity and acquired legally by the blood of Israeli soldiers. As written in Dt. 11:24, "Every place your foot touches shall be yours." It is a halakhic commandment and promise: the Jews will hold the land vehemently.

2. If the above is true for the liberated territories in general, it applies all the more so to the holy territories such as the Tomb of Rachel and Cave of Makhpela. For it is by the merit of the patriarchs and matriarchs that modern day Israel exists. It was painful at the time of partition not to have these territories, nor the Temple and its environs, nor even right of entry

for worship. The world should know: the people of Israel will never be separated again from the land of Israel.

3. [Israeli writes at length how the liberation of the Western Wall was the height of the victory.] It is the main symbol of the old city of Jerusalem and of the Temple, where Jews can dream of a return of the sacrificial service. The liberation of the wall and the city should be a sign to the Diaspora to make aliya.



RABBI OVADIAH HADAYA  
QUESTIONS REGARDING THE TERRITORIES LIBERATED BY ISRAEL IN THE  
SIX DAY WAR

[Rabbi Hadaya responds to a series of questions, including whether one should perform Keriah or recite Shehechianu when entering the old city of Jerusalem. The questions of import for this thesis are:

1. Whether or not there is a difference in holiness between Eretz Israel and the other conquered lands such as Sinai and Golan; and

2. Whether or not it is permissible to return the conquered lands in whole or in part.

Hadaya's answers follow.]

1. Mishna Kelim 1:6-9 discusses in depth degrees of holiness: The land of Israel is holier than other territories - and even more holy, in ascending order, are walled cities, the Temple Mount and so forth. It is not necessary to elaborate on all the details since Jews may not enter the Temple Mount anyway.<sup>1/</sup> It suffices to say that the land of Israel is holier than other lands and that Jerusalem and the wall around the Temple are even more so. Accordingly, the holy city must not be secularized or profaned; synagogues and study houses, not movie theaters and play houses, must be established. The old city must become a religious neighborhood, for the holy cannot be mixed with the profane.

<sup>1/</sup>Rambam, Hilkhos Beit HaBechira 6:14 and Rabad, ad loc.

2. "Lo Techonem" means not to give to gentiles on the land mercy or compassion; that is, it is forbidden to sell one's house to a non-Jew in Eretz Israel. This prohibition applies when Jews struggle under foreign rule and more so when Jews have control of the land. There cannot be a greater application of "Lo Techonem" than the return of entire cities to non-Jews. Additionally, one cannot let non-Jews acquire the land of Israel, for it was sworn to Abraham and his seed as an eternal possession in Genesis 17 and elsewhere in Scripture. The sins of our people that caused our exile did not cause the promise to lapse; the promise of inheritance and the command "Lo Techonem" applied during the period of destruction and foreign domination. Now, in this time of redemption, the time of God's wondrous miracles on our behalf, the promise and command applies more than ever. Jews must have faith that the God who performed miracles for them in the Six Day War will continue to do so in the future; there is no need to fear the other nations and cave in to their threats. The sins that caused the exile have been atoned for; the end of days appears to be near; the time has arrived for Israel to rejoice.

Additionally, when God permitted Israel to conquer the land that had been exploited by foreigners, the Shekhina was raised from the dust. If Israel returned even a handful of land, it would be the beginning of the end, for the foreigner would add one handful to another and expand his

rule. The holiness would be vanquished, the Shekhina debased  
- and no one knows when the new exile would end. The  
foreigner has its rule outside of the land of Israel - and  
that is enough; it should not be allowed any rule inside the  
land of Israel.

RABBIS SHAUL ISRAELI, CHAYIM DAVID HALEVY AND MORDECAI BREUR  
NOT EVEN AN INCH: A COMMANDMENT FROM THE TORAH?

1. Rabbi Shaul Israeli.

It is a well-known idea that the commandment to conquer and settle the land of Israel, to the point of "die so as not to transgress," is applied by some to modern Jews. And some propose that "saving the life of the community" overrides the commandment. This use of "saving a life" to override the commandment is different than that generally found in the halakha, where an individual transgresses a commandment in order to save a life.

Some argue that the commandment to conquer the land is operative only on the basis of some amorphous equation, where as the loss of life increases the obligation to fulfill the commandment decreases. At some point of no return, where the loss of life is too great, the commandment no longer applies. This use of saving a life is tenuous, for as Minchat Chinukh notes, the essence of commanded war is to risk life, so saving a life could not override a commanded war.<sup>1/</sup>

But is commanded war the essence of settlement? The commandment to conquer the land, in the notion of Ramban who spoke of it most forcefully, was upon the individual to settle and possess the land. The idea of commanded war devolves upon the public, not the individual, and Ramban did not speak of the commandment to settle the land in these terms. Rather,

<sup>1/</sup>Minchat Chinukh, Commandment 425.

the commanded military conquest applied one time only, for Joshua. In fact, the commanded war may only be obligatory upon those who fled Egypt.<sup>2/</sup>

There are two ways a commanded war can be obligatory in our times. One is for a prophet to order it. The other is "by force of circumstances" - the security situation. But that latter matter is for security forces, not halakhic authorities to decide.

If there were a commanded war, it would be upon all Jews to fight whether they lived in Israel or the Diaspora. Since most Jews live in the Diaspora and would not participate in the war, one cannot talk of a commanded war. Further, if all Jews lived in Israel, the war would result in fewer (proportionately) casualties; the larger Jewish population might even serve as a deterrence to war. Accordingly, to devolve the responsibility for war upon the few currently living in Israel is even more unfair. But, ultimately, the question of a commanded war is a governmental one.

Therefore, one should not speak of the issue of the territories from the aspect of "conquering" or of "war", but rather the narrower perspective of "Lo Techonem" - the obligation of the Jews to settle the land of Israel. But this commandment, like all commandments, other than that of obligated war, can be superseded by the need of saving a

<sup>2/</sup>Talmud Bavli, Chagiga 3b.

life. The question of whether "Lo Techonem" applies to all the territories is beyond the scope of this piece.

[Israeli addresses as an aside the viewpoint of Rabbi Aaronberg, as cited in Rabbi Weingart's 1977 article in HaMayan. The article arrives on Israeli's desk as he writes his article.] Rabbi Aaronberg claims that if gentiles attack the territories, a commanded war arises so that the Jews do not transgress the prohibition of "Lo Techonem." But "Lo Techonem" applies to the situation of giving the gentile land - not the situation where the gentile comes to take land against the Jews' will. One does not transgress the prohibition in this sense of compulsion.

Further, if a Jew is pressed to give or sell land, he is not obligated to die so as not to transgress. The gentile is doing this for his own benefit. Rabbi Aaronberg has engaged in creative halakhic exegesis (pilpul) when he says that the Arabs have more than a political cause - that they have religious motives. Rather, it is an example of "independent enjoyment" as in Sanhedrin 74b.

Moreover, in a situation where the gentile has superior force than the Jew so that the Jew cannot prevent the taking, it is permissible, and possibly preferable, to receive money in exchange for land, as in Gittin 44a.

Returning to the issue whether there is a doctrine of saving a life applicable to the community, it must be stated that early rabbis do not address this issue. Rabbi Kook invented the concept, arguing that it overrides all



commandments, even those where the law "die so as not to transgress" has been applied, except for idol worship.<sup>3/</sup> Yet, even in his opinion the rule is not halakhic, strictly speaking. It should only apply as an exception in unique circumstances. This rule seems to be a "new creation" and requires further elaboration.

## 2. Rabbi Chayim David Halevy.

The law of saving a life is not dependent on the issue of individual or community - it includes both.<sup>4/</sup> Those that differentiate between the two, or say that to return the territories to the gentiles violates a commandment over which one should die first, are wrong.

Those who take this latter view base themselves on Minchat Chinukh's interpretation of Sefer HaChinukh.<sup>5/</sup> Indeed, those words correctly state that war commanded by the Torah requires one to put himself in danger. However, the words must be put in their context. The Torah is speaking of a war against the seven nations, against Amalek, or to conquer Israel.

The Minchat Chinukh has misunderstood the Sefer HaChinukh who would agree that danger to life does not override this commandment. The Sefer HaChinukh is stating that on an individual basis, the obligation to fight is overridden by the

<sup>3/</sup> In his book Mishpat Cohen, Teshuvot 143 and 144.

<sup>4/</sup> HaLevy cites the following sources for his understanding that the rule of saving a life applies equally to the individual and the community: Yoma 85b; Shulchan Arukh, Orach Chayim, 228 and 229; Rambam, Hilkhos Yesodei HaTorah 5:1-3.

<sup>5/</sup> Sefer HaChinukh and Minchat Chinukh, Commandment 425.



danger to self. This does not refer to the individual in a community war, but rather, the individual in a private situation.

Indeed, individuals die in war and Jews must fight in "commanded wars," risking the lives of hundreds or thousands of individuals. Many current rabbis have observed that if a commandment involves war, individuals cannot be exempted by the rules of saving a life. But they have then reasoned that just as commanded war overrides danger to individuals within the community, it also overrides communal danger. According to them, giving back land won in such a war would be prohibited by "die so as not to transgress." However, this matter of the preservation of the people through the existence of the State cannot be seen within the purview of the commanded war of Torah. When the nation as a whole is endangered by war, it must be given the freedom not to get involved in that war. The halakha does not deal with sensitive and complex questions of politics and national defense. The government of the Jewish state is not obligated to endanger the Jewish nation it represents in order to fulfill inapplicable commandments. Even the sages of Israel, at the time of the end of the Second Temple, opposed the revolutionaries in order to make peace with the Romans, as discussed in Gittin 56b.

Moreover, the current situation is overall one of debate between governments, not one that fits within halakhic definition. To pursue the current status quo creates a

perpetual state of war, endangers life and perhaps risks physical destruction. The supply of arms and the economic support of the country are strictly political questions; one does not find halakhic permission or prohibition in this area. The Jewish people has never been in circumstances like these in their history. These are not halakhic questions. In fact, the strength of the halakha is that it never interfered in particular political questions. \*

In conclusion, the ultimate issue is the security of the Jewish people, which, perhaps, can be understood in the broad sense of the Toraitic commandment, "You shall live by them."<sup>6/</sup> The essence of the question of return or possession of the territories is what best provides for the security of the State that has the purpose of preserving the people. This is not a matter of written halakha, or of interpreting the law of "saving a life"; it is a question of simple, practical logic.

3. Rabbi Mordecai Breur.

(a) One of two major foundations for those who argue against the return of the territories is "Lo Techonem." Yet, Rabbi Avraham Yitzhak Kook states that the prohibition applies to the gentile who has no possession on the land<sup>7/</sup> (as Rabbi Zolti writes that Rashi interpreted the prohibition in Gittin 47a). Accordingly, the prohibition of "Lo Techonem" would not

<sup>6/</sup> Lev. 18:5.

<sup>7/</sup> R. Abraham Isaac Kook, Shabbat HaAretz, pp. 54-55.

apply to those Arabs already residing in the territories, and would not prevent return to them of the territories.

Admittedly, the words of Rabbi Abraham Isaac Kook were written to permit the sale of land to Arabs in order to satisfy the requirements of the sabbatical year. But Rabbi Tzvi Yehudah Kook has added that the prohibition of "Lo Techonem" should not apply when the sale of land benefits (economically) the Jew.<sup>8/</sup> Support for his position is found in Rabbenu Nissim's comment on Gittin 38b, regarding the need to let the law lapse to benefit the Jew. The question is whether this lapse of "Lo Techonem" because of the economic need of the individual Jew can be extended to the territories because of the security needs of the community of Jews. All this assumes that true peace is obtainable with the Arabs (a question for political experts) and that the return of territories increases security (a question for military experts).

Further restrictions of "Lo Techonem" were raised by Rabbi Zolti.<sup>9/</sup> For example, lands not repossessed by the immigrants from Babylon are not considered "the land of Israel" and "Lo Techonem" does not apply there. Also, to sell land in Israel to a non-resident gentile does not violate "Lo Techonem," since that non-resident gentile will not lead the Jew astray ("Lo Yeshvu" being the reason for "Lo Techonem").

<sup>8/</sup>R. Tzvi Yehuda Kook's comment is quoted in the journal Eretz Nachala 1975 by Yehuda Shaviv, p. 107.

<sup>9/</sup>R. Betzalel Zolti, Torah ShB'al Peh, Vol. 11, pp. 48-49.

All those who discuss the prohibition of "Lo Techonem" rely on Chazon Ish, whose words were in connection with the sabbatical year and the removal of holiness from land sold to the gentile. There is room to differentiate between the transfer of land by an individual Jew to a gentile and the transfer of governmental sovereignty over territory of Israel to gentiles. The former transfer may cause the removal of holiness from the land. The latter does not cause the lapse of any commandment, whether or not dependent on the land, that a Jew is obligated to perform. If a Jew owns land of Israel under gentile sovereignty, he is still obligated to perform all the commandments.

Furthermore, Chazon Ish was strict regarding the principle of saving Jewish life. Once [Breur and some friends] asked the Chazon Ish his opinion regarding youths' volunteering for the Haganah. The Chazon Ish responded that the action of the Haganah could possibly cause greater loss of life to Jews and therefore, he opposed their volunteering. Accordingly, it is a great leap to apply the words of the Chazon Ish, who wrote of "Lo Techonem" in the context of the sabbatical year, to a situation where its application may be detrimental to making peace and preserving Jewish life.

Next, one must address the point that Rabbi Zolti made, that Rambam understood "Lo Techonem" as prohibiting the changing of gentile presence on the land from temporary to permanent status. In this perspective, to transfer sovereignty is a worse violation of "Lo Techonem" than selling

land, for it leads to greater permanence of gentile settlement. Yet, one can argue that the continued occupation by the Israeli army of territory with a predominantly gentile population increases gentiles' obstinacy to seize the land and that territorial compromise could weaken their desire.

(b) The second major point those arguing against the return of the territories bring is based on Ramban's commentary of Rambam's Sefer HaMitzvot, in which the former talks of an ongoing commandment to conquer and settle the land. But, the essential aspect of the commandment for Ramban is the settlement, not the conquest of the land. The situation of the Six Day War is the opposite - a military conquest without settlement. True settlement, according to the weight of authorities, requires building houses, planting trees and sowing crops.<sup>10/</sup> A withdrawal of military forces from territory not truly settled does not violate the positive command to settle the land. Further, under these circumstances, even Ramban may support such a withdrawal.

Another aspect of the commandment to settle the land concerns the three oaths mentioned in Ketubot 111a based upon Song of Songs 2:7, 3:5 and 5:8. The author of Megillat Esther explained that Rambam did not count as a commandment the obligation to settle the land, based upon this passage.

<sup>10/</sup> See Rabbi Shaul Israeli, Eretz Chemda, pp. 12-13; Rambam, Hilkhos Melakhim 4:10; Tosefta, Avodah Zarah 5; Rabbi Friedman as quoted in Eretz Nachala, p. 100; Encyclopedia Talmudit, Vol. 2, p.225; and Ramban, Commentary to Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments.



Perhaps Ramban took the passage from Ketubot into account when he counted the commandment to settle the land. The essence of the passage is that it is not a community obligation of all Jews to make aliya and conquer the land, while individual Jews may choose to do so.<sup>11/</sup>

(c) One must also consider the political and historical aspects of the question. But for every aspect used to prove one point, the opposite can be said. People should not be willing to jump to conclusions and die for them on the basis of this reasoning. Halakhic experts should [stick to halakha and] not analyze the Arabs' psychology.

Nevertheless, it is clear that for tens of years the Arabs have struggled for independence against foreign rule. This struggle has been against the Islamic Ottoman Empire, Christian Europe and now Jewish Israel. While the Arabs may make strident anti-Israeli or anti-Jewish statements, at their root is a political and social movement typical of that found around the world; it is not primarily a religious issue. The refugees and residents of the territories are speaking, whether justified or not by the law, of their own interests. In a case of "for their own benefit" the law "die so as not to transgress" does not apply.

The Tur speaks of the command "die in order not to transgress" as being applicable only in religious matters

<sup>11/</sup> Rabbi Issac b. Sheshet, Teshuvah 101 and Kaftor VeFerach, Section 10, where both discuss that individual aliya is commanded, but communal aliya is not.

where Jews are being pressed to deny or abdicate their religion;<sup>12/</sup> it is more the reality in these circumstances that the Arabs are pursuing their own interests, not attempting to affect Jewish religious practice. The principle of "the hour of the decree," which requires the Jew "to die so as not to transgress" (even a light commandment), depends not on the severity of the decree but the intent of the one issuing the decree to force the Jew to deny his religion. It is difficult to know that the intent of the Arabs is to force the Jews to transgress their religion. An analogy can be made to events of the emancipation in the 1800s in Western Europe, when Jews were required to bring their cases before civil courts, not their own Jewish courts. This ruling caused Jews to transgress the law against hearing cases in civil courts.<sup>13/</sup> Nevertheless this is not an instance of "die so as not to transgress" but rather "transgress so as not to die." Since the intent of the decree was not to cause Jews to transgress their religion, this was not an application of "the hour of the decree." Essentially, a commanded war or the obligation to "die so as not to transgress" should not be declared on the basis of inaccurate judgments of Arab intent.

<sup>12/</sup>Tur, Yoreh Deah 157 and see Rambam, Hilkhos Avodah Zarah 5:2-4.

<sup>13/</sup>Rambam, Hilkhos Sanhedrin 27:7.



(d) Rabban Yochanan ben Zakkai compromised with the Romans, preferring to preserve Jewish life over Jewish territory.<sup>14/</sup> Similarly, the early Zionists and those who discussed partition of the land compromised for the same goal. In those days, the prominent rabbis, including the Chazon Ish, did not protest the partition plan, or argue that Jews should die in order not to transgress.<sup>15/</sup> There is nothing greater than peace.

<sup>14/</sup>Gittin 56b.

<sup>15/</sup>See, for example, HaPardes, Vol. 11, No. 7 (1936) pp. 8-9.

RABBI ABRAHAM ABBA WEINGART  
THE MATTER OF RETURN OF TERRITORY OF ISRAEL AND SAVING A LIFE

Weingart follows an organized, outlined methodology as follows:

I. The Basis for the Prohibition of Return of Territories.

A. One source for the Jew's sole right to the land is in Ramban's commentary on Rambam's Sefer HaMitzvot, Addendum No. 4 to the Positive Commandments, in which Ramban states that the land belongs to the Jews and no one else and that it is an ongoing commandment to conquer and settle the land. Many authorities since Rambam's time have criticized him for not listing the obligation to settle the land as a commandment. Others have determined that Rambam also believes that settling the land is a requirement.<sup>1/</sup>

B. A second source for the Jew's sole right to the land is the commandment "Lo Techonem" from Avodah Zarah 20a.

1. The first issue is whether or not the Arabs are included in this rule. Based on all the authorities, the obligation includes all nations, not just the seven nations.<sup>2/</sup> The disagreement concerns the resident stranger who is not included within "Lo Techonem".

<sup>1/</sup>Cf. Megillat Esther on Ramban's comment there and Chatam Sofer, Yoreh Deah 234.

<sup>2/</sup>Chazon Ish, Hilkhos Avodah Zarah 68 and Minchat Chinukh Commandments 94 and 426.

Rambam writes that the procedure for accepting a resident stranger is not operative in our time.

Rabad says while the law providing for the acceptance of the resident stranger is not applicable in our time, anyone who accepts the seven Noachide laws is thought of as a resident stranger for the purposes of "Lo Techonem." The rationale is that the basis of "Lo Techonem" is that they will "lead you into sin" (i.e., idol worship), which someone who has accepted the seven Noachide laws will not do.

The Kesef Mishneh writes that Rambam agreed with Rabad that for purposes of dwelling on the land, one did not exclude a "resident stranger" (one who had accepted the seven Noachide laws.)

The Minchat Chinukh and Chazon Ish disagree with Kesef Mishneh's understanding of Rambam. Since we do not accept resident strangers by means of court procedure in our time, we cannot examine the person and be certain of their observance of the seven Noachide laws. Whether or not Arabs would be included as resident strangers would depend on how they came to accept the Noachide laws. The Chazon Ish writes that even according to Rabad in order to be included as a resident stranger and thus exempt from "Lo Techonem", one had to go beyond accepting the seven Noachide laws and have complete faith in

the Jewish religion.<sup>3/</sup> The Arabs do not fall into this exemption.

2. A second issue is whether transfer of sovereignty over the territories from Jewish to gentile rule violates "Lo Techonem." One must further recognize that publicly or governmentally owned lands will be transferred not only in relation to sovereignty, but also actual ownership.

There are two different approaches to the problem. On one hand, if the purpose of "Lo Techonem" is, as Rambam asserts in Hilkhos Avodah Zarah 10:4, to prevent gentiles' temporary settlement from becoming permanent, then to give the Arabs sovereignty is to increase their permanence and violates "Lo Techonem." On the other hand, if the purpose of "Lo Techonem" is as Rabad asserts, to prevent ~~their~~ leading Jews astray, then transfer of sovereignty will help keep the peoples separate and does not violate "Lo Techonem." But, when one analyzes the problem as does the Chazon Ish in Hilkhos Avodah Zarah 65, transfer of sovereignty is seen as a violation of "Lo Techonem."

Essentially, the problem does not concern the person spoken of in the commandment, that is gentiles

<sup>3/</sup>Chazon Ish, Avodah Zarah 65. The positions of Rambam, Rabad and Kesef Mishneh are found in Hilkhos Issurei Biah 14:7 and 8 and also presented by Minchat Chinukh, Commandment 94. It is not clear that Chazon Ish correctly analyzes the position of Rabad.

and their influence upon Jews; rather it concerns the thing commanded, that is the presence of idolatry upon the land which is despicable to God. The passages of the Chazon Ish point out that the essence of "Lo Techonem" is not "lest they lead you to sin" but that the presence of gentiles on the land itself is offensive and must be minimized. Rambam brings the rule of "Lo Techonem" in Avodah Zarah because it is operative in our time, when the gentiles have superior strength and Israel is primarily in exile. One learns that current presence of gentiles on the land does not exempt them from "Lo Techonem" from Gemara Avodah Zarah 14b.

"Lo Techonem" applies whether the army withdraws or actual sovereignty is given to the gentiles by agreement, for according to the Chazon Ish, the presence of gentiles on the land is despicable to God. In all events, to strike a deal with the gentiles or make a peace agreement with the Arabs is far worse than mere withdrawal. By placing an official stamp on Arab sovereignty over the land, one has violated "Lo Techonem," making the gentiles' presence permanent (Rambam) and has transgressed "the land shall only be in Jewish hands" (Ramban).

## II. Does the Law of Saving a Life Apply?

A. The law does not apply because of special circumstances. Generally, all halakha is superseded by

the need to save a life, except for murder, sexual offenses and idolatry. However, it can be argued that the subject under discussion, like war, is a special circumstance in which the law of saving a life does not apply. [Weingart brings in the essence of Aaronberg's argument from Shanah b'Shanah.]

According to Ramban, the commandment to conquer the land is operative in our day, and presumes one must fight a war, and war is not superseded by the obligation to save a life. [Weingart adds that Ramban's command not to let the land out of Jewish hands also leads to the same conclusion.] Rambam says it is a permissible, not commanded, war to take the land of Israel from any other than the seven nations. [Weingart notes a question exists whether Rambam believes any commanded war to take the land is not operative in our time. It could be argued that Rambam viewed the commanded war "against the seven nations" was not specifically limited to a war against the seven nations, but rather epitomized the commanded war to conquer the land. Or, on the basis of Megillat Esther, it could be argued that Rambam believed the conquest no longer commanded in our time. Even if the conquest is viewed only as permissible, authority exists that in a permissible war, saving a life is not an operative

exception.<sup>4/</sup> On the other hand, it can be argued that a permissible war can only be ordered by the Sanhedrin and is not operative in our time. There is still another way to view any war for Eretz Israel as commanded. After Joshua's conquest, any other nations who come to the land can be considered as thieves and any war for Eretz Israel is one of defense and therefore commanded.]

Rambam agrees that a commanded war must be fought when gentiles come to take the land from us, based on his commentary on Mishna Sotah 8:5 and Mishneh Torah, Hilkhot Melakhim 5:1, Shabbat 2:23, and Ta'anit 2:3. [Weingart notes that Rambam believes in these commanded wars at all times, not just when the commandment to settle the land is operative. Further, the commanded war refers to the land of Israel, not necessarily any land settled by Jews.] Accordingly, if all authorities agree that it is commanded to fight a war to prevent land from being taken from Jews, how can land be returned in order to prevent a war? This position, concludes Aaronberg, assumes the war can be won.

[Weingart notes the compromise Rabban Yochanan ben Zakkai made with the Romans as related in Gittin 56b. Perhaps it was to prevent the total destruction of the population, which would lead to the vulnerability of the women of Israel. Perhaps the Romans did not actually want

<sup>4/</sup>Rabbi Naphtali Tzvi Yehuda Berlin.



ownership of the land; rather, the Jews would support Roman sovereignty].

B. Since, as discussed above, no special circumstances of war apply, it must be determined whether the rules of saving a life permit return of territory. Generally, "Lo Techonem" would be included with all the other commandments (except murder, sexual transgression and idolatry) and be overridden by the need to save a life. However, the rule "die so as not to transgress" may apply, preventing the application of the law of saving a life. The general rule is "transgress so as not to die" except in cases of "public compulsion" and "the time of the decree."

1. Clearly, any withdrawal from territory would be a public act. However, if this public act is solely for the benefit of the gentile, without any implication for the religion of Jews, then Jews do not have to die so as not to transgress. But, this is not the case here.

- a. Many of those involved in the war have no personal interest in the land. Even if one argues that the Arabs have the interest of the refugees in their heart, one must be aware that for Muslims it is difficult to distinguish between a political and religious war. The Arabs wish to establish Arab hegemony over a broad area and view the Jews as a cancer that

must be removed. They speak of the war as a holy war. The land cannot be given over as Arab inheritance, for it is the inheritance of the entire Jewish people, not just individual Jews. It must remain "Jewish," not "Arab" land.

As for the other nations, clearly "for their own benefit" is not applicable when they pressure Jews because of the oil situation and their own Christian theological reasons. Their comments that Jews do not have a right to the land and that the conquest was illegal clearly undermine the Jewish religion.

b. The essence of "for their own benefit" presumes that the action of the gentiles does not directly contradict a commandment. But here, the essence and purpose of "Lo Techonem" is precisely so that the gentiles will not get permanent residence on the land or get land for free. To give them possession for their own benefit directly contradicts the prohibition "Lo Techonem." Therefore, "for their own benefit" cannot serve as an exception to the rule that when gentiles demand that Jews transgress a prohibition in public, Jews must risk their lives and not transgress.

2. The second instance in which "die so as not to transgress" supersedes "transgress so as not to die"

is when a ruler decrees that Jews should transgress (as in Rambam, Hilkhos Yesodei Torah 5:3). The question is whether this application of "die so as not to transgress" is dependent on the one who issues the decree or the decree itself. One learns in Sanhedrin 74b that the essence of the rule is the decree which requires the denunciation of religion or commandment. The significance of the one who decrees is that a ruler is generally not concerned with individuals or one-time only events. Rather, there is generally a broad design. In this instance, that design would be to compel all Jews toward abdication of the commandments.

Regarding the matter under discussion, if one based "die so as not to transgress" on the identity of the ruler issuing the decree - the rule would not apply, for the problem here is between governments, not a sovereign and his citizens. But, as stated above the essence of "die so as not to transgress" is not the identity of the one issuing the decree but the effect of the decree issued. Therefore, even though the problem of the territories could be seen as one between governments, the effect of delivering territory to the Arabs would be to give them encampment upon the land, annulling the commandment "Lo Techonem" and absolutely negating the Jews' right to the land. This falls into the purview of "the

hour of the decree" and therefore, "die so as not to transgress."

### III. Summary

A. The law of saving a life cannot apply in a wartime situation, whether it be permissible or commanded war. The situation of Israel is one of commanded war because of:

1. Ramban's position that the land shall only be held by the Jews, among all the nations of the world; and
2. Rambam's position that when gentiles come to take the land of Israel already possessed by Jews, all Jews are obligated to fight.

B. Assuming the laws of war do not apply but "Lo Techonem" does, the further rule that Jews should die so as not to transgress "Lo Techonem" applies because the transgression would be in public and in the nature of a forced decree.

### IV. Further Remarks.

A. While the commandment "Lo Techonem" forbids the return of territory already in Jewish possession, Jews are not necessarily commanded to conquer land of Israel still in Arab possession.

B. The signing of a formal accord is worse than withdrawal. One reason is the violation of "Lo Techonem" as explained in IB2. The other is the violation of "Do not sell the land in perpetuity" (Lv. 25:23), as explained

by Ramban in his commentary to Sefer HaMitzvot, Negative Commandment No. 27. While it is possible that the prohibition of Lv. 25:23 applies only when the Jubilee year is operative, the basis of not selling the land in perpetuity is that the land belongs to God. It is not for its sole caretakers, the Jews, to design the borders or deliver it in perpetuity to the gentiles. Thus, even if the rule of "saving a life" should apply, the most it would permit is the withdrawal of Jewish forces, not the signing of a contract or making a treaty.

Some may argue that a withdrawal without a treaty is dangerous, for the treaty could guarantee no more war. But there is nothing to guarantee that in the future the other nations will remain true to their pledge. Others argue peace will lead to more peace - but perhaps even Israeli withdrawal could weaken the Jewish position. As Rabbi Aaronberg noted in Shanah b'Shanah (based on Eruvin 45a and Rashi thereon), border areas have great strategic importance. Loss of border territory could lead to vulnerability of other territory. Further, withdrawal could indicate a weakened Israeli resolve and encourage Arabs to push for more territory. A true peace will only come when Arabs understand that Jews are firmly and deeply rooted on the land.

C. One must ask who is qualified to determine whether the laws of saving a life affect return of territory. A comparison may be made between the doctor one goes to at

Yom Kippur regarding the ability to fast and the expert one goes to regarding whether "saving a life" applies in regard to the territories.

The doctor on Yom Kippur bases his application consistently on medical criteria, allowing no other considerations to influence his judgments. The government leaders are not consistent. Judea and Jerusalem, sacred lands in which Jews live, should be treated equally for purposes of "saving a life," yet based on political reasons there are proposals to return land in Judea but not Jerusalem. In a similar vein, no one discusses return of certain lands in the Galil in which no Jews live. Consequently, the leaders of Israel do not base their decisions on an halakhic application of the laws of saving a life, but rather on political judgments.

D. The essence of the reality of the law of "saving a life" is ~~that~~ it depends on which side of the scale one looks. On the one hand, there are those who claim that because of "saving a life" Israel should firmly seize all the land in its possession; on the other hand, there are those who say the opposite. In this instance, one should tip the scale in favor of the side that adheres to the rule of Torah.

E. One may ask: if a commanded war specifically precludes the application of "saving a life," why was it not listed in the Gemara along with murder, sexual transgression and idolatry? Simply because, as according



to Minchat Chinukh, war necessarily includes risk to life and thus there was no need to mention it specifically.

Further, when one speaks of war, one must do so in terms of the entire community of Israel, its past, present and future. The Torah has fixed rules for creating peace for all times. When Jews live by laws of Torah, they will be at peace. Among the requirements are that all Jews must live on the land and no strangers be present on the land. A war fought for the purpose of increasing Jewish presence and decreasing gentile presence on the land is a war to bring peace to the community of Israel.

Accordingly, "saving a life" requires that the land be conquered. Just as an individual may sacrifice his life for the community within the halakha, so too does war fought to maintain possession of Israel play an integral part in bringing life and peace to the Jewish community.

[Weingart next responds to the remarks made by Breur, published in the Oz v'Shalom monograph and also in this issue of HaMayan as a response to Weingart's initial article. Weingart does not address Breur's entire piece, but focuses on the following points.]

A. Even though the hypothetical issue of transfer of sovereignty when all the land is privately owned was not addressed, in general, transfer of sovereignty is included within the prohibition "Lo Techonem." One must address the acquisition of permanency the gentile acquires through sovereignty over the land. The matter appears to be



covered by the concept that it is forbidden to sell additional land to a gentile who already owns land in Israel. This is the opinion of Chazon Ish, based upon Avodah Zarah 14b, and Kaftor VeFerach Section 10, based upon Rashi to Gittin 47a. Rabbi Zolti also states that transfer of sovereignty increases permanency. Two points may be added:

1. According to Chazon Ish, the purpose of "Lo Techonem" is to insure the land is settled by Jews and not gentiles. Certainly, a Jewish government is conducive to Jewish settlement and an Arab government to Arab settlement.
2. There is a distinction between private ownership and public ownership, as represented by the government. Political sovereignty over the land is expressed through the administration, but its essence is the right over the "native homeland." The law of "~~Lo~~ Techonem" is based in principle on the notion that the land of Israel belongs to the Jews as a people, not just private individuals. Accordingly, Rambam permits the sale of fields and houses outside the land "because it is not our land," and forbids it in Israel because it is "our land." The transfer of sovereignty to the Arabs would make the land "Arab national land" and there is no greater violation of "Lo Techonem."

Breur comments that because of the transfer of sovereignty, no commandment dependent on the land will cease to be performed and perhaps there is no violation, even according to Chazon Ish, of "Lo Techonem." But Breur has erred in making "Lo Techonem" dependent on the sabbatical procedures. Acquisition of land by the gentile does not cause the cancellation of tithes; so ruled Rambam, and even those who disagreed with Rambam on this issue would agree that performance of commandments dependent on the land and "Lo Techonem" are two independent concepts.

Regarding Breur's use of Rabbi Abraham Kook's permission to sell land to a gentile, it must first be noted that not all residents in the territories own land and transfer of sovereignty to them gives them all permanence and possession. Second, Rabbi Kook was speaking of a temporary sale of land only for the purpose of annulling the provisions of the sabbatical year and that is not truly a permanent transfer of ownership to gentiles.

Regarding Breur's use of Rabbi Tzvi Yehuda Kook's comment that "Lo Techonem" does not apply when one needs to protect economically a Jew, even Breur noted that Rabbi Kook's remarks were not applicable to a question of possession of land. (Also, Rabbi Nissim, in Gittin 38, does not speak of economic

protection of a Jew in terms of possession of the land, as noted by Chazon Ish.) Section 10 of Kaftor VeFerach permits sale of land by a Jew to a gentile due to economic compulsion - but more in an instance when there is no other option.

The question of economic compulsion, also addressed by Kaftor VeFerach, concerns certain limited opportunities of sale and external pressures. It does not concern direct pressure on the land itself, such as that the Jew should deliver it to the gentile. In these instances, the rule of "saving a life" applies, and this matter needs further elucidation.

Regarding the matter of Solomon and Hiram (I Kings 9:11), Abravanel explains that Solomon did not transfer sovereignty over the land or people to Hiram for that would have violated a rule of Torah. Rather, Solomon retained control over the people and lands and gave Hiram the right to the annual produce of the land. Thus exists proof that mere transfer of sovereignty is a violation of "Lo Techonem."

B. Ramban's commentary on Rambam's Sefer HaMitzvot speaks of two separate commandments, the conquest and the settlement, both of which are eternal. The sages refer to conquest as "commanded war," and this commandment falls upon the community, not the individual. The conquest does not fulfill the entire obligation, for the second aspect

requires settlement on the land with houses, planting and sowing for all generations. The conquest is the essential first component that activates the second component of settlement; the reverse is not the case.

C. The concept of "die so as not to transgress" is not based upon political considerations but on halakhic considerations as exemplified by Rabbi Nissim's commentary on Pesachim. But even in this situation, it is not so easy to say that this is a case of "their own benefit" when much historical data indicates that the Arabs want more than their own national independence. Even assuming independence is their goal, their drive for independence cannot be seen in the political and social terms of other national liberation movements. Their desire to take the land of Israel for their own directly clashes with principles of Torah, namely, that the land should belong eternally to the Jews. A similar historical incident was the exile ordered by Ferdinand and Isabella - while they claimed they strove for political and social unity, their driving force was the unity of religion.

It is clear that when speaking of "their own benefit" it must be in consonance with, not diametrically opposed to, principles of Torah. One may not get benefit from something that the Torah specifically forbids because of that benefit which may be derived. The Torah has declared the land of Israel to be the Jews' possession and that the gentiles, Arabs included, should not have encampment

thereon. There is no exception to "die so as not to transgress" in terms of return of land "for their benefit."

D. Rabban Yochanan ben Zakkai, in Gittin 56b, had a choice between surrender or suicide, not peace or war with a possibility of victory. The Torah does not command suicide and Rabban Yochanan ben Zakkai did not intend that his action be an eternal decree - nor even one for 2,000 years. The intention of the many decrees the rabbis passed was that the Temple would soon be rebuilt.

In conclusion, the essence of the problem does not concern the conquest of territory, but rather the continued possession of it, for it already is in Jewish hands. Regarding the possession of the land of Israel, the words of Rabbi Akiba upon his death in martyrdom should be recalled: "All my life I have regretted [not being able to completely fulfill the obligation to love God with all one's might inferred from the Shema] and now that I have it in my power to do so, I should not?"

RABBI OVADIAH YOSEF  
THE RETURN OF TERRITORIES OF ISRAEL ON ACCOUNT OF SAVING A  
LIFE.

The halakha rules that the need to save a life overrides all the other laws of Torah, except the prohibitions against idolatry, sexual transgression and murder.<sup>1/</sup> The tradition that the Torah was established to bring compassion, loving-kindness and peace into the world runs from Torah through Talmud, Rambam and Ramban up to modern times.

The following is the essence of the law regarding the return of the territories when the doctrine of saving a life does not apply. Rambam wrote in Avodah Zarah 10:6 that on the basis of "Lo Yeshvu" if Jews have superiority over the other nations, they are forbidden to tolerate even gentile presence on the land, unless the gentiles have accepted the seven Noachide laws, rejecting idolatry. Rambam applies this rule to all gentiles, including the Arabs. Rabad<sup>2/</sup> and Sefer Mitzvah Gadol <sup>3/</sup> disagree, noting that "Lo Yeshvu" applies to the seven nations and at most applies to their settlement on the land and not their passing through it. Support for their position is found in Gittin 45a and the Rashi thereon. Ramban

<sup>1/</sup>Dt. 18:5; Sanhedrin 74a-75a; Yoma 85b; Rambam, Hilkhos Yesodei Torah 5:1-3.

<sup>2/</sup>Rabad on Rambam's Hilkhos Avodah Zarah 10:4.

<sup>3/</sup>Sefer Mitzvah Gadol, Commandment No. 49.



applies "Lo Yeshvu" to idolaters.<sup>4/</sup> The opinion of the majority of early rabbis is that "Lo Yeshvu" does not apply to the Arabs who are not idolaters. All are in accord that in this time, when the Jews do not have the superiority to exile gentiles from the land, the law does not apply, as Rambam explained in Hilkhos Avodah Zarah 10:4. Even those who actually are idolaters cannot be moved off the land. (There are deep political issues regarding the Christians who can be considered idolaters.)

Another aspect to consider is that when Jews do not have superiority throughout the world, that "Lo Techonem" applies, prohibiting the sale of land of Israel to gentiles. This law, presented in Rambam's Mishneh Torah (Avodah Zarah 10:4) is based on Talmud Bavli, Avodah Zarah 20a, where the Tosafot apply the prohibition to all gentiles. Nevertheless, Rabbi Raphael ben Samuel Meyuchas in his book Mizbach Adamah, notes that in modern times, many great leaders of Israel sold land to Arabs, believing that "Lo Techonem" applied only to idolaters. They based themselves on Rambam's Negative Commandment No. 51, wherein Rambam includes "Lo Techonem" as part of the explanation to "Lo Yeshvu." Yet in Avodah Zarah 10:4, Rambam means to include all gentiles. Accordingly, there is great division of opinion whether "Lo Techonem" applies to all gentiles, including Arabs, or just idolaters.

<sup>4/</sup>In his commentary on Dt. 20:18 and Ex. 23:33.



Those who apply "Lo Techonem" to Arabs include Chazon Ish<sup>5/</sup> and Rabbi Joseph Karo in Bet Yosef.<sup>6/</sup> Those who apply "Lo Techonem" to idolaters only include the Meiri,<sup>7/</sup> Tur,<sup>8/</sup> Bach and Rashba. Radbaz<sup>9/</sup> noted that the principle of "Lo Techonem" is "to not show compassion" to the gentile, and that the principle of "do not give them encampment" is a rabbinic enactment based on the verse; so too writes Rabbi Yerucham Fishl Perle<sup>10/</sup> in his commentary on the Sefer HaMitzvot of Rabbi Sadya Gaon. There have been modern instances where sales of land have been permitted to gentiles to satisfy requirements of the sabbatical year, the rabbis noting that it is good for the Jewish settlement.<sup>11/</sup>

If the political and military leaders should determine that by not returning the territories, war and loss of life is threatened and that by returning the territories, the danger of war will be reduced, then the territories should be returned to obtain peace and protect life, for there is nothing more important than saving a life. The matter can be compared to forcing one who is ill to eat on Yom Kippur. Even

<sup>5/</sup>Chazon Ish, Hilkhos Shevi'it 24:3.

<sup>6/</sup>Bet Yosef on Choshen Mishpat 249.

<sup>7/</sup>Meiri, Avodah Zarah 20a.

<sup>8/</sup>Tur, Choshen Mishpat 249 and Bach, there.

<sup>9/</sup>Teshuvot HaRadbaz, Section 5, Paragraph 2.

<sup>10/</sup>Section 2, Negative Commandment No. 13, Page 21, Paragraph 73.

<sup>11/</sup>Yeshuot Malko, Yoreh Deah 55 and elsewhere.

if it is merely possible he will endanger himself by fasting, he must eat and cannot be strict upon himself. Even if a majority of more expert doctors say a fast is permissible and only a few say it is dangerous, the ill person must rely on the doctors who order him to eat.<sup>12/</sup> Accordingly, if there is a difference of opinion regarding the return of the territories, the matter of saving a life follows the lenient position (that which will protect life), and the territories must be returned to prevent the danger of war.

Some may argue that Jews should trust in God to provide victory for them and not deal with the enemy to end war and save life. The basis for this position comes from Pesachim 56a, where it is discussed that when Hezekiah sent the gold from the doors of the Temple to Sennacherib, the King of Assyria, as payment to leave him in peace, the Sanhedrin did not agree with him, for he should have trusted in God.<sup>13/</sup> But Hezekiah's generation was unique in its faithfulness - it walked in the path of Torah and would receive its reward from God. This generation, which strays from Torah, as evidenced by the education of its youth, immodesty of its women and general lack of observance of Sabbath and festivals and so forth, is prone to great punishment for its sin. It cannot rely on miracles and will lose life in wars, such as the Yom Kippur War. For now, the territories must be returned. When

<sup>12/</sup>Shulchan Arukh, Orach Chayim, 618:14 and many other early and late authorities.

<sup>13/</sup>See also Rashi's comments there, Pesachim 56a.

Jews walk in the way of Torah and are fully repentant, the exiles will be returned to the land, and God will deliver all of the territory of Israel to the Jews.

Further regarding the matter of Hezekiah, it has been said that he did trust in God, but that he also knew that man should not rely on miracles but must act out God's will. It is said that many sages agreed with Hezekiah, but even more opposed him. In those days, it can be said that both positions were true.<sup>14/</sup> However, in these times, with the spiritual situation what it is, both sides would agree that people should not rely on miracles in entering a war with the Arabs. Further authority for using another's property to save life is found in Baba Kama <sup>15/</sup> based upon King David's burning cornfields in which Philistines were hidden to save his life and the lives of his soldiers. The issue is not the use of the property, therefore, but the compensation of the person or entity from whom the property was appropriated.

Still, one must address the issue raised by Ramban in his commentary on Rambam's Sefer HaMitzvot, in which he discussed the Jews' obligation to conquer the land and possess it exclusively. The rabbis refer to the conquest of and fight to preserve the land in Jewish hands as a commanded war. And as Minchat Chinukh notes, the law of saving a life is not

<sup>14/</sup> See, for example, Ritba on Eruvin 13b.

<sup>15/</sup> Baba Kama 60b; Tosafot, Baba Kama 61b; Rosh, Baba Kama 6:12; Rashba, Baba Kama 81b.

operative during war (although his comments are in the context of a war against the seven nations).<sup>16/</sup>

But, according to Rabbi Isaac DeLeon, in Megillat Esther, Rambam omitted the conquest as a commandment because he believed the commandment lapsed after the exile and would be in effect until the time of the messiah. Rather, according to Ketubot 111a, Jews were commanded not to revolt among the nations of the world. Ramban's grandson, Rashbash, rectified his grandfather's position with the passage from Ketubot 111a.<sup>17/</sup> Settlement of the land was an important commandment, but it devolved upon the individual Jew, not the community of Israel. Support for this position is found in Divrei Issachar and Avnei Nezer.<sup>18/</sup> According to this line of thought, Ramban, too, would oppose war to maintain possession of the territories, given the opposition of the nations and the lack of Urim and Turim to authorize a commanded war and king and Sanhedrin to authorize a permissible war. (See Ramban's comment on Negative Commandment No. 17.) While the individual is commanded to settle the land, it is not to the extent of bringing the community to war and risking life.

Even if one were to say that according to Ramban, the conquest is commanded in our time, the partial hold over the land at present cannot be seen as fulfilling the commandment

<sup>16/</sup>Minchat Chinukh Commandment 604.

<sup>17/</sup>Rashbash, Teshuvah No. 2.

<sup>18/</sup>Divrei Issachar, Section 149 and Avnei Nezer, Yoreh Deah 454:52.

of the Torah. The Jews do not even have the strength to exile the idolaters (i.e., the Church and its missions) from the land, as commanded by "Lo Yeshvu," because of fear of the nations. In these circumstances of unfulfilled conquest, Jews should not endanger themselves to maintain their hold on the territories.<sup>19/</sup>

A further issue is the war in defense of the border town, discussed in Eruvin 45; Mishneh Torah, Shabbat 2:23; and Shulchan Arukh, Orach Chayim 329:6. Jews are commanded to violate the Sabbath to protect the border town, even when the gentile comes to take property and not life. Interpretations by Rambam, Rashi and elsewhere in the Talmud indicate that the reason is that from the border town the entire land would be subject to conquest. Interpretations by Raban and Shulchan Arukh indicate the reason is to save life.

Regarding saving life, Raban reasoned that if Jews were surrounded by gentiles and tried to defend their property, the gentiles would kill them without fear. Thus, the Jews were allowed to attack first. But in these days of swift retaliation by airplane, the Arabs, even if they dare to

<sup>19/</sup> See the comment of Rabbi Dov Katz, on page 74 of his book Hagot VeDeot in the name of Rabbi Hayim Soloveitchik. During the World War, in which multitudes were killed, including many Jews, some said to Rabbi Soloveitchik that if the war had brought the redemption it may have been worthwhile. Rabbi Soloveitchik rebuked them, saying that it were better that many redemptions for Israel would be postponed rather than one soul of Israel perish in hastening the redemption. Further, if we were to learn that the death of one soul would bring the messiah, it would be better that the messiah did not come and the person did not die, for the law of saving a life supersedes every commandment in the Torah.



attack, have nowhere to flee. Thus, this rationale no longer applies. [That is, that territories exist on our border is no longer of consequence concerning saving a life. Our border areas are as defensible as any other.]

Regarding conquest, indeed there is great authority that the conquest may be initiated on the Sabbath. However, according to Megillat Esther's and Rashbash's interpretation of Ramban, the conquest is not a commandment operative in these times. Thus, there is no need to differentiate between a border town and other areas in the land. Whenever the enemy attacks to take life, Jews are obligated to respond to save life.

But the issue of the border town does not apply to the greater issue of preventing war immediately. The real threat of war in the present is not the same issue as the possible threat of war in the future. Many authorities note that the possibility of danger in the future does not activate the laws of saving a life.<sup>20/</sup> The political and military authorities have determined that the return of the Sinai to Egypt reduces the chances of immediate war and the failure to return exacerbates the chances of immediate war. Perhaps, in the future the presence of Egypt on the border would be dangerous and activate the laws of the border town. But, we must rely

<sup>20/</sup>Yehezkel Landau, Volume 2 of Responsa, Yoreh Deah, Section 210; Chatam Sofer, Yoreh Deah, Section 336; Chazon Ish, Hilkhot Ohalot 22:32.

on the political and military authorities who believe that the present threat is greater if the territories are not returned. The guardian of Israel will protect the remnant of Israel.



RABBI CHAYIM DAVID HALEVY  
PEACE AND ITS IMPLICATIONS

The peace treaty with Egypt and return of the Sinai has raised profound questions of Torah and halakha. There are some among us who assert that the Torah of God cannot resolve modern problems, whether they be social, economic or political. There is a half-truth to this. On one hand, most modern problems can be resolved by application of halakha and one who denies this is an apostate of the worst sort. On the other hand, there are certain issues that are simply not the concern of Torah and halakha, particularly in the realm of economics and politics. One reason for this separation of Torah from these realms is that while Torah is an eternal document, economics and politics undergo constant change from generation to generation. Accordingly, the Torah intentionally did not define specifically economic and political relationships. Second, Torah desired to give the people free choice regarding these specific spheres of activity. Nevertheless, Torah did lay out certain essential and fundamental commandments regarding governmental authority. These commandments are basically to prevent the negation [of the law] possible under any government.

All the above, therefore, does not negate the possibility that Torah does provide certain guidelines for governmental and security issues. The procedures for initiating a non-commanded war are discussed in Sanhedrin 26, 16a and 20b. The law is then interpreted through Rashi's comments there and on

Berakhot 3b as well as in Rabbi Shelomo ben Aderet's Responsum 48. Essentially, these passages indicate that there were procedural requirements that had to be followed so that rabbis could give approval of decisions made by the sovereign body. The Sanhedrin made its decisions by "Da'at Torah" - never by "Psak Halakha." That is, there was not a specific halakha fixed for all times that determined their decision; rather, the Jewish ethical point of view from Torah guided their understanding of strategic, military and political factors that changed from generation to generation.

Similarly then, the current government makes its decisions based upon these kinds of political, military and strategic considerations. It may consult rabbis for broad guidelines, but the role of the rabbis is not to make governmental decisions.

The next question is whether Torah absolutely prohibits return of territory considered the land of Israel, as was done in the peace treaty with Egypt. The border of Israel, according to Nm. 34:5 extends to Nachal Mitzrayim. There are those, such as the Targum Yonatan and Rashi there, who state that the Nachal is the Nile. Others, such as Sadya Gaon and Radbaz, state that the Nachal is Wadi el Harish. In both opinions, all land up to the Wadi is land of Israel. [Some land of Israel, therefore, was returned to Egypt in the peace treaty.]

There are those who argue, based on Ramban's addendum to Rambam's Sefer HaMitzvot and commentary on Nm. 33:53, that it

is contrary to Jewish law to return any territory of Israel possessed or liberated by the Jewish people. Further, the commandment to settle the land includes conquest by means of war, and the essence of war is danger to life, raising the issue of "die so as not to transgress" and prohibiting the application of "saving a life" to override the commandment.<sup>1/</sup> Accordingly, even if Israel were to be at the brink of war, a return of territory in order to save life would be contrary to halakha.

This position, though, is incorrect. It is based upon [a misunderstanding of] the words of Minchat Chinukh. The Minchat Chinukh correctly reasons that any war commanded by Torah necessarily requires risk of life and precludes the application of the doctrine of saving a life. Indeed, there is no doubt that the author of Sefer HaChinukh understood this principle. The Minchat Chinukh did not understand that Sefer HaChinukh, in stating that the individual should not endanger himself to fulfill this commandment, spoke only in terms of the individual as individual, not the individual as obligated in a communal war. Indeed, danger is the essence of war and the death of individuals in war cannot supersede the commandment to fight that war.

Some rabbis have therefore reasoned that since the commandment to settle the land includes conquest, and conquest implies commanded war, and war precludes the application of

<sup>1/</sup>Based on Minchat Chinukh's comment on Sefer HaChinukh, Commandment 425.

the doctrine of saving a life, that Jews are commanded to die so as not to transgress the commandment to settle the land.

Their reasoning is correct but misses the point in that one cannot compare the settlement of the land to the existence of the nation as represented by its government. Indeed, the commanded conquest and war may require deaths of thousands and cannot be superseded by the need to save a life. But it would be absurd to say that the entire existence of the people should be endangered on the basis of this reasoning.

The essence of the problem, however, cannot be resolved by halakha. The strength of halakha is that it is not concerned with complicated political issues. Instead, it provides some general foundations from which one can approach a problem. Here, the many details are complicated; never before has the Jewish people been in a situation like this. Likely at stake is the survival of the State of Israel that represents the Jewish nation. The continuation of the state of war may lead to destruction; negotiations and withdrawal from territory may lead to peace. The essence of the negotiations is to preserve the security of the nation; the Toraitic principle is: "And you shall live by them."<sup>2/</sup> The problem will not be resolved by halakhic analysis, about issues of "saving a life," but by simple logic.

Based on the principle "and you shall live by them," a return to pre-1967 borders is not wise. If Israel had been

<sup>2/</sup>Lv. 18:5.

persistent in its negotiations with Egypt, it might not have had to return the settlements and airfields of the Sinai. But again, these are political issues which are beyond the scope of this article.

There are current authorities who argue that a return of settlements is forbidden by the halakha concerning a gentile attack on a Jewish border town.<sup>3/</sup> This halakha concerns the right to defend a border town on Shabbat when the gentiles come and issue an ultimatum in the sense of "your money or your life." This halakha does not concern two governments at war in the past who negotiate a peace settlement that returns the countries to pre-war borders as part of the agreement. One does not need this halakha to understand the value of border towns, particularly strategically at the time of war. This halakha simply concerns the right to defend the border town on Shabbat. Neither it nor any other halakha concerns the return of territory to pre-war borders to secure a peace agreement; that is strictly a governmental decision.

Other current authorities argue that a return of territories violates "Lo Techonem." The plain meaning of the Scriptural verse refers to the seven nations only, as some rabbis over the ages have interpreted. The Tosafot (Bavli Avodah Zarah 20a) apply the prohibition to all idolaters, a

<sup>3/</sup> Eruvin 45a and Rashi thereon; Shulchan Arukh, Orach Chayim 329:6.



position followed by Rambam (Hilkhos Avodah Zarah 10:3-6) and Sefer HaChinukh.<sup>4/</sup>

Rambam's presentation of the prohibition "Lo Techonem" shows that it is primarily connected to the selling or leasing of houses or fields. This matter concerns the individual within Israel; it is not within the government's authority to rent or lease houses or fields. At first glance, though, it would appear that the rule could be extended from the individual to the government to include the prohibition of returning territory of Israel.

However, that position is only at first glance, for Rambam develops the principle that "Lo Techonem" is based upon "Lo Yeshvu" (Ex. 23:33), where the rationale is that "so they shall not lead you astray into idolatry." It is for this reason that "Lo Techonem" applied to all idolaters and exempted those who accepted the seven Noachide laws. Support for this position is found in Kesef Mishneh's response to Rabad's criticism of Rambam.<sup>5/</sup> The principle of "Lo Techonem" - that they shall not lead you into idolatry - determines its application.

From here, one sees that one who sells his house to an idolater in the land of Israel among the people of Israel raises the possibility that the idolater will lead the Jews

<sup>4/</sup> There are others who believe Sefer HaChinukh applied the prohibition only to the seven nations. See Sefer HaChinukh, Commandment 426.

<sup>5/</sup> Rambam, Hilkhos Avodah Zarah 10:4 and Rabad and Kesef Mishneh there.

astray. However, a governmental situation is different. If the government decides for the benefit of its citizens to cede certain border territory, then the principle of "being lead into idolatry" does not apply. Those Jews residing among Muslims can relocate in the State of Israel; or, they may stay in the Muslim State and be treated like others outside the land, where "Lo Techonem" does not apply.

Clearly, all states wish to increase, not reduce their territory. However, if the government arrives at a situation where it believes that ceding territory is for the benefit of the people it represents, then "Lo Techonem" does not apply to its security decision.

All the above analysis assumes that "Lo Techonem" applies to Muslims as well as idolaters. Bet Yosef (Choshen Mishpat 249) bases his application of "Lo Techonem" to Muslims on the Tur. The Bach criticizes him, arguing that the Tur would not have referred to idolaters if he meant to include Muslims.<sup>6/</sup> Many authorities agree with the Bach.<sup>7/</sup> Additionally, many recent authorities permitted sales of land to Muslims on the basis that they are not idolaters.<sup>8/</sup> Furthermore, in a commentary on Bavli, Avodah Zarah 21a it is written that the

<sup>6/</sup>Tur, Choshen Mishpat 249 and Bet Yosef and Bach, there.

<sup>7/</sup>Including Rabbi Raphael ben Samuel Meyuchas in his book Mizbach Adamah.

<sup>8/</sup>Rabbi Abraham Isaac Kook in his book of responsa, Mishpat Kohen 63, permitted land sales to Muslims for the purposes of the sabbatical year; others are referred to in Mizbach Adamah - Rabbi Raphael b. Samuel Meyuchas apparently sold land to Muslims outright.



law applied in the land of Israel when occupied by idolaters; not outside the land or in these times.<sup>9/</sup> Therefore, "Lo Techonem" does not include Muslims. If one were to argue that permitted sale to Muslims only concerns the individual, one then supports the position that "Lo Techonem" does not apply to the government. In any event, one cannot prove from "Lo Techonem" any prohibition of return of territory to Muslims.

Further proof that "Lo Techonem" does not apply to governments comes from I Kings 9:11ff, in which King Solomon delivers 20 cities in the Galilee to King Hiram of Tyre in exchange for Temple building material. No rabbi who has attempted to explain this exchange has been particular about its details. Some, such as Malbim and Abravanel, state that Solomon only gave Hiram the produce from the cities, not the cities themselves. Radbaz suggests there was an exchange of cities, based on II Chronicles 8:1ff. Yet even an exchange is considered a violation of Lo Techonem according to the halakha.<sup>10/</sup> Indeed, an exchange of territories between Hiram and Solomon appears to have occurred, as based upon II Chronicles 8:1ff. In essence, as Radak comments, the exchange of territories was to strengthen the peace between them. From this it is learned that "Lo Techonem" does not apply to nations and governments' pursuing their security needs.

<sup>9/</sup>Meiri on Avodah Zarah 21a.

<sup>10/</sup>See the Gaon of Lublin, quoted by E. Waldenberg in Tzitz Eliezer 6:31.

In conclusion, there is no clear halakha that rules against withdrawal from territories of Israel as part of a negotiated peace. The essence of the peace is the existence and security of the nation. If the government concludes that ceding the territories will prevent war and bloodshed and bring true peace, then it is obligated to do so as a logical deduction from the principle "and you shall live by the Torah."11/

11/ Lv. 18:5, Yoma 85b, Sanhedrin 74a and elsewhere.

## CONCLUSION

## Analysis

The issue of "saving a life" in the halakhic sense leads to the broader issue of preservation of the people. Thus, both issues will be discussed herein.

### 1. The Halakha on "Transgress So As Not to Die".

The basic rules of saving a life, detailed in Sanhedrin 74a and 74b, require one to transgress certain commandments to stay alive. The Talmud excludes automatically certain commandments from the application of this rule: those concerning idolatry, incest and murder. Additionally, by logical reasoning, the later rabbis exclude the obligation to fight war from the rule of "transgress so as not to die." Since all war endangers life, the exclusion would negate the rule and consequently does not apply.

At first glance, one might conclude that all other commandments are automatically overridden by the obligation to transgress so as not to die. However, there are two major exceptions to the rule: (i) "public compulsion" and (ii) "the ruler's decree." When one is compelled to transgress a commandment in public or because of a ruler's decree, one must die so as not to transgress. The legal definitions of "public compulsion" and "ruler's decree" are complex. Therefore, it is difficult to determine whether the obligation to transgress so as not to die overrides the commandments of "Lo Techonem" and settlement of the land.

Since according to the general consensus in the halakha, commanded settlement applies to the individual, that entire body of law loses significance regarding the question of return of territories. Accordingly, no authorities addressed the issue of whether the obligation of saving a life affects the individual's obligation to settle in Israel. Rather, they address the issue of saving a life as it applies to "Lo Techonem."

2. How Current Halakhic Authorities Apply "Transgress So As Not to Die" to "Lo Techonem".

As for the first exception, public compulsion, if a Jew is compelled to transgress a commandment in public (in front of ten Jews) solely for the benefit of the gentile and without any impairment of the Jew's religious identity, then the Jew must transgress the commandment in public. In this instance, the legal issue is clear: Is the public act solely for the gentile's benefit? The only way in which the modern halakhic authorities can differ is in their application of the facts to the issue.

Not surprisingly, Breur, who favors return of territory, argues that the Arabs are acting for their own benefit, not to force the Jews to violate their religion. He argues that the Arab struggle for independence began under the Islamic Ottoman Empire and has also been waged against Christian Europe. He understands anti-Israeli and anti-Jewish remarks as side issues typical of political and social movements for independence found all over the world. He concludes that

whether or not justified by the law, the refugees from and residents of the territories are speaking of their own interests.

Weingart and others who argue against return of territory note contrary facts. Even if the Arabs have the interests of the refugees in their hearts, most Arabs involved in the struggle have no personal interest in the land, and it is difficult for Muslims to distinguish between a political and religious war. Weingart states that the Arabs speak of Arab hegemony over the land and the Jews as a cancer that must be excised. He further notes that the implications of any return of territory are that the Jews do not have an eternal, God-given right to the land and that their conquest of it was illegal. Consequently, return of territory, ipso facto, undermines the Jewish religion.

Beyond this battleground of factual interpretation, Weingart raises an interesting legal point not addressed by Breur. Weingart asserts that the essence of "for their own benefit" presumes that the action of the gentiles does not directly contradict a commandment. The essence of "Lo Techonem" is to prevent gentile residence, and to give them possession for their own benefit would directly contradict that prohibition. Therefore, Weingart concludes, "for their own benefit" cannot serve as an exception to the rule that when gentiles demand that Jews transgress a commandment in public, Jews must die so as not to transgress. Assuming

Weingart's statement of the law is correct, his argument seems solid.

The second exception to "transgress so as not to die" is to the effect that when a decree is issued compelling a Jew to transgress, he must die so as not to transgress. The legal issue raised by Weingart and Breur is whether this exception depends on the intent of the one issuing the decree or on the content of the decree. The decree about which they speak is a peace treaty that would exchange land of Israel for peace with its neighbors.

Breur argues that the exception depends on the intent of the one issuing the decree. The essential question for Breur is whether the ruler's intent is to force the Jew to deny his religion. At this point, Breur returns to his political analysis. While the effect of the decree may cause Jews to deny an aspect of their religion, one cannot know the intent of those issuing the decree, except by objective evidence. Here, Breur interprets the facts to support his position and concludes that the intent of those issuing the decree is solely to achieve Palestinian rights. Therefore, the exception of the ruler's decree does not apply and "transgress so as not to die" does.

Weingart takes Breur to task for this reasoning. Weingart raises many legal issues, but in the end, Weingart simply weighs the evidentiary facts differently than Breur. First, Weingart states that the legal issue does not concern the intent of the ruler, but rather the content of the decree



issued. Reading the halakhic sources, however, it is difficult to determine the precise difference between the "ruler's intent" and the "effect of the decree." Generally, intent would be determined by effect, an issue of fact, not law.

Second, Weingart raises the legal issue of burden of proof concerning how the relative facts should be weighed. Here, Weingart is a bit deceptive. He states that in issues of transgressing a commandment the burden of proof rests with those arguing that a commandment should be transgressed. In certain circumstances this statement is true, but as Yosef states directly and as Breur implies, when the reason for transgression is to save a life, the burden of proof rests on those arguing against the application of the rule of saving a life.

Third, Weingart raises the "straw man" that the legal issue could concern the identity of the ruler issuing the decree. Here, Weingart acknowledges that if one were to look at a peace treaty as something negotiated between two governments, as opposed to a decree promulgated by a foreign ruler affecting the Jewish people, the exception of the ruler's decree would not apply. However, Weingart rejects that understanding of the exception. (There are current halakhic authorities who argue against making a peace treaty with the Arabs on the basis of Dt. 7:2, "You shall not make a covenant with them," but that issue is not addressed here.)

All of Weingart's legal issues basically lead him to making his factual interpretation. Here Weingart notes that one can weigh the evidentiary facts to prove that the intent of the Arab rulers is to cause the Jews to reject their religion. That is, the effect of a peace treaty would be to give the Arabs rights to the land of Israel and annul the Jews' rights to the land promised them in the Torah. Therefore, Weingart reaches the legal conclusion that transgression of "Lo Techonem" must be resisted to the point of death.

Like Breur, Weingart makes legal conclusions and factual interpretations that support his political perspective. On a strict halakhic application of the law of saving a life to the issue of "Lo Techonem," Weingart's analysis appears difficult to refute. Therefore, those who favor a return of territory steer the argument away from one of strictly interpreted halakha to the broad principle of being able to live one's life according to the principles of halakha. (This, of course, is a second line of argument. The first line is that "Lo Techonem" does not apply.)

3. Current Halakhic Authorities on the Preservation of the People.

In their own way, Israeli, Breur, Yosef and HaLevy note that the issue may be beyond halakha - it is a question of military and political realities. Even many of those who argue against return of territory speak of the defensive war as commanded "assuming it can be won." Thus, underlying the

whole halakhic argument appears an awareness that halakha should not lead to national suicide.

In this vein, Breur cites the example of Rabban Yochanan ben Zakkai compromising with the Romans. He also cites the early Zionists, both secular and religious, who compromised with the United Nations by forming the State of Israel through partition. (Breur also comments that one of the people in favor of territorial compromise to form the State was the Chazon Ish, the same rabbi cited by other current authorities as the source for prohibiting transfer of land.) In responding to Breur's reference to Yochanan ben Zakkai, Weingart comments that Zakkai had a choice "between surrender or suicide, not peace or war with a possibility of victory." Now the argument has become patently political. Recognizing that the ultimate issue - upon which all the above authorities appear to agree - is one of the survival of the Jewish people on their land, HaLevy forcefully argues for a solution beyond halakha, if necessary.

Obviously, there is an inherent risk in being part of the halakhic system and at the same time arguing for its inapplicability. Yosef seems to be aware of this undercurrent - that it is only because of lack of faith that Jews are not invincible. One notes the euphoria of Hadaya soon after the Six Day War. Hadaya argues that Jews must have faith that the God who performed miracles for them in the Six Day War will continue to do so and that there is no need to fear other nations and surrender to their threats. Yosef even mentions

Pesachim 56a, the Talmudic support for this position. There, King Hezekiah sent the gold from the Temple doors to the King of Assyria so that the latter would leave him in peace. King Hezekiah was rebuked by the Sanhedrin for not trusting in God. But, Yosef comments, King Hezekiah's generation was unique in its faithfulness - it walked in the path of Torah and would receive its reward from God. On the other hand, the current generation, being licentious and negating the Torah, is prone to punishment. Therefore, Yosef reasons, for the time being, practicalities must rule the day and the territories must be returned if that will bring peace. When the Jews are true to the Torah, they will be returned from exile to the land of Israel in its entirety.

HaLevy defuses the problem of being accused of faithlessness because of his favoring political settlement. He forthrightly declares that the issue of return of territories is non-halakhic. HaLevy notes that most (but not all) modern problems can be resolved by application of halakha, and anyone who denies that is an apostate. On the other hand, certain issues are not the concern of Torah and halakha. In particular, while economics and politics may be guided by principles of Torah, their intricate details are to be developed freely by human beings. As HaLevy notes, the government may consult rabbis for broad guidelines, but must make its decisions based upon political, military and strategic considerations. The only question is whether Torah absolutely prohibits return of territories. A brief review of

HaLevy's arguments cited above demonstrates the inapplicability of halakha and the use of principles of Torah to guide political decisions.

"Lo Techonem" is a law that concerns individuals not governments.

The commanded settlement, even if it includes commanded war, cannot demand national suicide. Furthermore, most passages concerning defensive war as commanded do so in context of Shabbat; their primary concern is not the return of border territory.

Therefore, the root of the problem cannot be resolved by halakha. In fact, HaLevy asserts that the very strength of halakha is that it is not concerned with political issues. Here, the Jewish people finds itself in a complex political situation. At stake is the survival of the State of Israel that represents the nation. The continuation of war may lead to its destruction; negotiations and withdrawal may lead to peace. The essence of negotiations is to preserve the security of the nation on the Toraitic principle "and you shall live by them." The problem will not be resolved by halakhic analysis, by strained interpretations of "saving a life," but by political solutions that assure national survival.

## CONCLUSION

In the period beginning in December, 1987 when this thesis was proposed and ending in February, 1989 when it was completed, the Palestinian rebellion, or intifada, erupted. It continues to this day.

Sadly, after nearly 22 years of military presence in the territories, Israel is no closer to peace with its Arab neighbors. If anything, Israel's situation is less stable than before.

Internally, dissension is high over the fate of the territories. The options are to exchange territories for peace, to annex them or to continue the status quo. The internal strife has had profound social effects, as many Jews no longer find Israel a desirable place to live. Immigration to Israel is low, emigration is high - partly because of the social and economic costs of military occupation. Additionally, Israel finds itself more ostracized from the world community as the occupation continues.

The world now focuses on Palestinian rights and the need for Palestinians to have some sort of state of their own. The nature of that state - whether independent, as part of Jordan or in confederation with it, whether demilitarized or with a small police force - all remains to be decided. But the creation of some type of Palestinian state within Israel appears inevitable.

At first thought, one would think that the creation of a Palestinian state on the land of Israel negates Israel's exclusive, religious claim to the land. There are current



halakhic authorities who argue that position. In so doing, they equate the existence of the modern, sovereign State of Israel with the eternal right of the Jewish people to the land of Israel. As mentioned in the introduction, this issue is a matter of debate within the halakhic community.

To assume that the halakha clearly requires such a connection is both wrong and dangerous. It seems improbable that a few million Jews can dominate hundreds of millions of Arabs. Israeli domination at this point has more to do with strategic maneuverings of client states by global superpowers than the will of God. Halakhic authorities such as Rabbi Ovadiah Yosef discuss misplaced messianism and its potentially dangerous consequences for the future of the Jewish people. Rabbi David HaLevy flatly states that one can be a halakhic Jew and agree that the current situation, presenting an opportunity of exchange of land for peace, is not governed by minutiae of halakha but by general principles of Torah.

The halakhic battle is fought over three major issues: prohibited gentile settlement, commanded Jewish settlement and saving a life.

First, those against a return of territory argue that prohibited gentile settlement includes Arabs. Thus, this commandment requires Jews to make the settlement of Arabs on the land less permanent. Since Arab sovereignty will lead to Arab permanence, this commandment precludes an exchange of land for peace.

The second argument against an exchange of land for peace is based on the law of commanded conquest. Certain rabbis declare that commanded conquest requires all Jews at this time to take and hold, by force if necessary, Eretz Israel.

Finally, those arguing against compromise note that the halakhic application of the law of saving a life cannot override either "Lo Techonem" or "VeHorashtem."

Those who favor a return of territory argue that the commandment prohibiting gentile presence concerns individual land sales to idolaters and therefore does not apply either to Arabs or to land transfers between governments.

Next, they hold that to settle the land is a commandment that devolves upon each individual Jew, but that there is no commandment that now requires the community of Israel to take the land by force. Interestingly, those favoring compromise fail to note the dramatic inconsistencies in the position of those against compromise. The commanded conquest, if applicable, should require Jews to take other lands east of the Jordan and expel Arabs living in "Eretz Israel." This position is nothing more than a consistent application of "VeHorashtem," an order contextually pertaining to the seven nations but extended by some to all gentiles on the land.

The position of those favoring compromise would be strengthened if they would agree that the halakhic application of saving a life cannot override the application of the laws concerning prohibition of gentile settlement and commanded Jewish settlement. Rather, they should be consistent and

declare that those laws simply are not germane and have no need to be overridden. The avoidance of national suicide by compromise is as justifiable today as it was when Yochanan ben Zakkai compromised with the Romans.

Accordingly, even if an exchange of territory for peace were governed by halakha, the results of this thesis demonstrate that the halakhic interpretations are greatly influenced by political considerations. Certainly, my own analysis of the issues would have been different had my attitude about both the halakha and political settlement been different. But, given my belief that the status quo cannot be maintained forever, I found myself endorsing the halakhic positions that strictly construed the interpretations of "Lo Techonem," and "VeHorashtem." Moreover, as a progressive Jew, I found myself endorsing HaLevy's findings that the issues actually are beyond the halakha.

Some type of political solution needs to be developed. There are two essential parties to this solution: the Palestinians and the Israelis. The Palestinians desire a state. The Israelis desire security for their state. Unfortunately, both parties are not independent actors in a vacuum, but are enmeshed in a web of global issues, not only the issues of East versus West but of pan-Arabism and pan-Islamism.

Even without the complication of these broader issues, any resolution would be most difficult. David Shipler relates in Arab and Jew the deep seated fear and mistrust of each party

for the other. In A Zionist Dream Revisited, Amnon Rubinstein shows that ideological momentum in Israel has shifted from the early socialist, Labor-Zionists to the messianic, chauvinistic Gush Emunim. Meron Benveniste attributes the rise of those favoring the expansion of Israeli territory to an emphasis on the concept of "moledet," the Jewish homeland, in both traditional Judaism and Zionism.<sup>1/</sup> The value of possession of land was stressed while "equally cherished values such as the brotherhood of man, social justice and civil equality to all" were neglected, leading "inexorably to chauvinism and xenophobia."<sup>2/</sup>

I believe that Benveniste correctly states the three competing claims on the Jewish psyche in the State of Israel: moledet, Jewish state and liberal democracy.<sup>3/</sup> I agree that moledet must give way to an exchange of land for peace to preserve the Jewish state and liberal democracy. Some current halakhic authorities also recognize the truth of this proposition. They find within the halakha authority for the government of Israel to negotiate for peace as it sees fit. Nevertheless, there are many for whom the concept of moledet runs deep. These include the current halakhic authorities who interpret the halakhic sources to preclude any possibility of exchange of land for peace. They are determined to preserve the Jewish state on all Jewish land

<sup>1/</sup>Benveniste, Meron. Conflicts and Contradictions, p. 45.

<sup>2/</sup>Ibid., p. 45

<sup>3/</sup>Ibid., p. 181.

currently settled by Jews and controlled by Israel. If necessary to achieve this result, they are willing to dispense with democratic values.

Benveniste recognizes the growing movement in Israel to maximize territorial possessions and concludes that return of territory is politically impossible. But contrary to the halakhists, he is willing to maintain democracy at the expense of the Jewish nature of the state. Benveniste stands virtually alone in arguing for a democratic binational state.

Of course, all these potential solutions must be negotiated with the Palestinians and other Arabs in the region. Prospects for a peaceful solution in the near future seem less likely than the continuation of the intifada or outbreak of another war.

Benveniste, discussing the competing cultures on the land, closes his book with the following analysis and anecdote:

"Yet there is an additional element of irony in the tragedy. We can never escape the inherent struggle between our symbolic attempt to create authentically Israeli forms and the perpetual slide toward the physical forms of the Palestinians, perhaps, in a way, because we sense that they are in an inalienable part of the land. Take the Tower of David, the best-known symbol of Jerusalem. Its form is simply and solely that of a minaret, and whatever you do, you cannot alter the fact that it is an Islamic, Arab structure. The ruins of the Arab villages - a few layers of weathered stone, a half-buried arch, a broken millstone - betray the previous

existence of a once living, breathing village. Even where, literally, one stone does not remain upon another, you can still detect the ghost of a village. There are plants such as dill that grow only in places inhabited by men and his domestic beasts. There are 'bustans,' groves of vine, fig, and pomegranate; there are dense hedges of sabra-cactus fencing off one property from another. Even where the village itself has completely vanished you can still discern its contours. Almost two million Palestinians still live on their land, cherish it, and are determined to preserve their own map and physical forms. It is impossible to erase their contribution to the landscape of our shared homeland, no matter how hard people try. Someone, someday, will raise the question and will demand an answer. Are we ready to merge the two maps? Are we ready to stop eradicating each other's names? When such questions can be asked, perhaps the dissonance and conflict that plague so many Israelis will be resolved.

"When at a certain state I left my own immediate surroundings to seek out a more universal dimension to my experiences, I found myself in the Grand Opera House of Belfast. The first performance of Brian Friel's 'Translations' was given in the Opera House - rebuilt after twenty-four bombing incidents - to an all-Catholic audience. The play dealt with the substitution of an English map of Ireland for the original, the ultimate symbolic expression of possession. When the play ended, I said to my friend, a

Catholic, 'You know what? We've been doing the same thing all along - translating, changing names, creating a new reality.' My friend regarded me for a moment with an expression of the utmost sadness and said at last, 'Well, if that's the case, may God have mercy on you all!'"<sup>4/</sup>

Israel is a land of conflicts and contradictions: between Arabs and Israelis; between East and West; and among Muslims, Christians and Jews. Israel is a land where conflicts and contradictions seethe within each group. Whether Israel is a land where these competing groups will have the courage to compromise remains to be seen.

<sup>4/</sup>Ibid., pp. 201-202.



## BIBLIOGRAPHY

- Aaronberg, Rabbi Joshua Menachem and Shragai, Rabbi Schneur Zalman. "An Exchange of Letters Concerning the Liberated Territories and the Commandment of Saving Lives," Shanah B'Shanah, Heikhal Shelomo (Jerusalem:1969), pp. 138-145.
- Ariel, Rabbi Yakov. "The Conquest of Eretz Yisrael - the View of Nachmanides (response to article in Techumin)," Techumin, Vol. 5, Tzomet (Gush Etzion:1984), pp. 174-179.
- Babad, Josef. Sefer Minchat Chinukh on Sefer HaChinukh, Isaac Funk (Vilna:1912).
- Bakshi-Doron, Rabbi Eliahu. "Transfer of Land of Israel to Gentiles." Torah ShB'al Peh, Vol. 15, Mossad HaRav Kook (Jerusalem:1973), pp. 137-142.
- Benveniste, Meron. Conflicts and Contradictions, Villard Books (New York:1986).
- Bleich, Rabbi J. David. Contemporary Halakhic Problems, Vol. II, Ktav Publishing House, Inc. (New York:1983).
- Botterweck, G. Johannes and Ringgren, Helmer (eds.). Theological Dictionary of the Old Testament, Vol. 5, William B. Eerdmans Publishing Company (Grand Rapids:1980).
- Brown, Francis; Driver, S.R. and Briggs, Charles A. A Hebrew and English Lexicon of the Old Testament, Clarendon Press (Oxford:1951).
- Elon, Menachem. HaMishpat HaIvri, Magnes Press (Jerusalem:1973).
- Glickman, Rabbi Yitzchak. "Delivery of Israeli Territory to Gentile Sovereignty in the Light of the Torah," Noam, Vol. 21, Torah Shelemah Institute (Jerusalem:1978), pp. 101-111.
- Hadaya, Rabbi Ovadiah. "Questions Regarding the Territories Liberated by Israel in the Six Day War," Noam, Vol. 11, Torah Shelemah Institute (Jerusalem:1967), pp. 176-184.
- HaLevy, Rabbi Chayim David. "Peace and Its Implications," Torah ShB'al Peh, Vol. 21, Mossad HaRav Kook (Jerusalem:1980), pp. 39-48.
- Hoffman, Lawrence, A. (ed). The Land of Israel: Jewish Perspectives, University of Notre Dame Press (Notre Dame:1986).

Israeli, Rabbi Shaul; HaLevy, Rabbi Chayim David and Breur, Rabbi Mordecai, "Not an Inch: A Commandment from the Torah?", Oz V'Shalom Monograph No. 2 (Jerusalem:1977).

Katznelbogen, Rabbi Raphael. "The Law About Conquering the Land of Israel," Noam, Vol. 16, Torah Shelemah Institute (Jerusalem:1972), pp. 44-52.

Klein, Rabbi David B. (tr.) and Freedman, Rabbi Dr. Harry. "Eretz Israel," Encyclopedia Talmudit, Vol. III, Talmudic Encyclopedia Institute (Jerusalem:1978), pp. 1-68.

Kook, Rabbi Abraham Isaac. Shabbat HaAretz, Mossad HaRav Kook (Jerusalem:1951).

Krieger, Rabbi Ben Tzion. "Return of Captured Territories," Techumin, Vol. 8, Tzomet (Gush Etzion:1987), pp. 310-336.

Nachshoni, Rabbi Yehuda. "The Problem of Saving a Life and Settlement on the Land," HaMayan, Vol. 20, No. 2, Mossad Isaac Bryer of Agudat Israel (Jerusalem:1980), pp. 9-16.

Rabinowitz, Rabbi Nachum Eliezer. "Nachmanides - The Conquest of Israel," Techumin, Vol. 4, Tzomet (Gush Etzion:1983), pp. 302-306.

Rabinowitz, Rabbi Nachum Eliezer. "The Conquest of Eretz Israel - The Views of Nachmanides and Maimonides (response to Rav Ariel)," Techumin, Vol. 5, Tzomet (Gush Etzion:1985), pp. 180-186.

Sefer HaMitzvot of Rambam Including the Commentary of Nachmanides and the Response to that Commentary by Megillat Esther, Reinman Seforim Center, Inc. (New York:1984).

Shipler, David K. Arab and Jew, Times Books (New York:1986).

Sofer, Avraham (ed.). Beit HaBechira of Meiri, Maseket Avodah Zarah, Kedem (Jerusalem:1980).

Sperber, Daniel. "On the Transfer of Property from Jew to non-Jew in Amoraic Palestine," Dine Israel, Vol. IV, Tel Aviv University Faculty of Law (Tel Aviv:1973), pp. xvii-xxxiv.

Unterman, Rabbi Issar and Israeli, Rabbi Shaul. "Questions Regarding Territories Liberated by the Israeli Army," Shanah B'Shanah, Heikhal Shelomo (Jerusalem:1967), pp. 103-108.

Warhaftig, Rabbi Yakov. "Lo Techonem - Its meaning in Modern Israel," Techumin, Vol. 2, Tzomet (Gush Etzion:1981), pp. 193-212.

Weingart, Rabbi Abraham Abba. "The Matter of Return of Territory of Israel and Saving a Life," HaMayan, Vol. 18, No. 4, Mossad Isaac Bryer of Agudat Israel (Jerusalem:1978), pp. 1-20 and 26-29.

Yosef, Rabbi Ovadiah. "The Return of Territories of Israel on Account of Saving a Life," Torah ShB'al Peh, Vol. 21, Mossad HaRav Kook (Jerusalem:1980), pp. 12-20.

Zolti, Rabbi Betzalel. "Possession of the Liberated Territories," Torah ShB'al Peh, Vol. 11, Mossad HaRav Kook (Jerusalem:1973), pp. 137-142.

## SOURCES OF TRANSLATIONS

### BIBLE:

Tanakh, The Holy Scriptures, The Jewish Publication Society (Philadelphia:1988).

### MISHNA:

Blackman, Philip. Mishnayoth, Vols. I-VI, The Judaica Press, Inc. (New York:1983).

### TALMUD BAVLI:

Hebrew-English Edition of The Babylonian Talmud, Relevant Volumes, Soncino Press (London).

### TALMUD YERUSHALMI:

Neusner, Jacob. The Talmud of the Land of Israel - Abodah Zarah, University of Chicago Press (Chicago:1982)

### RASHI COMMENTARY ON TORAH:

Rosenbaum, Rev. M and Silberman, Dr. A.M. Pentateuch and Rashi's Commentary, Shapiro, Valentine & Co. (London:1930).

### RAMBAN COMMENTARY ON TORAH:

Chavel, Rabbi Dr. Charles B. Ramban, Commentary on the Torah, Shilo Publishing House, Inc. (New York:1973).

### RAMBAM, SEFER HAMITZVOT

Chavel, Rabbi Dr. Charles B. The Commandments, The Soncino Press (London:1967).

### RAMBAM, MISHNEH TORAH:

#### 1. Hilkhot Melakhim:

Touger, Rabbi Eliyahu. Maimonides Mishneh Torah, The Laws of Kings and Their Wars, Maznaim Publishing Corporation (New York:1987).

#### 2. Hilkhot Avodah Zarah and Hilkhot Yesodei Torah:

Weinberg, Rabbi J. The Book of Knowledge From the Mishneh Torah of Maimonides, The Royal College of Physicians of Edinburg (Edinburgh:1981).

3. Hilkhot Shabbat and Ta'anit:

Gandz, Solomon and Klein, Hyman. The Code of Maimonides, Book Three, The Book of Seasons, Yale University Press (New Haven:1961).

SEFER HACHINUKH:

Wengrov, Charles (tr). Sefer HaChinukh, Vols. I and IV, Feldheim Publishers (Jerusalem:1978 and 1988).

